



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-03
IB-762/ND/2020

IN THE MATTER OF:

Uttam Singhal

....Applicant

Vs.

M/s. Anushree Home Developers Pvt. Ltd.

.....Respondent

SECTION

U/s 7 IBC

Order delivered on 20.04.2023

CORAM:

**SHRI P.S.N PRASAD,
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets. IB-762/ND/2020
is **dismissed**.

S/d-
(DR. BINOD KUMAR SINHA)
MEMBER (T)

S/d-
(P.S.N PRASAD)
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V NEW DELHI BENCH
COMPANY PETITION IB (IBC) NO. 762 of 2020**

A petition under section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

UTTAM SINGHAL & ORS.

...Applicant/Financial Creditor

Versus

M/s ANUSHREE HOME DEVELOPERS PVT. LTD. & ANR.

...Respondent/Corporate Debtor

Order pronounced on: 20.04.2023

Coram:

SHRI P.S. N. PRASAD, HON'BLE MEMBER (J)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (T)

MEMO OF PARTIES

1. Uttam Singhal

Resident of A-18,
Rana Pratap Bagh

2. Radha Devi Singhal

Resident of A-18
Rana Pratap Bagh

3. Javita Kar & Shantanu Kar

Both residents of P-1/12-B,
SRS Pearls Floors, Sector 87,



Faridabad-121002 (Haryana)

4. Kashmir Singh & Paramjit Kaur

Both residents of 41,
Vijay Nagar,
Kanpur Road,
Lucknow- 226023 (UP)

5. Rahul Krishna & Shivani Krishna

Both residents of C-1/102
Summer Palms, Sector 86,
Faridabad- 121002 (Haryana)

6. Gurjeewan Jot Kaur & Ravinder Pal Singh

A-56, Anand Vihar,
New Delhi- 110092

7. Sandeep Agrawal

Flat No. 9C, Tower T12,
Ozone Park Apartment, Sector 86,
Faridabad- 121002 (Haryana)

8. Gordhan Sharma

Village Tatarpur,
PO Asaoti, Palwal (Haryana)

9. Paresh Mathur

B1-103, Summer Palms,
Sector 86,
Faridabad- 121002 (Haryana)

.... Financial Creditors

VERSUS

1. M/s Anushree Home Developers (P) Ltd.

Registered Office: B-101, Durga Vihar
Devli Road, Khanpur
New Delhi- 110062

2. M/s Swatantra Land & Finance (P) Ltd.

Registered Office: A-71 F.I.E.E. Phase- II
Okhla Industrial Area
New Delhi- 110020

.... Corporate Debtors



Appearances (through video conferencing):

For the Applicant : Adv. Ashwarya Sinha, Mr. Alok K. Singh,
Advs.

For the Respondent : Adv. Tarun Singla

ORDER

PER: SHRI P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

1. This is a Company Petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity “the Code”) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016, by Uttam Singhal & Ors (hereinafter referred to as ‘Financial Creditor’) , represented by Mr. Uttam Singhal , authorized through a letter of authorisation dated 04.03.2020 , seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against M/s Anushree Home Developers Private Limited [CIN: U00000DL2001PTC109448] and Swatantra Land and Finance Private Limited[CIN: U74899DL1962PTC003792] (“Corporate Debtors”).
2. The Corporate Debtor Anushree Home Developers Private Limited was incorporated on 31.01.2001, having CIN: U00000DL2001PTC109448, under the Companies Act, 1956 . Its registered office is at B-101, Durga Vihar Devli Road, Khanpur, New Delhi DL – 110062. And, the Corporate Debtor Swatantra Land and Finance Private Limited was incorporated on 20.08.1962, having CIN: U74899DL1962PTC003792, under the Companies Act, 1956. Its registered office is at A-71 F.I.E.E Phase- II, Okhla Industrial Area New Delhi, South Delhi DL 110020.



Therefore, this Bench has jurisdiction to deal with this petition.

3. The present petition was filed on 05.03.2020 before this Adjudicating Authority on the ground that the Corporate Debtors has defaulted to make a payment of a sum of Rs. 2,88,76,277/- (Rupees Two Crores Eighty-eight Lakhs Seventy-six Thousand Two-hundred seventy-seven) as on date of default 26.10.2018 and 28.02.2020.

Submission of learned Counsel appearing for the Financial Creditor

4. The details of transactions leading to the filing of this petition as averred by the Financial Creditor is as follows:
 - a) The Financial Creditors are a group of 13 individuals who made an investment in 10 flats/units based upon the extensive advertisement and representations made by the Corporate Debtors and their representatives insofar as their real estate project, the group housing colony namely SLF Anushree Apartments (AOP) was concerned.
 - b) That the Corporate Debtors herein have formed an 'Association of Persons' namely M/s SLF Anushree Apartments (A.O.P) for the purposes of launching and advertising its Group Housing Colony Project namely "SLF Anushree Apartments" situated within the revenue estate of Village Martajpur, District Faridabad, Haryana. Notably, the Developer AOP also functions out of the same address as the registered address of the Corporate Debtor No. 2. That the Financial Creditors were approached by the present Corporate Debtors



through its Directors authorized officers, being also the authorized personnel of the Developer AOP, in and around year 2015 to invest in the under-construction Project of the Corporate Debtors.

- c) Thereafter, the Financial Creditors agreed to invest in the venture/project of the Corporate Debtors making such investment as per the 'Schedule of Payment' provided along with the Builder Buyer's Agreement (hereinafter "BBA"). A portion of 'Basic Sale Price' of the flat/unit was paid by the Financial Creditors along with the Application for purchase/booking. Then, in October 2015 separate BBAs were executed between each Financial Creditor and the Developer AOP as floated by the Corporate Debtors herein.
- d) That in terms of the said agreement, the Financial Creditors were to ensure payment as per the Schedule of Payment provided along with such BBA and the Developer AOP was to offer possession of the concerned flat/unit to the respective Financial Creditors within three years of the date of execution of the respective BBAs. The relevant details of the Financial Creditors and corresponding unit/flat, date of execution of BBA, total consideration, amount already paid by the respective Financial Creditors has been annexed with the petition.
- e) That according to Section 5(8) of IB Code, 2016, any amount raised from allottee(s)/buyer(s) under a real estate project is deemed to be an amount having the commercial effect of a borrowing and thus is covered by the definition of 'Financial Debt' under the Code. Also,



the Amendment Act, 2018 recognizes home buyers as “Financial Creditor”.

- f) That a total of Rs. 2,88,76,277/- was raised by the AOP of CD-1 and CD-2 for allotting 10 respective units to the Financial Creditors herein for constructing the Group Housing Colony. That respective Builder Buyer Agreements were entered into with Financial Creditors and all payments were made by the Financial Creditors directly to the Corporate Debtors. It is of utmost importance to state that demands for such payments were made by the Corporate Debtors herein, and corresponding payment receipts were also issued by the Corporate Debtors herein.
- g) That as per Clause 4.3 of the BBA, the Corporate Debtor was mandated to hand over possession of the Units within a period of 3 years from the date of execution of Agreements. It is submitted that all the agreements were entered into on 26.10.2015, except for Financial Creditor No. 4 whose BBA was entered into on 28.02.2017, therefore the due date of handing over possession in the present case was 26.10.2018 and 28.02.2020 respectively.
- h) It is admitted position that construction of the Project has not been completed till date, as the Corporate Debtors have been issuing demand letters for construction of 10th Floor. Therefore, the default occurred on 26.10.2018 and 28.02.2020 when the Corporate Debtors failed to hand over possession of the respective units to the Financial Creditors, despite



raising the aforementioned financial debt amounting to 2.88 Cr.

- i) Furthermore, the present Financial Creditors form 10% of the class of allottees/buyers in the concerned real estate Project as being developed by the Developer AOP of the Corporate Debtors herein. It is submitted that second proviso to Section 7, IBC lays down that an application initiating CIRP shall be filed jointly by not less than hundred or 10% of such allottees under the same project. Furthermore, Explanation 2 to Section 5(8)(f) lays down that the term allottee and real estate project shall have meanings respectively assigned to them in Section 2, Clauses (d) and (zn) of RERA, 2016. From a bare perusal of definition of 'real estate project' in Section 2(zn) of RERA, 2016, which clearly includes the word 'any building', it is evident that even a building, moreover a Group Housing Colony can be a real estate project under the definition. It is further submitted that for purposes of IBC what is to be seen is definition of real estate project under Section 2(zn), RERA,2016 which clearly includes Group Housing Colony.
- j) It is pertinent to mention that the Corporate Debtors being the developer of the group housing colony, have entered into the respective BBAs with the Financial Creditors for a group housing colony comprising of three towers being Tower P1 (114 flats), Tower P2 (76 flats) and Tower P3 (57) with a total of 249 flats. It is of utmost importance to state that this group housing colony has distinctly and exclusively been advertised, marketed and sold by the name of SLF Anushree



Apartments at Site 2 of the entire parcel of land belonging to the Corporate Debtors.

- k) The below mentioned clauses and stipulations of the BBAs are clearly indicative of the fact that SLF Anushree Apartments was a separate and a standalone Group Housing Colony/Project in itself-
- i. Declaration Clause f, g
 - ii. Clause 1.1
 - iii. Clause 2.4, 2.7 and 2.8
 - iv. Clause 5.4, 6.1 and 6.3

It is pertinent to mention that all these clauses of BBA were only applicable to the advertised Group Housing Colony at Site 2. The Projects at Site 1 and Site 3 were entirely separate and distinct and had no commonality with respect to the Group Housing Colony in the present case as the said projects were separated by a government road. Also, the Corporate Debtors in their reply have themselves admitted that the projects at Site 1 and Site 2 have already been constructed and completed. This can also be seen from RERA Registration Certificate issued to the Corporate Debtors herein which clearly states that Tower A3, A4, C1, C3, C4, C5 and EWS towers have all been completed and occupation certificate has been received as back as 02.04.2019.

- l) It is, therefore, clear that SLF Anushe Apartments is a distinct and a separate project in itself for the purposes of IBC, which had a total of 249 units, out of which only 99 Units were allotted at the time of filing of the present application and issuance of notice as mentioned in the RERA Registration Certificate. It is an undisputed fact



that the filing Financial Creditors herein are allottees of 10 Units. It is therefore submitted that the Financial Creditors being 10% i.e. 10/99 of allottees satisfy the mandate of second proviso to Section 7, IBC.

m) It is submitted that the Booking application forms allotment letters and all the Builder Buyer Agreements were executed by the Corporate Debtors herein. Furthermore, the description of the Corporate Debtors in the BBA and declaration (b) clearly mentions that AOP of the Corporate Debtors i.e. SLF Anushree Apartments is the “Developer”. Also, Clause 4.3 clearly stipulates that the Developer i.e. the Corporate Debtors shall be responsible for handing over possession of the respective flats/units to the Allottees. It is of utmost importance to reiterate that all demand letters, payments and corresponding receipts were issued in the name of SLF Anushree Apartments i.e. the Corporate Debtors herein and even as per the RERA Registration it is unequivocally clear that SLF Anushree Apartments was the Developer.

n) That the Paradise Welfare Society (“TPWS”) is a society registered under the Haryana Registration of Societies Act, 2012, represented by Shri Sanjeev Dhankar (President), Shri B.K. Chaurasia (Vice President), Shri Deepak Biswas (Secretary) and Shri Jaspal Gill (Trasurer). That in the year 2013, the Financial Creditors herein were interested in purchasing a property in “Faridad”, Haryana, and were approached by officials of TPWS who informed the Applicants herein that there is an upcoming project which is to be built in Sector 75 & 76, Faridabad, however, the units in the



project will only be allotted to members of TPWS as has been done in the project Site 1 and Site 3 with their respective societies. It is pertinent to mention that the president, Sh. Sanjeev Dhankar, is not even a unit holder in the project.

- o) That accordingly the Financial Creditors herein agreed to become members of the society solely for the purpose of purchasing the units. It is pertinent to mention that the Applicants herein have been paying certain sum towards membership fee. It is also relevant to clarify that the Financial Creditors are neither office holders nor were associated with functioning of TPWS in any manner. The booking of the unit was made through TPWS and thereafter all dealings of the Financial Creditors herein were directly being dealt by the Corporate Debtor. The Corporate Debtors were solely sending construction updates and corresponding demand letters were being regularly issued by the Corporate Debtors. Furthermore, all payments were made to the Corporate Debtors for which the corresponding receipts were issued by the Corporate Debtors.
- p) It is submitted by the Financial Creditor, that in the year 2018 the allottees started protesting against delay in construction as per the BBA. It was only thereafter, to the utter shock and surprise of the Allottees, that the Corporate Debtors produced an agreement dated 12.01.2015 entered into between TPWS and Corporate Debtors and started making baseless claims that they are not in default as per the said agreement. The homebuyers were neither informed by the Corporate



Debtors nor TPWS of the existence of such agreement dated 12.01.2015 executed between the Corporate Debtor and the TPWS. It is clear from the fact that the Corporate Debtor neither in their reply nor in various affidavits filed in the present matter have annexed a single document to show that the Financial Creditors even had the knowledge of existence of the illegal Agreement dated 12.01.2015. It is therefore submitted that the Corporate Debtors have further entered into another illegal Restated Agreement date 27.03.2019 and sent an addendum to the Financial Creditors in order to further coerce the homebuyers, however the same was never signed by the Financial Creditors. It is pertinent to mention that no such addendum was ever sent or executed in pursuance of illegal agreement dated 12.01.2015.

- q) It is submitted by the Financial Creditor that the Corporate Debtors in collusion with the officials of TPWS only brought forth this agreement dated 12.01.2015 to wriggled out of the obligation of giving timely possession of the respective units to the Allottees of the Project. It is of utmost importance to submit that an illegal and collusive agreement of a society cannot be used as a tool to defeat legitimate rights of homebuyers and allottees.
- r) It is pertinent to reiterate that the alleged agreement between Corporate Debtor and TPWS was entered into on 12.01.2015. It is an admitted position that the Corporate Debtors have been receiving payments even prior to entering into agreement. It is of utmost importance to emphasize that all BBAs were executed



much after execution of the said illegal agreement dated 12.01.2015 has been made in any of BBAs executed by the Corporate Debtors with the Financial Creditors. It is humbly submitted that it is the case of the Corporate Debtors that the said agreement dated 12.01.2015 materially affects the rights of the Financial Creditor, however, the Corporate Debtor in the Agreement drafted by itself has completely and actively chosen not to mention the agreement dated 12.01.2015 even once. Furthermore, even the Booking application forms does not mention the agreement dated 12.01.2015. The only word “agreement” in the booking application form relied on by the Corporate Debtors does not even mention the date or any specifics thereto. The said word agreement in the booking application referred to agreement as informed to the allottees was for discounted purchase price and exclusive right of booking of the TPWS.

- s) As pointed out above, it is clear that under the BBAs executed between Financial Creditors and Corporate Debtors, the Corporate Debtors have been unequivocally declared as the developer. The said agreement nowhere mentions the fact of the TPWS being the developer, builder etc. Furthermore, the BBAs do not even mention TPWS even once and moreover the Agreement itself in Cl. 6.1 stipulated for formation of association which shall be responsible for providing and maintaining common areas and facilities. It is reiterated that TPWS being society registered under Haryana Registration of Societies Act, 2012 could not have undertaken construction of the said project as it was beyond the scope of aims and objects of the Act. Section



6 of the Act lays down the aims and objects for which a society can be formed including the formation of associations of flat owners, however the same only permits for operation, management and maintenance of facilities of a project and not its construction or development. Furtherance even Cl 4.1.5 of the Agreement dated 12.01.2015 as relied by the Corporate Debtors only mentions that the TPWS shall be responsible for recommendation of contractor and claims of contractor. Pertinent it is to specify that the agreement dated 12.01.2015 itself does not stipulate anywhere that TPWS shall be the developer/builder.

- t) Further, it is submitted that all payments have been made by the Financial Creditors to the bank accounts held solely in the name of the Corporate Debtors herein and the same is clearly evidenced from the bank accounts statements of the Financial Creditors herein. Furthermore, it is relevant to reiterate here that all the payments have been received by the Corporate Debtors and corresponding receipts have been issued by the Corporate Debtors. It is pertinent to mention that even as per HDFC Bank Certificate the said account bearing 50200008954202 of HDFC Bank was being maintained by the Corporate Debtor. The only averment made by the Corporate Debtor is that the said accounts were being operate by officials of TPWS. It is humbly submitted that for purpose of Section 7 what is material is that the financial debt/ money is raised by whom and by whom such financial debt has been incurred. In present case even if the averment of Corporate Debtor is taken to be true, the said officials would only be



responsible for operation of the said account and the legal ownership of the money/financial debt in the account would be solely of the Corporate Debtor. It is an admitted position of the Corporate Debtor itself that they were the landowners and money was raised by them from the financial creditor for construction of the project as mandated under Explanation 1 of Section 7, therefore, it is immaterial as to who was allegedly operating the account.

- u) It is an admitted position of the Corporate Debtors, as per the certificate issued by the HDFC bank, that the Corporate Debtors were maintaining the said account bearing 5020008954202- to which all the payments were made. Even in arguendo is it was to be assumed that the official of TPWS were jointly operating the said bank account, for the purposes of financial debt as defined under Section 5(8)(f), IBC it is immaterial as to who was operating the bank account. The sole consideration for determining whether a transaction constitute a financial debt as defined under Section 5(8)(f) is whether the Corporate Debtors received that amount and that there has been default on its part. In the present case at hand, it is clearly evidenced from the demand letters raised and corresponding receipts issues by the Corporate Debtors that money was taken by them from the Financial Creditors herein.

- v) As a result, the present application for initiation of the Corporate Insolvency Resolution Process (CIRP) is in accordance and consonance with the second proviso to Section 3 of the Ordinance, 2019 which provides that,



“Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor 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”

- w) Therefore, the Project being constructed/developed by the Developer AOP floated by the Corporate Debtors herein consists of 99 units sold/booked. The Financial Creditors herein totaling 13 in numbers having invested in 10 units/flats and are thus compliant with the relevant provisions of the Ordinance, 2019.
- x) Therefore, in light of the above facts and circumstances, the Corporate Debtor is clearly in default of the contractual obligations on his part and thus the Financial Creditors are compelled to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, as the remedy provided under the Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, by making an application under Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
5. The Financial Creditor has placed the following documents on record:
- a. Chart showing details of Financial Debts of the Financial Creditors and the terms of Agreement.



- b. Copy of Builder Buyer's Agreements
 - c. Copy of demand letters
6. The Financial Creditor has proposed the name of Shradha Agrawal, registration number IIBI/IPA-001/IP-P01255/2018-2019/11997, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration.

Submission of learned Counsel appearing for the Corporate Debtor

7. The details of the submissions made by the Corporate Debtor are as follows:
- a) Financial Creditors are allottees of apartments in real estate project named "SLF Anushree Apartments" developed under License No. 61 of 2007 issued by Director Town Country Planning Haryana. As per Section 5(8)(f) Explanation (ii) of the Code, expression "*allottee*" and "*real estate project*" have the same meaning as assigned to them in clause (d) and (zn) of Section 2 of Real Estate (Regulation and Development) Act, 2016.
 - b) Financial Creditors have filed the details of project "SLF Anushree Apartments" after downloading the same from the website of Haryana Real Estate Authority at pages 272 to 319 of the main application under Section 7 of the Code. As per these details the land area of the



project is 44,211.94 square meter and the License number granted by Town & Country Planning Department is 61 of 2007. Details of the apartments in the project are given at page 286 & 287 of the main application under Section 7 of the Code, according to which there are 12 buildings/towers in the project which have been booked/allotted. These details also show the construction of 8 towers was complete prior to filing of the present application and construction of 4 towers is going on.

- c) As on the date of filing of present application under Section 7 of the Code, there were 653 allottees, therefore, as per Section 7(1) of the Code, minimum 64 allottees are needed for filing/maintainability of the present petition. The Financial Creditors have taken a plea that allottees of apartments of which construction is complete are not to be included for computation of the threshold limit of number of allottees required for the present petition, but, the number of allottees on the date of filing of the main application under Section 7 of the Code are to be taken as 653 and the present petition filed by allottees of 10 apartments fall short of the required number. Hence, the present application is not maintainable.
- d) The Financial Creditors have relied upon Builder Buyer Agreement and have read recital (f) to say that the apartments allotted to them are situated in 4/5 towers situated on Site-2, which is separated by road from other two sites. Therefore, the apartments situated in buildings/towers of Site-1 & Site-2 are not to be included. It is submitted that recital (c) at page 44



makes it clear that Director Town & Country Planning Haryana has granted one license for developing the Group Housing Colony stood divided in three parts i.e. Site-1, Site-2, and Site-3. Irrespective of this division the project remains one and same comprising land measuring 10.9 acres spread over Site-1, Site-2, and Site-3. Even as per RERA registration, this is one project having 12 towers which are situated at Site-1, Site-2, and Site-3. Therefore, Site-2 is not an independent project and the present petition is not maintainable as it does not satisfy the requirement of minimum number of allottees as prescribed under Explanation (ii) to Second Proviso to Section 7 (1) of the Code.

- e) Vide Agreement dated 12.01.2015, Corporate Debtors agreed only to transfer the land with approvals to 'The Paradise Welfare Society' (association of flat buyers). This association of flat buyers took the responsibility of construction on itself and itself fixed the rates for sale of flats to its members. However, the association could not make sufficient members and therefore, due to paucity of funds it could not complete the construction and approached the Corporate Debtors to complete it. Consequently, a Re-stated Agreement dated 27.03.2019 was executed whereby Corporate Debtors took over the construction from association of flat buyers in the year 2019 with stipulation to complete the construction from association of flat buyers in the year 2019 with stipulation to complete the construction by 31.03.2022. Due to Covid-19, RERA has extended Corporate Debtors' time to complete the construction



by 30.06.2023. Though, the Financial Creditors/Petitioners have not made any payment after Corporate Debtors took over the construction in 2019, yet the construction is at advantage stage of completion and Corporate debtors will be able to complete it within the RERA timelines.

- f) The Financial Creditors reliance on Builder Buyer Agreement to allege default on part of Corporate debtors is misplaced because Corporate debtors executed the Builder Buyer Agreement in compliance of clause 4.1.1 of Agreement dated 12.01.2015 wherein it was stipulated that in order to facilitate home loans to the members of TPWS, Corporate Debtors will execute the Builder Buyer Agreements with the concerned members of TPWS. It is further submitted that Financial Creditors cannot plead ignorance about aforesaid agreement dated 12.01.2015 because Application form signed by each of the Financial Creditors states that “*I/ We are members of the Paradise Welfare Society, Faridabad- 121003 and in pursuance of your agreement with the Society...*”. It is submitted that the agreement mentioned in the application form cannot be any agreement other than the agreement dated 12.01.2015.
- g) Therefore, it is submitted that Corporate Debtors have not committed any default. It merely took the responsibility of providing land with approvals to Association of flat buyers took the responsibility of construction. It is the Association of flat buyers which failed to complete the construction and thereafter in order to bail out the Association and its members,



Corporate Debtors took over the responsibility of completing the construction. Post the circumstances arising from Covid-19, Corporate Debtors have time till 30.06.2023 to complete construction but the Financial Creditors are not making payment in terms of Re-stated Agreement dated 27.03.2019 executed between Corporate Debtors and Association of flat buyers. In any case, Corporate Debtors will be able to complete the construction by 30.06.2023. Hence, it is prayed by the Corporate Debtor, that the instant application/petition is not maintainable and the same may be dismissed in totality with costs.

8. The Corporate Debtor has placed the following documents on record:
 - a) Copy of agreement dated 12.01.2015
 - b) Copy of certificate issued by bank regarding the signatories of Bank Account No. 50200008954202 maintained in the name of “SLF Anushree Apartments” with HDFC Bank Limited

Issues

9. The issues in question in the present C.P are:
 - a)** Whether this application can be admitted or not?
 - b)** Whether the claim of the Financial Creditor can be admitted or not?

Analysis and Findings

10. We have heard the Learned Counsel for the Financial Creditor and perused the averments made in the petition.



Since the registered office of the Corporate Debtor is in Delhi, this Tribunal which has territorial jurisdiction over the Union Territory of Delhi, therefore, is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of the respondent Corporate Debtor under Section 7 of the Code.

11. In order to affirm that this petition falls within the ambit of Section 7, we need to see whether there is a debt owed to the Financial Creditor and whether there is a default with respect to such debt. Additionally, we also need to see whether the Financial Creditors being the allottees under a real estate project in the present case, fulfill the threshold limit provided under Section 7 of the IB Code, for maintaining this application.

12. Proviso to Section 7 which lays down the minimum threshold limit for the Financial Creditors who are allottees under a real estate project states that:

“Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor 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:”

13. In the present case the Financial Creditors have entered into a Builder Buyer Agreement with the Corporate Debtor and claim that Financial Creditors being the allottees in a Real Estate Project fulfill the mandate of second proviso of Section 7 stating that they are 10% of the total number of



allottees. The Financial Creditor states that the clauses of the BBA entered between the Applicant and the Corporate Debtors were only applicable to the Group Housing Colony at Site 2, and it explicitly excludes the project at Site 1 and Site 3. According to the Financial Creditors, SLF Anushree Apartments has total 249 Units, out of which only 99 Units were allotted at the time of filing of the present application, and out of 99 Units 10 Units were allotted to the applicants.

14. However, as per the details provided in the Haryana Real Estate Authority the land area of the project is 44,211.94 square metre i.e 10.9 acres and the License number granted by Town & Country Planning Department is 61 of 2007. The same has been filed on record. The details of the apartments in the project are provided in the petition, and according to which there are 12 buildings/towers in the project which have 820 apartments, out of which 653 apartments have been booked/allotted. These details also show that construction of 8 towers was complete prior to filing of the present application and construction of 4 towers is going on.

15. Therefore, as on the date of filing of the present application, there were 653 allottees, and as per Second Proviso to Section 7(1) of the Code, minimum 64 allottees are needed for filing/maintainability of the present petition. Also, the issue arising out of the plea taken by the Financial Creditor that allottees of apartments of which construction is complete are not to be included for computation of the threshold limit of number of allottees required for the present petition, was considered by the Hon'ble Supreme Court in ***Manish Kumar V. Union of India, 2021 (5) SCC,***



wherein Hon'ble Supreme Court held that the persons to whom the flats have already been sold after completing construction thereof would still be allottees and would be included for computation of threshold limit.

“120. Be that as it may, as we have noticed the question must be decided with reference to real nature of the real estate project in which the applicant is an allottee. If it is in the case of an apartment, then necessarily all persons to whom allotment had been made would be treated as allottees for calculating the figure mentioned in the impugned proviso. The word ‘allotment’ does mean allotment in the sense of documented booking as is mentioned in Section 11(1)(b) in regard to apartment or plot with which we are largely concerned. Such detail regarding the quarterly up-to-date list of the number and the types of apartments are to be uploaded as provided in Section 11. It is this information incidentally, which is the reservoir of data which the legislature intends that the allottees can use even though it is not necessarily confined to them. The allottee would also include a person who acquires the allotment either through sale, transfer or otherwise.”

16. Therefore, as per the law laid down by Hon'ble Supreme Court in **Manish Kumar V. Union of India** , the number of allottees on the date of filing of the main application under Section 7 of the Code are to be taken as 653 and the present petition filed by allottees of 10 apartments fall short of the required number. Hence, the Financial Creditor does not fulfill the threshold limit as provided under Section 7 and due to this reason the present application is not maintainable.



17. In view of the above facts and circumstances, the instant petition bearing **CP IB (IBC) NO. 762 (ND)2020** is not maintainable and therefore stands dismissed.

18. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
DR. BINOD KUMAR SINHA
Member (Technical)

Sd/-
SHRI P.S. N. PRASAD
Member (Judicial)