

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

(IB)-945(ND)/2019

IN THE MATTER OF:

1. Habib Sheikh

S/o Mr. Mohammed Hasan
R/o House No. 115, 3rd Floor,
Amritpuri B, Street 13,
East of Kailash, New Delhi-11006

...Applicant No. 1

2. Mr. Hemant Mehendiratta

S/o Mr. Harbans Lal
R/o Flat No B-412, Khushboo Apartment,
Plot No. 11, Sector-pi, Greater Noida,
Kasana, Gautam Buddha Nagar, UP-20131

...Applicant No. 2

3. Mrs. Sonia Narula

W/o Mr. Hemant Mehendiratta
R/o Flat No B-412, Khushboo Apartment,
Plot No. 11, Sector-pi, Greater Noida, Kasana,
Gautam Buddha Nagar, 1M-201310

...Applicant No. 3

4. Mrs. Ankita Singh

W/o Mr. Shubhank Singh
R/o 504, Pyramid City-6,
Tower A Building 1, BESA Nagpur

...Applicant No. 4

5. Mr. Sharat Kumar Dutta

S/o (Late) Sh. Shib Chandra Dutta
R/o X-41, Ground Floor, Green Park Main
New Delhi-110016

...Applicant No. 5

6. Mrs. Charu Srivastava

W/o Mr. Umang Srivastava
R/o G-11, II Floor, Green Park Extns.
New Delhi-110016

...Applicant No. 6

7. Mr. B.L Parsaria

S/o (Late) Sh. Heera Lal Parsaria
R/o YB 400 Anandam NTPC SAS Ltd.
Pocket-6. Greater Noida

...Applicant No. 7

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Habib Sheikh and Ors. Vs Samiah International Builders Ltd.



- 8. Mr. Pankaj Parsaria**
S/o Sh. B.L Parsaria
R/o YB 400 Anandam NTPC SAS Ltd.
Pocket-6. Greater Noida
...Applicant No. 8
- 9. Mr. Bhairab Bose**
S/o (Late) Mr. Pritish Bose
R/o J-201, Rail Vihar, Alpha-1,
Greater Noida Gautam Buddh Nagar,
Uttar Pradesh-201310
...Applicant No. 9
- 10. Mrs. Jhumur Bose**
W/o (Late) Mr. Pritish Bose
R/o J-201, Rail Vihar, Alpha-1,
Greater Noida Gautam Buddh Nagar,
Uttar Pradesh-201310
...Applicant No. 10
- 11. Mr. Girish Kumar**
S/o (Late) Sh. D.L Kashyap
R/o 1/9697, Pratap Pura,
Gali No. 2/7, West Rohtash Nagar,
Shahdara, Delhi-110032
...Applicant No. 11
- 12. Mrs. Prachi**
W/o Mr. Girish Kumar
R/o 1/9697, Pratap Pura,
Gali No. 2/7, West Rohtash Nagar,
Shandara, Delhi-110032
...Applicant No. 12
- 13. Mr. Nitya Nagaich**
S/o Mr. Vijay Sharma
R/o 1454 Park View Apartments,
Sector 29 Noida, U.P-201301
...Applicant No. 13
- 14. Mrs. Priyanka Anand**
W/o Mr. Nitya Nagaich
R/o 1454 Park View Apartments,
Sector 29 Noida, U.P-20130
...Applicant No. 14
- 15. Mr. Karan Bhatia**
S/o Mr. Yogesh Kumar Bhatia
R/o 102, Kaveri block, Anandashray Society
Sector-PHI 2, Near Jalvayu Vihar
Greater Noida, U.P- 201315
...Applicant No. 15
- 16. Mrs. S.L Bhatia**
W/o Mr. Yogesh Kumar Bhatia
R/o 102, Kaveri block, Anandashray Society
Sector-PHI 2, Near Jalvayu Vihar
Greater Noida, U.P- 201315
...Applicant No. 16



17. Mr. Vishal Gupta

S/o Mr. Ravinder Kumar Gupta
R/o 1A-607, AWHO Gruzinder Vihar,
Sector-chi-1, Greater Noida-201310

...Applicant No. 17

18. Mrs. Sangeeta Gupta

W/o Mr. Vishal Gupta
R/o 1A-607, AWHO Gruzinder Vihar,
Sector-chi-1 Greater Noida-201310

...Applicant No. 18

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

...Corporate Debtor/Respondent

Order Delivered on: 20.09.2022

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)-945/(ND)/2019

Habib Sheikh and Ors. Vs Samiah International Builders Ltd.



ORDER

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

Mr. Habib Sheikh and others (for brevity, the **'Applicants/Financial Creditors'**), have filed the present Petition under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the **'IBC, 2016'**) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by 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 with the Application.

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



partner namely Arcmate Housing Solutions Pvt. Ltd. under the name of their consortium Arcmate Samiah Consortium. It is stated by the Applicants that they are the “Allotees” in the Green View Apartment.

4. The Allotee-wise details of the units allotted, allotment date and amount of default as stated by the Applicants are summarized below:

Sl. No	Name of the Allotee	Date of Allotment /Agreement	Unit Details	Amount of Default (Rs)
1	Habib Sheikh	04.08.2013	Flat No. 4D-097 9th Floor, Type-D Tower No. 4, admeasuring approx.1120sq. ft	45,18,586
2	Mr Hemant Mehendiratta and Mrs. Sonia Narula	04.03.2017	Flat No. 1B-046 4th Floor, Type-B Tower No. 1, admeasuring approx.1860sq. ft	66,22,032
3	Ankita Singh	12.11.2013	Flat No. 3E-095 9th Floor, Type-E Tower No. 3, admeasuring approx.900 sq. ft	40,54,883
4	Mr. Sharat Kumar Dutta & Mrs. Charu Srivastava	27.03.2015	Flat No. 3D-068 6th Floor, Type-D Tower No. 3, admeasuring approx.1120 sq. ft.	43,47,483
5	Mr. B.L Parsaria and Mr. Pankaj Parsaria	04.11.2015 (Agreement)	Flat No. 3D-098 9th Floor, Type-D Tower No. 3, admeasuring approx.1120sq. ft	48,24,177



6	Mr. Bhairab Bose and Mrs. Jhumur Bose	04.01.2016	Flat No. 4C-048 4th Floor, Type-C Tower No. 4, admeasuring approx.1450sq. ft	50,45,686
7	Mr. Girish Kumar and Mrs. Prachi	18.11.2015	Flat No. 2B-026 2nd Floor, Type-B, Tower No. 2, admeasuring approx.1860sq. ft	29,14,906
8	Mr. Nitya Nagaich and Mrs. Priyanka Anand	08.05.2015	Flat No. 4C-091 9th Floor, Type-C Tower No. 4, admeasuring approx.1450sq. ft	62,24,724
9	Mr. Karan Bhatia and Mrs. S.L Bhatia	05.05.2015	Flat No. 3D-048 4th Floor, Type-D Tower No. 3, admeasuring approx.1120sq. ft	47,78,469
10	Mr. Vishal Gupta and Mrs. Sangeeta Gupta	24.09.2014 (Agreement)	Flat No. 4C-098, 9th Floor, Type-C, Tower No. 4, admeasuring approx. 1450 sq. ft	71,79,328

5. It is stated by the Applicants that various communications took place and meetings organized between the Financial Creditors and the Respondent/Representatives of the Arcmate Samiah Consortium, wherein the status of the Project, utilization of funds collected from the members, the sale of further Units and development and completion of the Project were discussed at length. That on one such occasion, Mr.



Jamil Khan a representative of Arcmate Samiah Consortium sent a letter to the Financial Creditor No.1 stating that there are no funds for completion of the Project. Yet the Financial Creditors kept on receiving demand letters under the pretext of development/construction of the Project.

6. It is stated by the Applicants that since the Respondent has neither handed over the possession nor refunded the payment made by the Applicants, it has committed default and hence, CIRP be initiated against it.

7. On issuance of notice, the Respondent had filed its reply and opposed the prayer made by the Applicants.

7.1 It is stated by the Respondent that M/s Arcmate Housing Solutions Pvt Ltd (**hereafter referred as "Arcmate"**) and Respondent herein had entered into a registered partnership through a firm named as "ARCMATE SAMIAH CONSORTIUM" vide partnership deed registered on 18.06.2013 to engage in the business of constructing group housing projects as a contractor. It is further stated that the said Partnership deed recorded that 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 collaboration for development of the real estate Project under reference i.e., "Green View Apartment" at Chorasia estate, Plot No. 4, Sector Pi, Greater Noida by the Green View II Sahkari Avas Samiti Ltd as a contractor.



7.2 It is stated by the Respondent that the Applicants herein had booked their apartments in the said “Green View Apartment” project and accordingly, submitted their application forms to the said Registered Partnership firm. The Terms and Conditions appended to Application form in paragraph 1 clearly states as under:

“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.”

7.3 Further, the said Application form filled and submitted by the Applicants for booking of their units expressly noted as under:

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

Subsequently, Agreement or Memorandum of Understanding were executed by and between the Applicants and M/s Arcmate Samiah Consortium, the registered partnership firm, which was developing the Green View Apartment project as a contractor. It is also relevant to mention herein that the Agreement / Memorandum of Understanding do not refer to the Respondent herein even once nor do they 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.



7.4 It is stated that pursuant to the aforesaid Agreement/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 is ever made to M/s Samiah International Builders Ltd and there is no privity of contract between the parties.

7.5 Without prejudice to the above, it is stated by the Respondent that the Applicants had paid the money for allotment of units in Green View Apartment and in return of the said money, Green View Sahkari Awas Samiti has granted share certificates to them and they became members of the said Green View Sahkari Awas Samiti which is the owner/developer of the project. Thus, even otherwise, the financial 'creditors herein have claim, if any only against the Green View Sahkari Awas Samiti and not against the Respondent herein.

7.6 It is further stated by the Respondent that Hon'ble NCLAT in its judgment in the case **of Mrs. Mamtha vs AMB Infrabuild Pvt Ltd & Ors. in Company Appeal (AT) (Insolvency) No. 155 of 2018** has held as under:

"14. If the two 'Respondents' collaborate and form an independent corporate unit entity for developing the land and allotting the premises to its allottee, the application under Section 7 will be maintainable against both of them jointly and not individually against one or other."



8. After hearing submissions of both the parties and perusing the documents placed on record, we notice 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. In Compliance of the said direction, the Respondent has filed its Affidavit dated 13.01.2020 stating that there are total 406 Units in the Project "Green view Apartments", out of which 344 Apartments are sold. The scanned 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 total number of allottees in the Real estate project " Green View Apartments.
3. 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.

3

[Signature]
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

[Signature]
DEPONENT

[Signature]



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

10. From the memo of parties, it is observed that the present Application has been filed by total 18 Applicants. However, when we peruse the agreements executed between the parties, we observe that except the agreements executed by Mr. Habib Sheikh (the Applicant No.1) and Ms. Ankita Singh (the Applicant No.4), all other Applicants have jointly purchased their respective units and are collectively held as allottees. Hence, the Applicant No.2-3, Applicant No.5-6, Applicant no. 7-8 Applicant No. 9-10, Applicant No 11-12, Applicant No. 13-14, Applicant No 15-16 and Applicant No 17-18, being the joint ones against the same unit, shall be counted as one allottee each for the purpose of counting the number of Allotees filing the Application. Hence, the present application has been filed by 02 individuals and 08 co-allotees. Thus, the total number of Allotees, who have filed this application comes to 10.

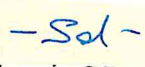
11. Further, vide Affidavit dated 13.01.2020, it has been submitted by the Respondent that out of total 406 units, only 344 units have been

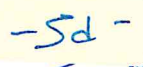


sold in the Project 'Green View Apartments', the threshold of which in terms of 10% of Allotees in a project comes to 35. However, the present application has been filed by only 10 Allotees, which is less than the threshold limit prescribed under Proviso to Section 7(1) of IBC, 2016.

12. In view of the aforesaid discussion, we conclude that the instant Application is neither filed by 100 Allotees nor by 10% of the Allotees in the Project "Green View Apartments", hence we have no other option but to reject the Application in terms of Proviso to Section 7(1) of IBC, 2016.

13. **Accordingly, the Application is dismissed being non-maintainable.**


(L. N. GUPTA)
MEMBER (T)


(DHARMINDER SINGH)
MEMBER (J)