NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

(IB) 1051 (ND)/2019

In the matter of:

ANAND PRAKASH SONI ..... Financial Creditor 1

SOURABH SONI ..... Financial Creditor 2

SURAJ PRAKASH SONI ..... Financial Creditor 3

DURGA DEVI SONI ..... Financial Creditor 4

SHALU SONI ..... Financial Creditor 5

RAM RAJ SONI ..... Financial Creditor 6

DEEPIKA SONI ..... Financial Creditor 7

POOJA SONI ..... Financial Creditor 8

YOGITA SONI ..... **Financial Creditor 9**

NIKITA SONI ..... **Financial Creditor 10**

V/s

M/S HECTOR REALTY VENTURES PVT LTD. .... **Respondent/Corporate Debtor**

SECTION: U/s 7 of IBC, 2016

Order delivered on 09.12.2019

Coram:

JUSTICE (RETD) RAJESH DAYAL KHARE BLE MEMBER (J)
SMT. SUMITA PURKAYASTHA, HON' BLE MEMBER (T)

For the Petitioner: Adv Vibhav Tyagi, Advocate
For the Respondent: Adv. Manoj K. Srivastava, Adv. Nishant Verma

ORDER

PER SMT. SUMITA PURKAYASTHA, MEMBER (T)

1. The present petition has been filed under Section 7 of the Insolvency &Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency Resolution Process of the Respondent/Corporate Debtor on grounds of its inability to liquidate its financial debt.

2. As per the averments made by the Financial Creditors No.1 the total amount of default committed by the Corporate Debtor is Rs. 25,60,000/- as on February 2019. The Corporate Debtor had in the month of June, 2015 launched its project for residential apartments with the name "Marvella City" situated at Haridwar, Uttarakhand. The Corporate Debtor had assured the Financial Creditor No.1 that the said project would be completed by the year 2017. The Financial Creditor No. 1 expressed its intention to purchase a unit in the said project and made booking in the said unit. Pursuant to the booking made by the Financial Creditor, the Corporate Debtor issued a Welcome Letter dated 11.06.2015 to the Financial Creditor No.1. The Corporate Debtor issued an Allotment Letter dated 11.03.2016, wherein a Flat bearing no. T-D504 A was allotted to the Financial Creditor No.1 and was informed that the total sale consideration of the said unit was Rs. 17,02,315/- The Financial Creditor has paid a total amount of Rs. 16,00,000/- to the Corporate Debtor. The details of the receipt are:

Receipt No.	Amount (Rs)
PRO-1366	4,000/-
PRO-1365	2,26,000/-
PRO-1527	2,30,000/-
PRO-2247	1,35,000/-
PRO-2513	1,35,000/-
PRO-2707	5,70,000/-
PRO-2706	3,00,000/-

3. The Corporate Debtor and the Financial Creditor No.1 entered into a Builder Buyer Agreement dated 01.08.2017 and also entered into a Memorandum of Understanding dated 01.08.2017, in terms of which the Corporate Debtor was liable to pay the Financial Creditor an amount of Rs.48000/- per month till the date of registry of the subject unit in the nature of the Financial Creditor No. 1 The Corporate Debtor issued certain PDCs in favour of the Financial Creditor No.1 for the assured return but the same has been dishonoured. The Financial Creditor No.1 approached the Corporate Debtor for the repayment of Assured Return hence, the Financial Creditor No.1 issued a legal notice dated 22.09.2018 calling upon the Corporate Debtor to repay the said amount. The Corporate Debtor had assured possession of the said unit by December 2018 but despite lapse of the said period, the Corporate Debtor has failed to provide possession of the said unit. The financial Creditor No.1 sent a communication dated 14.02.2019 demanding refund of the total outstanding amount payable by it.

4. As per the averments made by the Financial Creditor No.2 the total Amount of default committed by the Corporate Debtor is Rs. 25,60,000/-as on February, 2019. The Financial Creditor No. 2 expressed its intention the purchase a unit in the said "Marvella City Project" and made the booking in the said Unit. That the Financial Creditor had paid a total amount of Rs. 16,00,000/- to the Corporate Debtor till date. The details of some receipts are being produced below:

Receipt No	Amount (Rs.)
PRO-2711	2,00,000
PRO-2713	6,00,000

5. That the Corporate Debtor and the Financial Creditor had entered into a Builder Buyer Agreement dated 01.08.2017 in terms of which the Corporate Debtor was liable to provide possession of the said unit to the Financial Creditor No, 2 by December, 2018. That the Corporate Debtor and the Financial Creditor No. 2 also entered into a Memorandum of Understanding dated 01.08.2017, in terms of which the Corporate Debtor was liable to pay the Financial Creditor an amount of Rs. 48,000/- (Rupees Forty Wight Thousand Only) per month till the date of registry of the subject unit in the name of the Financial Creditor No, 2 That the Corporate Debtor had even issued certain PDC's in favour of the Financial Creditor No, 2 for the assured return but the same has been dishonoured.

6. The Financial Creditor No. 2 approached the Corporate Debtor for the repayment of Assured Return but till date the Corporate Debtor had failed to return the said amount of the Financial Creditor No. 2. The Financial Creditor No, 2 even issued a legal notice dated 22.09.2018 calling upon the assured return but the Corporate Debtor has failed to make the said payment. The Corporate Debtor had assured possession of the said unit by December 2018 but despite lapse of the said periods, the Corporate Debtor had failed to provide possession of the said unit. Aggrieved, the Financial Creditor No. 2 sent a communication dated 14.02.2019, demanding refund of the total outstanding amount payable by it. That despite the receipt of the said communication the Corporate Debtor has failed to repay the said amount.

7. As per the averments made by the Financial Creditor No.3 the total amount of default committed by the Corporate Debtor is Rs. 25,60,000/- as on February, 2019. The Financial Creditor No. 3 expressed its intention to purchase a unit in the said "Marvella City Project" and made the booking in the said unit. Pursuant to the booking made by the Financial Creditor No.3, the Corporate Debtor issued a Welcome Letter dated 11.06.2015 to the Financial Creditor No. 3. The Corporate Debtor, thereafter, issued an Allotment Letter dated 01.02.2016, wherein a Flat bearing No. T-D505 A was allotted to the Financial Creditor No. 3 and was informed that the total sale consideration of the said unit was Rs. 17,02,315/- (Rupees Seventeen Lakhs Two Thousand Three Hundred and Fifteen Only).

8. That the Financial Creditor No. 3 has paid a total amount of Rs. 16,00,000/- to the Corporate Debtor till date. The details of the receipts are being produced below:

Receipt No.	Amount (Rs.)
PRO-1362	2,30,000
PRO-1363	7,000
PRO-1528	2,23,000
PRO-2256	1,35,000
PRO-2514	1,35,000
PRO-2705	6,00,000
PRO-2704	2,70,000

9. The Corporate Debtor and the Financial Creditor No. 3 entered into a Builder Buyer Agreement dated 01.08.2017. The Corporate Debtor and the Financial Creditor No. 3 had also entered into a Memorandum of Understanding dated 01.08.2017, in terms of which the Corporate Debtor was liable to pay the Financial Creditor an amount of Rs. 48,000/- (Rupees Forty Eight Thousand Only) per month till the date of registry of the subject unit in the name of the Financial Creditor No. 3. The Corporate Debtor had even issued certain PDCs in favour of the Financial Creditor No. 3 for the assured return but the same has been dishonored.

10. The Financial Creditor No. 3 approached the Corporate Debtor for the repayment of Assured Return but till date the Corporate Debtor has failed to return the said amount to the Financial Creditor No. 3. The Financial Creditor No.

3 even issued a Legal Notice dated 22.09.2018 calling upon the Corporate Debtor to repay the said amount of assured return but the Corporate Debtor has failed to make the said payment. The Corporate Debtor had assured possession of the said unit by December 2018 but despite lapse of the said periods, the Corporate Debtor had failed to provide possession of the said unit. Aggrieved the Financial Creditor No. 3 sent a communication dated 14.02.2019 demanding refund of the total outstanding amount payable by it.

11. As per the averments made by the Financial Creditor No. 4 & 5 the total amount of default committed by the Corporate Debtor is Rs. 25,60,000/- as on Februray, 2019. The Financial Creditor No. 4 & 5 expressed its intention to purchase a unit in the said "Marvella City Project" and made the booking in the said unit. Pursuant to the booking made by the Financial Creditor No 4 and 5, the Corporate Debtor issued a Welcome Letter dated 28.08.2015 to the Financial Creditor No. 4 and 5.

12. The Corporate Debtor thereafter, issued an Allotment Letter dated 04.01.2016 wherein a Flat bearing No. T-NRO A+203 was allotted to the Financial Creditor No. 4 & 5 and was informed that the total sale consideration of the said unit was Rs. 17,77,315/- (Rupees Seventeen Lakhs Seventy Seven Thousand Three Hundred and Fifteen Only). The Financial Creditor has paid a total amount of Rs. 16,00,000/- to the Corporate Debtor till date. The details of the receipts are being produced below:

Receipt No.	Amount (Rs)
PRO-1619	1,20,000
PRO-1620	1,10,000
PRO-1560	1,10,000
PRO-2253	65,000
PRO-2252	70,000
PRO-2511	65,000
PRO-2512	70,000
PRO-2703	8,45,000
PRO-1546	1,20,000

13. The Corporate Debtor and the Financial Creditor No. 4 & 5 entered into a Builder Buyer Agreement dated 28.07.2017. The total sale consideration of the subject unit is Rs. 17,83,750/-. The Corporate Debtor and the Financial Creditor had also entered into a Memorandum of Understanding dated 28.07.2017, in terms of which the Corporate Debtor was liable to pay the Financial Creditor an amount of Rs. 48,000/- (Rupees Forty Eight Thousand Only) per month till the date of registry of the subject unit in the name of the Financial Creditor No. 4 and 5.

14. The Corporate Debtor had even issued certain PDC's in the favour of the Financial Creditor No. 4 and 5 for the assured return but the same has been dishonoured. That the Financial Creditor No. 4 and 5 approached the Corporate Debtor for the repayment of Assured Return but till date the Corporate Debtor has failed to return the said amount to the Financial Creditor No. 4 and 5. That the Financial Creditor No. 4 and 5 even issued a Legal Notice dated 22.09.2018 calling upon the Corporate Debtor to

repay the said amount of assured return but the Corporate Debtor has failed to make the said payment. The Corporate Debtor had assured possession of the said unit by December 2018 but despite lapse of the said periods, the Corporate Debtor had failed to provide possession of the said unit. Aggrieved the Financial Creditor No. 4 and 5 sent a communication dated 14.02.2019 demanding refund of the total outstanding amount payable by it.

15. As per the averments made by the Financial Creditor No.6 the total Amount of default committed by the Corporate Debtor is Rs. 25,60,000/- as on February, 2019. The Financial Creditor No. 6 expressed its intension to purchase a unit in the said "Marvella City Project" and made the booking in the said unit. Pursuant to the booking made by the Financial Creditor No. 6, the Corporate Debtor issued a Welcome Letter dated 09.07.2015 to the Financial Creditor No.6. The Financial Creditor No. 6 has paid a total amount of Rs. 16,00,000/- to the Corporate Debtor till date. The details of some receipts are being produced below:

Receipt No.	Amount (Rs.)
PRO-2715	3,70,000/-,
PRO-2714	5,00,000/-
PRO-2529	1,35,000/-
PRO-2266	1,35,000/-
PRO-1561	2,30,000/-

16. The Corporate Debtor and the Financial Creditor No. 6 entered into a Builder Buyer Agreement dated 01.08.2017. That the total sale consideration in terms of the Agreement

was Rs. 17,08,750/-. The Corporate Debtor and the Financial Creditor had also entered into a Memorandum of Understanding dated 01.08.2017, in terms of which the Corporate Debtor was liable to pay the Financial Creditor an amount of Rs. 48,000/- (Rupees Forty Eight Thousand Only) per month till the date of registry of the subject unit in the name of the Financial Creditor No. 6. The Corporate Debtor had even issued certain PDCs in favour of the Financial Creditor No. 6 for the assured return but the same has been dishoured.

17. The Financial Creditor No. 6 approached the Corporate Debtor for the repayment of Assured Return but till date the Corporate Debtor has failed to return the aid amount to the Financial Creditor No. 6. The Financial Creditor No. 6 even issued a Legal Notice dated 22.09.2018 calling upon the Corporate Debtor to repay the said amount of assured return but the Corporate Debtor has failed to make the said payment. The Corporate Debtor has assured possession of the said unit by December, 2018 but despite lapse of the said period, the Corporate Debtor has failed to provide possession of the said unit. Aggrieved, the Financial Creditor No. 6 sent a communication dated 14.02.2019 demanding refund of the total outstanding amount payable by it.

18. As per the averments made by the Financial Creditor No.7 & 8 the total amount of default committed by the Corporate Debtor is Rs. 27,00,000/- as on February, 2019. The Financial Creditor No. 7 & 8 expressed its intention to purchase a unit in the said "Marvella City Project" and made the booking in the said unit. The Financial Creditor

has paid a total amount of Rs. 17,40,000/- (Rupees Seventeen Lakhs Forty Thousand Only) to the Corporate Debtor till date. The details of the receipts are being produced below:

Receipt No.	Amount (Rs.)
PRO-2710	6,00,000/-,
PRO-2718	6,00,000/-
PRO-2709	1,35,000/-
PRO-2717	1,35,000/-
PRO-2708	1,35,000/-
PRO-2716	1,35,000/-

19. The Corporate Debtor and the Financial Creditor No. 7 & 8 entered into a Builder Buyer Agreement dated 01.08.2017. The Corporate Debtor and the Financial Creditor No. 7 & 8 had also entered into a Memorandum of Understanding dated 01.08.2017, in terms of which the Corporate Debtor was liable to pay the Financial Creditor an amount of Rs. 48,000/- (Rupees Forty Eight Thousand Only) per month till the date of registry of the subject unit in the name of the Financial Creditor No. 7 & 8. The Corporate Debtor had even issued certain PDCs in favour of the Financial Creditor No. 7 & 8 for the assured return but the same has been dishoured.

20. The Financial Creditor No. 7 & 8 approached the Corporate Debtor for the repayment of Assured Return but till date the Corporate Debtor has failed to return the said amount to the Financial Creditor No. 7 & 8. The Financial Creditor No. 7 & 8 even issued a Legal Notice dated 22.09.2018 calling upon the Corporate Debtor to repay the said amount of assured return but the Corporate Debtor has failed to make the said payment. The Corporate Debtor has assured possession of the said unit by December, 2018

but despite lapse of the said period, the Corporate Debtor has failed to provide possession of the said unit. Aggrieved, the Financial Creditor No. 7 & 8 sent a communication date 14.02.2019 demanding refund of the total outstanding amount payable by it.

21. As per the averments made by the Financial Creditor No.9 & 10 the total amount of default committed by the Corporate Debtor is Rs. 25,60,000/- as on February, 2019. The Financial Creditor No. 9 & 10 expressed its intention to purchase a unit in the said "Marvella City Project" and made the booking in the said unit. The Financial Creditor 9 & 10 have paid a total amount of Rs. 16,00,000/- to the Corporate Debtor till date. The Corporate Debtor and the Financial Creditor No. 9 & 10 entered into a Builder Buyer Agreement dated 01.08.2017. That in terms of the said Agreement, the total sale consideration for the said unit was Rs. 17,08,750/-.

22. The Corporate Debtor and the Financial Creditors had also entered into a Memorandum of Understanding dated 01.08.2017, in terms of which the Corporate Debtor was liable to pay the Financial Creditor an amount of Rs. 48,000/- (Rupees Forty Eight Thousand Only) per month till the date of registry of the subject unit in the name of the Financial Creditor No. 9 and 10. The Corporate Debtor had even issued certain PDCs in favour of the Financial Creditor Nos. 9 & 10 for the assured return but the same has been dishonoured.

23. The Financial Creditor Nos. 9 & 10 approached the Corporate Debtor for the repayment of Assured Return but till date the Corporate Debtor has failed to return the said

amount to the Financial Creditor No. 9 & 10. The Financial Creditor No. 9 & 10 even issued a Legal Notice dated 22.09.2018 calling upon the Corporate Debtor to repay the said amount of assured return but the Corporate Debtor has failed to make the said payment. The Corporate Debtor had assured possession of the said unit by December, 2018 but despite lapse of the said period, the Corporate Debtor has failed to provide possession of the said unit. Aggrieved, the Financial Creditor No. 9 & 10 sent a communication dated 14.02.2019 demanding refund of the total outstanding amount payable by it.

24. The Respondent- Corporate Debtor has filed its reply and has asserted the following contentions:

i. The Petitioner has not filed the present petition in correct form and format and has not filed relevant and necessary documents along with the present petition. The Corporate Debtor further states that the amount of Debt as claimed by the Petitioners is highly exaggerated. The assured return as claimed by the Petitioner in the petition is miscalculated and not as per the Agreed MOU executed between the parties.

ii. The Application filed by the Petitioner is not properly verified. An irregular letter has been filed on behalf of all Petitioners in favour of Mr. Rameshwar Soni. The present petition is not verified by way of affidavit by other Petitioners is a gross abuse of the process of the Hon`ble Tribunal.

iii. The Petitioners have neither filed complete bank account statement nor have they filed the certificate under the Bankers Books Evidence Act as mandatorily required. The bank account statements filed by the petitioner are not upto date.

iv. The Petitioner were also offered other unit in other project of the Respondent Company as a client goodwill gesture to compensate the Petitioner for the fall in the value of property booked by them. But the Petitioner have failed to come forward to take the alternate unit.

v. The receipts which were issued on the letter heads of the Respondent Company showing cash transactions were analyzed and it appears that the Petitioner is in default as no cash was ever received by the Respondent Company . It is pertinent to mention that the Respondent Company has a policy of taking payments through banking medium only.

vi. Due to personal problems of the concerned official of the Respondent Company, there was some delay in the execution of certain paper work and resolution of their grievances. It is further submitted that the MD of the Company was in Judicial Custody for a period of about 65 days and all the bank accounts of the Respondent has been freezed by the Department of Income Tax due to which the respondent company is facing extreme exigency and a difficult situation. Whereby the freezing of the accounts have led to non- redress of the grievances of the present Petitioner.

25. After hearing the arguments of the Learned Counsels for the parties, the order was reserved by this Court on 17.10.2019. The Financial Creditor as well as the Corporate Debtor have also submitted their written submissions which have been gone through by us alongwith the documents on record. And after hearing the Learned Counsels for the parties and after pursuing the records as well as the written submissions, we are of the considered opinion that the arguments raised by the Corporate Debtor in his pleadings that the Financial Creditor and the Corporate Debtor duly entered into the Builder Buyer Agreement dated 01.08.2017 and Memorandum of Understanding dated 01.08.2017 for the purchase of the flats developed by the Corporate Debtor a consideration of Rs. 17,08,750 as stipulated in the Flexi Payment Plan as per Clause 4 of the Buyer Builders Agreement but contra, the Financial Creditor tendered mere Rs. 16,00,000 in totality and *Ipso Facto* the Corporate Debtor refused to deliver the possession of the flats for a want of total amount due Rs. 17,08,750. However, the perusal of records show it was an agreed term between the Financial Creditors and the Corporate Debtor vide the Memorandum of Understanding dated 01.08.2017 that the concerned units of the project shall be allotted to the Financial Creditor on payment of Rs. 16,00,000 and it is in opinion of this Hon`ble Tribunal that no dispute was raised by the Corporate Debtor with respect to the amount of Rs 17,08,750/- to the Financial Creditor hence, the contention of the Corporate Debtor to not handover the possession of the said units of the project holds no legal ground. In *Sunil*

Handa & Ors. V. Today Homes Noida India Ltd. CP. NO. (IB) 923/PB/2018 it was held that in *"such construction contracts time is the essence of the contract and the Builder cannot evade its obligations in terms of the Builder Buyer Agreement."*

26. Considering the circumstances this Tribunal is inclined to admit this petition and initiate CIRP of the Respondent. Accordingly, this petition is Admitted.

27. A moratorium in terms of Section 14 of the Code is imposed forthwith in terms of the following:-

> *"(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 Securitisation 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.

(2) *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

(3) *The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

(4) *The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process."*

28. The financial creditor has proposed the name of Mr. Mukesh Kumar Grover as the IRP. His details are as registration no. IBBI/IPA-001/IP-P00383/2017-18/10640 ,email mukesh@mira.co.in The consent of the Mr. Mukesh Kumar Grover is on record along with the copy of his certificate. We accordingly confirm his appointment as the IRP. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15,17 and 18 of the Code and file his report.

29. Renotify this case for report of the IRP.

Sd/-

Sd/-

SUMITA PURKAYASTHA
Member (T)

JUSTICE RAJESH DAYAL KHARE
Member (J)

Pronounced today under Rule 151 of the NCLT Rules 2016 as Hon'ble Member(J), Justice (Retd.) Rajesh Dayal Khare is not holding court today.

Sd/-

(PRABHAT KUMAR SHARMA)

COURT OFFICER