

S.No. 8

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
26-09-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

CP(IB) No.193/7/HDB/2019
U/s 7 of IBC, 2016

IN THE MATTER OF:

Saurabh Purwar & 27 others

...Financial Creditor

Vs

RDB Hyderabad Infrastructure Pvt Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)**

ORDER

Orders pronounced and recorded vide separate sheets. In the result, the Company Petition is dismissed.

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**NATIONAL COMPANY LAW TRIBUNAL
BENCH-1, HYDERABAD**

CP (IB) No.193/7/HDB/2019

U/S 7 OF I&B CODE, 2016 READ WITH
RULE 4 OF I & B (AAA) RULES, 2016.

In the matter between:

- 1. Mr. Saurabh Purwar, S/o Sri Sushil Kumar Purwar,**
Aged 39 years, Occupation: Service,
R/o Flat no 402, Kinetic Pride,
Shri Prabhupada Township,
Masid Banda, Kondapur,
Hyderabad – 500084.

- 2. Mrs Shrawanti Gupta, W/o Sri Saurabh Purwar,**
Aged 37 years, Occupation: House wife,
R/o Flat no 402, Kinetic Pride,
Shri Prabhupada Township,
Masid Banda, Kondapur,
Hyderabad – 500084.

- 3. Mr Manoj Soni, S/o Sri Sathyanarayan Soni,**
Aged 32 years, Occupation: Business,
R/o 7-4-56, Tandur, Ranga Reddy District.

- 4. Mr.Kartik G.V, S/o Sri K.V.Gopalakrishnan,**
Aged 37 years, Occupation: Consultant,
R/o 303, Jakrias Ideal Residency,
Asha Officers Colony, RK Puram,
Secunderabad – 500056.

- 5. Mrs. Preetha Kumar, W/o Mr. KartikG.V,**
Aged 33 years, Occupation: Program Manager,
R/o 303, Jakrias Ideal Residency,
Asha Officers Colony, RK Puram,
Secunderabad – 500056.

6. Mr. Sidharth Sabat S/o Late Surendranath Sabat,
Aged 39 years, Occupation: IT Program Manager,
H-904, Aparna Sarovar Grande,
Nallagandla, Serlilingampally,
Hyderabad – 500019.
7. Palabatla Venkatesh, S/o Sri P.Gopal,
Aged 51 years, Occupation: Service,
R/o. E Block, 602, Aparna Towers,
Kondapur, Hyderabad – 500084.
8. Palabatla Hima Bindu,
W/o Palabatla Venkatesh,
Aged 44 years, Occupation: Service,
R/o. E Block, 602, Aparna Towers,
Kondapur, Hyderabad – 500084.
9. Mr. Mahesh Soni, S/o Sri Ramprasad Soni,
Aged 41 years, Occupation: Service,
R/o 1800 Silas Deane Hwy, 313,
Rocky Hills, Ct, 06067, USA.
Represented by GPA Mr Deepak Darak
S/o Govindprasad Balaprasad Darak.
R/o Flat no 201, KSR Residency, Manidaguda,
Miyapur, Hyderabad – 500049.
10. Amita Mahesh Soni, W/o Mr. Mahesh Soni,
Aged 38 years, Occupation: Software Engineer,
R/o 1800 Silas Deane Hwy, 313,
Rocky Hills, Ct, 06067, USA.
Represented by GPA Mr Deepak Darak
S/o Govindprasad Balaprasad Darak.
R/o Flat no 201, KSR Residency, Manidaguda,
Miyapur, Hyderabad – 500049.
11. Mr Manish Jadav S/o Sri Devprakash Jadhav,
Aged 44 years, Occupation IT Professional,
R/o BLK 265B, 05-338, Punggol Way,
Singapore 822265.
Represented by GPA Sri Devprakash Jadhav,
S/o Vittal Rao Jadhav, Aged 75 years,

R/o Manjeera Diamond Towers, Flat no C303,
Gopanpally, Hyderabad-500046.

12. Mr. Rajesh Chaparala,
S/o Sri Subbarao Chaparala,
Aged 44 years, Occupation: Software Engineer,
R/o # 186, Royal Hermitage, Gottigere,
Bannerghatta Road, Bangalore-560083.
13. Sri Harsh Shrimal, S/o Sri Mahendra Shrimal,
Aged 33 years, Occupation: Software Engineer,
R/o B-504, Akshat, Prem Nagar, Shanti Garden,
Mira Road, Thane, Maharashtra-401107.
14. Mr Jose Stephen, S/o Mr Stephen J Gonsalvez,
Aged 45 years, Occupation: Service Banking,
R/o Flat D-2, South Park, Mveeprupers,
Serilingampally – 500019.
15. Mr RaviShankar Alla, S/o Sri A.Chandra Sekar,
Aged 36 years, Occupation: Software Engineer,
R/o 65 Commonsrd, MA, USA
Represented by GPA Holder
Mr. Rajesh Chaparala,
S/o Sri Subbarao Chaparala,
Aged 44 years, Occupation: Software Engineer,
R/o # 186, Royal Hermitage, Gottigere,
Bannerghatta Road, Bangalore-560083.
16. Mrs Harika Mannava, W/o Mr RaviShankar Alla,
Aged 34 years, Occupation: Software Engineer,
R/o 65 Commonsrd, MA, USA
Represented by GPA Holder
Mr. Rajesh Chaparala,
S/o Sri Subbarao Chaparala,
Aged 44 years, Occupation: Software Engineer,
R/o # 186, Royal Hermitage, Gottigere,
Bannerghatta Road, Bangalore-560083.
17. Mrs Ratna Kumari, W/o Raman Rao,
Aged 55 years, Occupation: House wife,
R/o Flat no 208, Blossom Apartments,

Reliance Fresh, Indira Nagar,
Gachibowli, Hyderabad-500032.

18. Mr Jagadeesh Pandravada, S/o Sri Mallapa Raju Pandravada,
Aged 48 years, Occupation: Software Engineer,
R/o 22904, SE 5th Ter Sammamish, WA 98074, USA.
Represented by its GPA Holder,
Mr Palabatla Venkatesh,
S/o Late Palabatla Gopal, aged 53 years,
Occupation: Service,
R/o Flat no 602, E-Block, Aparna Towers,
Kondapur,Hyderabad-500084.
19. Mrs Neelima Pandravada, W/o Mr Jagadeesh Pandravada,
Aged 43 years, Occupation: House Wife,
R/o 22904, SE 5th Ter Sammamish, WA 98074, USA.
Represented by its GPA Holder,
Mr Palabatla Venkatesh,
S/o Late Palabatla Gopal, aged 53 years,
Occupation: Service,
R/o Flat no 602, E-Block, Aparna Towers,
Kondapur,Hyderabad-500084.
20. Mrs Mounika Medak, W/o Prashanth Gaddampally,
Aged 35 years, Occupation: Private Employee,
R/o Flat no 1017,Tower 2, Swanlake Apartments,
Sangeeth Nagar, Kukatpally, Hyderabad – 500072.
21. Kedarnath Badrinath Nayak, S/o Srikrushna Nayak,
Aged 36 years, Occupation Software Engineer,
R/o 1st Floor, Plot no 31, Anand Nagar Colony,
Kondapur, Hyderabad- 500084.
22. Smt Smrutirekha Patra, W/o Kedarnath Badrinath Nayak,
Aged 35 years, Occupation Software Engineer,
R/o 1st Floor, Plot no 31, Anand Nagar Colony,
Kondapur, Hyderabad- 500084.
- 23 Mr Dabbiru Ravi Kishore Patnaik,
S/o Dabbiru Prafulla Kumar Patnaik,
Aged 35 years, Occupation; Software Engineer,
R/o S/o B.Indira Bai.Kaki Street,

Z.P.Road, Srikakulam- 532001.

- 24 Mrs Uma Patnaik, W/o Mr Dabbiru Ravi Kishore Patnaik,
Aged 31 years, Occupation: House wife,
R/o S/o B.Indira Bai.Kaki Street,
Z.P.Road, Srikakulam- 532001.
- 25 Subathra Santhanam, W/o Mr Ramasamy Krishna Swamy,
Aged 39 years, Occupation: Software Engineer,
R/o C-702, Aparna Towers, Kothaguda,
Kondapur, Hyderabad-500084.
- 26 Mr Ramasamy Krishna Swamy, S/o Sri Krishna Swamy,
Aged 44 years, Occupation: Software Manager,
R/o C-702, Aparna Towers, Kothaguda,
Kondapur, Hyderabad-500084.
- 27 Mr Sridhar Kada, S/o Kada Siva Rama Brahma Charyulu,
Aged 41 , Occupation:Professional,
R/o 400 Coventry Trail Lane, Maryland Heights,
MO 63043.
Represented by its GPA Holder,
Kada Siva Rama Brahma Charyulu, S/o Kada Bangaraiah,
Aged 70 years, Occupation : Retired Employee,
R/o F-504, Hema Durga Heights, Widia Colony,
Miyapur, Hyderabad-500049.
- 28 Mrs Haritha Pokuri Chandrasekara, W/o Mr Sridhar Kada,
Aged about 38 years , Occupation:Professional,
R/o 400 Coventry Trail Lane, Maryland Heights,
MO 63043.
Represented by its GPA Holder,
Kada Siva Rama Brahma Charyulu, S/o Kada Bangaraiah,
Aged 70 years, Occupation : Retired Employee,
R/o F-504, Hema Durga Heights, Widia Colony,
Miyapur, Hyderabad-500049.

**.. APPLICANTS/
FINANCIAL CREDITORS**

M/s RDB HYDERABAD INFRASTRUCTURE PVT LTD

Having its Registered Office at:

Plot No - 502B, Amara Jyothi Building

4th Floor, Suite- 4A, Road No – 31

Jubilee Hills, Hyderabad, Telangana -500033.

**.. Respondent
Corporate Debtor**

Date of order : 26.09.2022

Coram:

**HON'BLE DR. VENKATA RAMAKRISHNA BADARINATH
NANDULA, MEMBER (JUDICIAL)**

and

**HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)**

Parties / counsels present:

For the Petitioner : Shri R. Sushanth Reddy and Ms. Sunitha, Advocates

For the Respondent: Shri A. Venkatesh, Shri Tulasi Krishna and Ms. Janaki,
Advocates

PER BENCH

ORDER

The Applicants herein are all the flat purchasers/home buyers in a project called "LEGEND GRK HARMONY" at survey no.102, situated at Serilingampally Village and Mandal, Ranga Reddy District, promoted by the respondent / corporate debtor.

2. The Corporate Debtor is a company incorporated in India under the having its corporate identification number : U45400TG2010PTC069601 with its registered office at Plot No - 502B, Amara Jyothi Building, 4th Floor, Suite- 4A, Road No - 31, Jubilee Hills, Hyderabad, Telangana -500033.

3. At the outset it is to be observed that pending adjudication of the Company Petition the applicants/ claimants, except applicants no.3 and 13, have settled the issue without involvement of this Adjudicating Authority. Memorandums of Understanding dated 15th May 2019, January, February 2022 have been filed by the parties and the same have been taken on record. The Adjudicating Authority, having perused the said Memos filed by applicants no.1, 2, 4 to 12, 14 to 28 accepts the same, sanctions these settlements and makes the settlement binding on the parties. CP (IB) No.193/7/HDB/2019 stands disposed of as withdrawn in terms of the above Memorandums of Understanding dated 15th May 2019, January, February 2022.

4. The learned counsel for the petitioners has filed Memo dated 12.05.2022 stating that applicants no.3 and 13 have reported no settlement and applicant no.13 has even filed a Consumer Complaint before the District Consumer Dispute Redressal Commission, Ranga Reddy. Now this Adjudicating Authority takes up the matter for adjudication only in respect of applicants no.3 and 13.

5. The present application is filed by applicants no.3 and 13/ Financial Creditors against M/s RBD Hyd Infrastructure Pvt Ltd./ Corporate Debtor for default of financial debt of Rs.45,79,200/- and Rs.37,22,400/- in respect of applicants no.3 and 13 respectively, aggregating to Rs.83,01,600/- (Rupees eighty three lacs one thousand and six hundred only). Hence, this Petition is filed under Section 7 of Insolvency and Bankruptcy Code, 2016, read with Rule 4 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the petition, initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

6. The averments made in the petition stated in brief are such that:

(i) The Applicants herein are all the flat purchasers/home buyers in a project called “LEGEND GRK HARMONY” at survey no.102, situated at Serilingampally Village and Mandal, Ranga Reddy District.

(ii) The project is promoted by the respondent / corporate debtor, by taking the land belonging to Kosetti Gopal Raj, K.Nagaraj, K.Kishore Kumar, on development under DGPA dated 03-02-2007 bearing document no. 2330/2007. Initially, the land owners had entered into a development agreement with M/s Legend Estate Private Limited on 03-02-2007 for developing the schedule property by construction of residential complex comprising of 33 towers having Cellar, Stilt and 19 upper floors. The developer and the landowners have entered into a registered supplementary agreement dated 06-11-2012, wherein M/s RDB Legend Infrastructure PVT LTD now known RDB HYD INFRASTRUCTURE PVT LTD had taken up the construction of the schedule property and have stepped into foot of developer and M/s Legend Estate Pvt limited and has become consenting party.

(iii) Consequently, all the initial obligations cast under the development agreement dated 03-02-2007 upon M/s Legend Estate Private Limited, stood assigned unto the respondent / corporate debtor. In fact, originally M/s Legend Estate Private Limited was entitled only for 50 % of built area, however, on account subsequent registered documents, the built up share falling to the share of developer stood increased from 50% to 61.5%. However the corporate debtor still did not complete the project or the apartment complex and the works on site are far from completion.

(iv) Applicant no.3 herein have entered into an Agreement of Sale dated 12-08-2016 for flat no 1431 in tower no 31 on 14th floor admeasuring 2344 Square feet’s including common area for a sale consideration of Rs 71,32,000/-(Rupees Seventy One Lakhs Thirty Two Thousand only). Applicant no.3 had paid an

amount of Rs 35,60,000/- (Rupees Thirty Five Lakhs Sixty Thousand Only) to the developer/corporate debtor as stated in the table below and further agreed to pay an amount of Rs 45,79,200/- (Rupees Forty Five Lakhs Seventy Nine Thousand Two Hundred only) to the developer at various stages of completion of the project at various stages as stated at clause no.4(b) of the Agreement of sale dated 12-08-2016. It was further agreed that in the event of delay by the Corporate Debtor the purchaser shall receive a compensation of Rs 5/- per square feet subject to payment of all instalments as per clause no 5. The corporate debtor had agreed to hand over the said flat within 24 months and 6 months grace period from the date of this Agreement of sale.

| Sl.No | Date | Cheque No/Bank | Amount |
|-------|------------|------------------|----------------|
| 1 | 15-10-2012 | 048581/HDFC Bank | Rs 5,00,000/- |
| 2 | 10-11-2012 | 048585/HDFC Bank | Rs 5,00,000/- |
| 3 | 06-05-2013 | 000007/HDFC Bank | Rs 3,00,000/- |
| 4 | 10-10-2016 | RTGS | Rs 5,00,000/- |
| 5 | 25-10-2016 | RTGS | Rs 5,00,000/- |
| 6. | 31-12-2016 | Bank Transfer | Rs 12,60,000/- |
| | | Total | Rs 35,60,000/- |

7. The Applicant no.13 herein have entered into an agreement of sale dated 10-04-2013 for flat no. 229 in tower no. 29 on 2nd floor admeasuring 1916 sq feet's including common area for a total sale consideration of Rs 73,06,000/- (Rupees Seventy Three Lakhs Six Thousand only) which had fallen to the share of Corporate Debtor. The Applicant no.13 have paid an amount of Rs 35,83,600/- (Rupees Thirty Five Thousand Eighty Three Thousand Six Hundred Only) to the Corporate Debtor on various dates as stated below and obtained acknowledgement. The Corporate Debtor agreed to hand over possession of the

said flat within 24 months plus 6 months grace period from the date of this agreement

| Sl.No | DATE | DETAILS | AMOUNT |
|-------|------------|-------------------|----------------|
| 1 | 06-04-2013 | 090705/ICICI BANK | Rs 12,61,200/- |
| 2 | 13-03-2013 | 090704/ICICI BANK | Rs 73,060/- |
| 3 | 13-03-2013 | 090703/ICICI BANK | Rs 1,26,940/- |
| 4 | 22-09-2016 | NEFT TRANSFER | Rs 3,00,000/- |
| 5 | 11-03-2016 | NEFT TRANSFER | Rs 5,00,000/- |
| 6 | 04-03-2016 | NEFT TRANSFER | Rs 5,00,000/- |
| 7 | 02-03-2017 | NEFT TRANSFER | Rs 3,61,200/- |
| 8 | 14-09-2016 | Online Transfer | Rs 4,61,200/- |
| | Total | | Rs 35,83,600/- |

(vi) It is submitted that applicants no.3 and 13 along with other Financial Creditors had paid Rs.7,47,74,520/-. However, the Corporate Debtor failed to construct the flats as promised.

(vii) Agreement of sale along with proof of payments made by applicant no.3 to the respondent/ Corporate Debtor are at Exhibit-2 (page 76-89). Agreement of sale along with proof of payments made by applicant no.13 to the respondent/ Corporate Debtor are at Exhibit-9 (page 264-283).

8. The respondent/ Corporate Debtor has filed Counter dated 08.07.2019 contending that:

(i) The petition under section 7 of the I&B Code, 2016 is not maintainable. The petitioners cannot be called Financial Creditors. The applicants are not

alleging or seeking any entitlement for enforcement/ recovery of any financial debt.

(ii) When a debt is owed and payment in respect of the same is defaulted, then only the I&B Code, 2016 can be invoked. In the present case, there is **neither financial creditor nor financial debt** as defined under sections 5(7) and 5(8) of the Code. The Corporate Debtor also relied on section 3(6), where ‘**claim**’ is defined and section 5(8)(f) [with explanations (i) and (ii)] of the Code where ‘financial debt’ is defined in support of its claim that the applicants herein cannot invoke the I&B Code, 2016 as they do not have an enforceable financial debt. The respondent/ Corporate Debtor submitted that by virtue of section 5(8)(f) of the I&B Code, 2016, the applicants cannot claim for money being laid by the applicants, except for seeking completion of the Project and to take possession thereof. It does not render the applicants the status of a ‘Financial Creditor’ to entitle them to invoke section 7 of the I&B Code, 2016.

(iii) There is nothing to substantiate the claim that the applicants have extended credit facilities or that the respondent has committed default. As such there is neither a claim nor a financial debt nor a default to invoke I&B Code, 2016.

(iv) **Force majeure issues:** Narrating the facts of the case the Corporate Debtor has voiced the difficulties faced by the construction industry and relied on *force majeure* issues which had serious impact on construction industry. Even Government of Telangana had issued GO MS No.7 dated 05.01.2016 (ANNEXURE R-3), whereby time period fixed for construction and completion of building has been extended by 6 years with further extension clause of two years.

(v) **Default in payment of instalments :** The Corporate Debtor has also attributed its failure to fulfil the provisions of Agreement/ Undertaking due to non-payment of instalments by some of the applicants in time. The respondent/

Corporate Debtor is not obligated to fulfil its promises in case of defaults committed by customers and in case of the customers failed to perform their obligations under the Agreement/ Undertaking. In view of such defaults, the respondent was constrained to terminate Agreements of Sale in respect of some of the customers.

(vi) **Disputed questions of facts** : The respondent/ Corporate Debtor has also raised certain factual aspects, such is issuance of cheques and the same being returned, Rejoinders, Sur-rejoinders, legal notices, reply to legal notices, returned cheques that were exchanged between the Financial Creditors and the Corporate Debtor.

9. The Financial Creditors have filed Rejoinder dated 13.08.2019 contending that:

(i) The respondent/ Corporate Debtor has not reached the milestones as stipulated in the Agreement of Sale within the contract period and the respondent has no right to allege breach on account of its own wrongdoing. The applicants have paid the following amounts to the respondent/ Corporate Debtor:

| Applicant No. | Applicant's name | Sale consideration Rs. | Amount paid Rs. | Amount due Rs. | % age | Last payment due |
|---------------|------------------|------------------------|-----------------|----------------|-------|------------------|
| 03 | Manoj Soni | 71,32,000 | 35,60,000 | 35,72,000 | 50 | 31.12.16 |
| 13 | Harsh Shrimal | 73,06,000 | 35,83,000 | 37,22,400 | 49 | 02.03.17 |

It is submitted by the petitioners that the respondent/ Corporate Debtor was only interested in demanding payments without achieving substantial progress in the project and therefore, there was no obligation on the part of the applicants to release the balance payments without the respondents achieving the milestones agreed under the contract of sale.

(ii) The respondent/ Corporate Debtor had taken money from the applicants to complete construction but had rather failed to do so on account of its financial

incompetence. Now the Corporate Debtor cannot wriggle out by refunding the amount with deductions and terminating the Agreement of Sale entered by the applicants vide Legal Notices and seek to unduly enrich itself at the cost and expense of the applicants by reselling the flat today at a higher rate.

10. The respondent/ Corporate Debtor has filed Sur-Rejoinder dated 16.09.2019, mostly reiterating what it has stated in its Counter. It is further reiterated that the respondent/ Corporate Debtor has raised funds from various sources owing to the applicants' failure to adhere to timelines under the respective Agreements/s and completed the project as of today and it is at the stage of fit outs. There is no financial incompetence on the part of the respondent as can be seen from the return of monies of the applicants herein along with the legal notices that were issued to the applicants.

11. The respondent has filed Written Arguments dated 26.04.2022, mainly focussing on the following points:

(i) Section 7(1) of the Insolvency & Bankruptcy Code, 2016 (as amended up to 18.03.2020) reads thus:

“7. Initiation of corporate insolvency resolution process by financial creditor.

(1) A financial creditor either by itself or jointly with 1 [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Provided that for the financial creditors, referred to in clauses (a) and (b) of subsection (6A) of section 21, an application for initiation corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

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:*

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first or second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second provisos as the case may be within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.”

12. After the amendment the petitioners were asked to comply with the provisions of section 7 of the I&B Code, 2016 as amended, but in vain.

13. The respondent/ Corporate Debtor submitted that the respondent is developing the project consisting of **627 flats**, out of which **407 flats** are under share of the developer and the rest **220 flats** are under the share of the owners. After developing the subject property, the respondent herein allotted **284 flats** to **317 allottees/** prospective purchasers and it is not out of place to mention that several prospective purchasers have already taken possession over the flats.

(ii) To avoid litigation the respondent/ Corporate Debtor has tried to negotiate with the petitioners. Due to such efforts compromise agreements have been arrived at with the petitioners and the same were filed before this Tribunal. Only two flat owners are trying to throw a spanner and trying CIRP for ulterior motives and the respondent herein has already delivered flat to most of the purchaser and promised to deliver the rest of the project within two months.

(iii) The respondent/ Corporate Debtor has relied on decision in Manish Kumar Vs. Union of India, 2021 SCC Online SC 30, wherein the Hon'ble Apex Court has considered the following, *inter alia*, points:

- The question of who is an allottee – paras 107, 142 and 140 to 158 of the judgment.
- Condition of 10% ought to be complied with – para 173 of the judgment.
- Threshold requirement is to be complied with as on date of filing of the matter and subsequent event shall not be considered. -- paras 178 to 181.

(iv) The respondent/ Corporate Debtor has further relied on decision in Amit Katyal Vs. Meera Ahuja and others, 2022 SCC Online SC 257 @ 21-25, wherein it was held that single purchaser cannot initiate CIRP as Homebuyers are different from other type of Financial Creditors, such as, in the present matter only two allottees.

14. In the above backdrop the point that emerges for consideration of this Tribunal is,

Whether the application as filed under Section 7 of IBC is sustainable?

15. We have heard the Ld. Counsel Shri R. Sushanth Reddy assisted by Ms. Sunitha, Ld.Counsel and Ld. Counsel Shri A.Venkatesh and Shri C. Tulasi Krishna , perused the records and case laws.

16. Admittedly, the present application has been filed prior to the amendment which was brought in as Section 7(1) of the Code which came into effect from 18.03.2020 and the same is as follows:-

Section 7(1) of the Insolvency & Bankruptcy Code, 2016 (as amended up to 18.03.2020) reads thus:

“7. Initiation of corporate insolvency resolution process by financial creditor.

(1) A financial creditor either by itself or jointly with 1 [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Provided that for the financial creditors, referred to in clauses (a) and (b) of subsection (6A) of section 21, an application for initiation corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent of the total number of such creditors in the same class, whichever is less:

*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:*

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first or second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second provisos as the case may be within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.”

17. Thus, it is quite clear from the proviso to the above Section, it is imperative for the applicants 3 & 13 to modify the application within 30 days of commencement of the Act, failing which the Application shall be deemed to have been withdrawn, before its admission. However, Petitioners 3 & 13 neither choose to settle the matter nor modify the application within the time allowed in terms of Section 7 (1) of the Code

18. It is clear from the memo dated 12.05.2022 filed by the Ld. Counsel for the Petitioners, that the Corporate Debtor entered into settlement with Petitioners 1,2,4 to 12, 14 to 18,. Therefore, the irresistible inference that can be drawn in terms of the above proviso is that the Petitioners 3 & 13 have withdrawn their claim before admission, as against the Respondent.

19. Accordingly, we hold that the Company Petition of the Petitioners 3 & 13 against the Respondent, is dismissed as withdrawn and the Company Petition against Petitioners 1, 2, 4 to 12, 14 to 28 has been dismissed as settled out the Tribunal. No costs.

Sd/-

(Veera Brahma Rao Arekapudi)
Member (Technical)

Sd/-

(Dr. N.Venkata Ramakrishna Badarinath)
Member (Judicial)

Karim