

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

(IB)-194(ND)/2021

IN THE MATTER OF:

Mr. Manish Kumar Gupta & 112 Ors
(Authorized Representative Vide LOA Dated 01.12.2020)

Registered Office at :

S/o Late Shri Ram Sewak Gupta
R/o A-1/538, Sector-6, Rohoni,
New Delhi – 110085

...Applicants/Financial Creditors

VERSUS

M/s Ajnara India Limited

Registered Office at :

502, 5th Floor, Sachdeva Corporate Tower 17
Karkardooma Community Centre
New Delhi-110092

...Respondent/Corporate Debtor

IVR Prime Developers (AVADI) Pvt. Ltd.

Having registered office at:

M-22/3 RT, Vijaynagar colony,
Hyderabad, Telangana- 500057

...Performa Respondent

Section: 7 of IBC, 2016

Order Delivered on: 20.09.2022

CORAM:

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

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

PRESENT:

For the Applicant :Mr. Bharat Bhushan Sethi, Ms. Chetna Bisht and
Mr.Niraj Chamyal Advocates

For the Respondent :Sr. Advocate Ravi Sikri along with Adv. Deepank
Yadav, Adv. Rajesh Gupta



ORDER

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

Mr. Manish Kumar Gupta and Others (for brevity, the '**Financial Creditors**') have filed the present Petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the '**IBC, 2016**') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) against M/s. Ajnara India Limited (for brevity, the '**Respondent/Corporate Debtor**').

2. The Respondent namely, M/s. Ajnara India Limited Limited is a Company incorporated on 11.11.1991 under the provisions of erstwhile Companies Act, 1956 with CIN U01111DL1991PLC046358, having its registered office at 502, 5th Floor, Sachdeva Corporate Tower 17, Karkardooma Community Centre, New Delhi-110092, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Corporate Debtor Company is Rs. 100,000,000/- and Paid-up Share Capital is Rs. 50376480/- as per the Master Data annexed.

3. It is submitted that the Applicants (Allottees)/Financial Creditors, who are total 113 in number, are seeking to initiate CIRP against the Respondent M/s. Ajnara India Limited for the default committed against the financial debt paid by the Applicants in lieu of the units purchased in the project namely, "Ajnara Ambrosia". It is



stated that the Respondent had entered into arrangements/ collaborations with the companies and individuals that owned and possessed land totaling approximately 1,42,967 sq. meters situated at Plot No- GH-01, Sector -118, Gautam Budh Nagar, Noida, Uttar Pradesh for construction of the group housing project. It is further stated that as per the lease deed executed between the Respondent and the Proforma respondent, half portion of the group housing land i.e., 71,483.5 square meters of area was given to the Respondent for the development & construction of the project "Ajnara Ambrosia".

4. It is further submitted that the applicants booked and purchased the Unit(s) from the Respondent in its said project "Ajnara Ambrosia", being a plotted residential society. The Respondent further lured the Applicants by offering them bogus "Subvention Scheme" at the time of the booking of the units. It is stated that as per the terms conditions laid down in the Builder Buyer's Agreement (BBA), at Clause 9.1, the Respondent was under the obligation to hand over the possession of the Units within 3 years from the date of signing of the agreement as per of the said agreement. The Respondent in accordance with the Builder-Buyer Agreement executed with the Applicants, gave different dates of possession to each of the Allottee/ Applicant for one particular project, which was to be constructed as a whole. Applicant/Allottee-wise summary of relevant particulars is given in the table reproduced overleaf :



S. No.	Name of the Allottee(s)	Unit	Tower	Amount paid	Date of possession
1.	Manish Kumar Gupta, Yashoda Devi	1607	G	41,56,684/-	31.07.2017
2.	Rajnish Kumar	1506	J	37,28,030/-	31.12.2019
3.	Raghib Husain Abidi, Syed Talib Husain	2302	K	45,71,883/-	30.09.2018
4.	Vishal Grover	1503	E	61,59,260/-	30.11.2017
5.	Nipun Mahajan	303	J	79,10,576/-	31.12.2017
6.	Subrata Sen, Meghna Sen	401	E	56,81,319/-	28.02.2018
7.	Nihal Abraham Philip Koshie, Rachel Ninan	1501	E	57,95,119/-	31.12.2017
8.	Hosakote Ramachandra Praveen, Chandrashekora Sharma Ramachandra, H.R. Naveen	2206	G	46,97,183/-	31.12.2018
9.	Ravi Prakash, Monika Singh	907	C	42,28,090/-	31.08.2017
10.	Rajiv Anand, Sonia Anand	307	A	41,93,096/-	31.01.2018
11.	Nitin Kumar Jain	1203	D	44,08,599/-	31.07.2017
12.	Anuj Kokas, Jyotsna Kokas	605	C	44,56,008/-	31.07.2017
13.	Arun Joshi, Shalini Joshi	1402	B	39,99,428/-	31.12.2017
14.	Rahul Upadhyay, Namrata Upadhyay	1103	C	45,93,354/-	31.03.2018
15.	Kapil Kataria, Nidhi Kataria	1406	D	42,81,038/-	31.07.2017
16.	Shams Tabrez	1202	G	52,17,168/-	31.12.2017
17.	Amit Kumar Sinha, Kanupriya Kumar	1205	K	67,39,647/-	31.12.2017
18.	Manish Bhutani	1801	C	42,41,819/-	31.07.2017

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19.	Sachin Rawat, Shilpa Bisht	802	B	47,57,915/-	31.08.2017
20.	Aman Ankit	206	C	24,42,437/-	31.12.2018
21.	Shoyeb Irfan	1301	B	41,83,702/-	31.07.2017
22.	Minal Gupta, Raghav Aggarwal	12A03	B	42,38,001/-	31.07.2017
23.	Vivek Kumar Garg	1501	F	55,14,904/-	31.07.2017
24.	Sanjeev Ghai	206	K	36,30,870/-	31.10.2018
25.	Abhas Tandon, Ayush Tandon	606	H	53,83,234/-	15.01.2017
26.	Rachit Mohan, Kirti Pandey	808	D	45,56,308/-	31.07.2017
27.	Sonal Agarwal, Himanshu Goyal	803	G	52,38,197/-	31.12.2017
28.	Vineet Agarwal, Sonika Agarwal	1503	G	51,17,880/-	31.12.2017
29.	Shahrez Ahmed	2102	F	32,49,063/-	31.12.2019
30.	Sudhir Rawat	402	B	21,84,640/-	28.02.2018
31.	Devbrat Anand	602	D	44,22,477/-	31.07.2017
32.	Pramod Kumar Jain	1402	E	47,61,534/-	31.12.2017
33.	Irfan Khan, Kahkashan Banu	2402	K	24,02,272/-	31.10.2018
34.	Amit Kumar Gupta, Jayati Chandra	501	F	72,29,069/-	31.12.2017
35.	Rishi Ahuja, Rita Ahuja	2207	A	40,81,685/-	31.12.2017
36.	Arun Chopra	804	A	34,30,948/-	30.09.2018
37.	Ajay Kumar Panigrahi, Sarita Panigrahi	1106	D	43,12,963/-	31.07.2017
38.	Nupur Agarwal, Shobhit Singhal	1601	G	28,34,716/-	30.11.2018
39.	Sunit Kapur, Akshra Malhotra	1506	D	47,82,871/-	31.07.2017
40.	Tushar Gupta	801	B	45,82,307/-	31.01.2018
41.	Saptha Rishi	604	B	50,49,418/-	31.07.2018
42.	Md Tarique Anwar	1201	G	52,17,167/-	31.12.2017
43.	Biju Abraham, Susan Biju	1504	G	46,88,046/-	31.08.2017
44.	Brijesh Kumar Pandey	608	D	46,11,204/-	31.12.2017
45.	Prashant Kumar Singh, Gajraj Singh	1202	B	40,44,244/-	31.07.2017
46.	Arjun Tiwari	1003	B	45,22,796/-	31.12.2017
47.	Durga Dutt	2306	E	34,83,977/-	31.01.2019
48.	Shiv Dutt	1406	E	45,55,275/-	31.10.2018

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49.	Jitendra Kumar, Priyanka Kumari	1007	D	27,49,146/-	30.11.2018
50.	Krishna Mohan Tiwari	602	A	46,81,139/-	31.12.2017
51.	Upkar Goyal	1408	A	43,83,581/-	31.08.2017
52.	Mohd. Khalid	1604	C	39,52,907/-	31.08.2017
53.	Anshul Mishra, Mansi Tiwari	706	B	20,59,681/-	31.01.2018
54.	Abhishek Kumar, Jaya Bharti	1508	C	39,42,451/-	31.07.2017
55.	Deep Dhar Pathak, Sonal Pathak	1403	E	50,95,681/-	31.08.2017
56.	Om Prakash Jha, Nisha Jha	1008	D	45,65,890/-	31.12.2017
57.	Abhishek Garg, Richa Garg	601	F	71,35,064/-	31.12.2017
58.	Rajneesh Dikshit, Tushar Dikshit	804	E	51,39,749/-	31.08.2017
59.	Nitesh Singh	1601	C	43,47,025/-	30.11.2017
60.	Vaibhav Kumar Yadav, Vandana Yadav	1605	F	61,17,565/-	31.12.2017
61.	Abhishek Prashar	1706	B	21,16,906/-	31.10.2018
62.	Kumar Biplav Himwan, Vibha Sharan	1706	F	63,70,430/-	31.08.2017
63.	Sachin Gautam	1001	D	50,16,274/-	31.07.2017
64.	Sachin Mohan Gupta, Akanksha Gupta	1202	A	42,84,412/-	31.07.2017
65.	Sumit Goyal, Santosh Goyal	606	B	50,31,149/-	31.08.2018
66.	Deepak Malu	2307	C	16,22,576/-	31.07.2018
67.	Ajit Singh	1502	C	43,67,032/-	30.11.2017
68.	Saurabh Jain, Sweta Jain	1004	H	52,85,944/-	31.08.2018
69.	Pramod Gupta, Sanjeev Kumar Gupta	908	C	40,02,230/-	31.07.2017
70.	Sanjay Verma, Renu Verma	104	G	53,81,315/-	31.12.2017
71.	Pankaj Kumar, Anju Yadav	12A06	H	44,46,352/-	31.12.2017
72.	Sumit Pal Singh Monga	1303	D	48,81,290/-	31.07.2017
73.	Geetesh Ghose, Arundhati Choudhary	301	E	55,10,250/-	31.07.2017
74.	Rahul Rakesh, Tanaya Vashistha, Kumar Rabindra Singh	602	K	61,46,989/-	31.12.2017
75.	Pawan Deep Singh, Deepika Kaur	303	B	46,84,041/-	30.04.2018

76.	Mukesh Sharma, Naresh Kumar	901	D	49,20,124/-	31.07.2017
77.	Bhoopendra Singh	507	A	38,72,641/-	31.08.2017
78.	Gyanendra Kumar Gupta	707	C	46,34,969/-	31.08.2017
79.	Chain Prakash Singh	903	B	19,22,199/-	31.10.2018
80.	Radhey Shyam Mishra	405	G	52,26,334/-	31.12.2017
81.	Sandeep Sharma	1504	K	29,30,018/-	30.06.2018
82.	Virendra Kumar Jain, Sachana Jain	1006	D	20,58,631/-	30.06.2019
83.	Varun Sharma	1801	F	31,69,000/-	31.12.2018
84.	Bajrang Lal Jhawar, Manoj Jhawar	302	J	73,46,535/-	31.12.2017
85.	Navendu Kumar, Payal Kamti	201	F	34,12,186/-	31.10.2018
86.	Sunil Shah, Shweta	2006	F	59,13,101/-	30.09.2017
87.	Ramesh Choudhary	1206	E	31,80,000/-	30.11.2018
88.	Amit Kumar Singh, Arpita Singh	1906	F	62,58,063/-	30.09.2017
89.	Surendra Choudhary	1001	G	44,40,977/-	31.08.2017
90.	Saurabh Sharma, Shweta	603	F	26,64,752/-	31.10.2018
91.	Sunil Kumar Suman, Asha Kumari	1003	G	46,89,344/-	31.07.2017
92.	Mohd. Ahmad	603	B	45,40,106/-	31.07.2017
93.	Payal Sakuja	702	B	46,43,321/-	31.12.2017
94.	Skand Kumar Khurmi, Gitika Khurmi	101	G	53,06,383/-	31.08.2018
95.	P. Anandaraj, S. Muruga Jeyalakshmi	1004	E	56,37,741/-	30.11.2017
96.	Rohit Singh, Prabhawati Singh	1702	H	23,46,255/-	28.02.2018
97.	Pankhuri Agarwal	1402	C	45,85,774/-	28.02.2018
98.	Shubhra Maheshwari, Misha Garg	1005	B	39,12,396/-	31.07.2017
99.	Ankur Goyal, Neha Garg	1606	A	43,83,735/-	31.12.2017
100.	Vinay Bapna	1204	E	56,50,695/-	31.08.2017
101.	Rajendra Gupta, Sarita Gupta	1606	G	41,56,684/-	31.07.2017
102.	Vineet Kumar	401	B	41,84,122/-	31.07.2017
103.	Nikhil Raghuvanshi	1607	A	39,42,195/-	31.07.2017
104.	Deepanshu Bajaj, Bharti Arora	205	G	46,00,395/-	31.08.2017

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105.	Vikas Kodesia, Sugandha Kodesia	1504	C	39,75,526/-	31.07.2017
106.	Arunda Verma, Anjali Verma	403	H	51,17,379/-	30.11.2017
107.	Amit Raina, Neha Rathi	2101	F	30,01,761/-	31.05.2018
108.	Udit Garg, Sonali Gupta	307	C	41,09,043/-	31.08.2017
109.	Rajan Kant	1103	A	36,28,566/-	31.07.2017
110.	Nitin Nagpal, Pooja Dhall	1006	G	49,92,338/-	31.03.2017
111.	Mohit Trivedi, Anjali Trivedi	707	G	44,20,537/-	31.07.2017
112.	Shruti Tripathi, Nitin Prashar	1007	A	45,94,571/-	31.12.2017
113.	Anju Kapur, Durlabh Kapur	1206	A	44,94,539/-	31.07.2017
	TOTAL			50,47,48,426	

5. It is submitted that the Respondent taking advance payments raised a total financial debt of Rs.50,47,48,426/- only from the Applicants but failed to fulfil its commitments and defaulted in construction of the project and delaying the possession of the Units/Flats. It is further submitted that the Respondent cleverly, got the project registered in the name of the proforma respondent as promoter of the said project. However, as per the builder-buyer agreements executed with the Applicants, the Respondent was to construct the project for which it had taken advance payments. Furthermore, considering the financial instability of the Respondent and the incomplete construction of the project, it is hard to assume that the Respondent in any manner will be able to handover the possession of the Units/ Flats in the project. The Respondent thus, has committed the default of the financial debt as paid by the Applicants by failing to handover the possession of the Units/Flats purchased within the stipulated period.

6. That the particulars of the total amount of debt/default, applicant-wise details and the date of default are stated in Part IV of the application, which is reproduced below for the sake of convenience :

PARTICULARS OF FINANCIAL DEBT OF APPLICANT		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	That a total financial debt of Rs.100,59,53,480/- [Rupees one hundred crores fifty nine lakhs fifty three thousand four hundred eighty only] is due and defaulted, as the Corporate Debtor has cumulatively defaulted the financial debt paid by the Applicants/ Financial Creditors/ Allottees towards the purchase of their respective units, which were assured to be delivered by 2017-2019 as per the Builder Buyer Agreement executed between the parties consequently. The Financial Creditor(s)/ Applicants/ Allottees(s) have approached this Hon'ble Tribunal against

the default of the financial debt committed by the Corporate Debtor by not providing the possession of the units purchased despite taking advance payments against the same. That the financial debt defaulted by the Corporate Debtor can be summarized as follows:

S.NO.	NAME OF THE ALLOTTEE(S)	DEFAULT AMOUNT (Rs.)
1.	Manish Kumar Gupta, Yashoda Devi	89,57,949/-
2.	Rajnish Kumar	47,19,530/-
3.	Raghib Husain Abidi, Syed Talib Husain	71,99,052/-
4.	Vishal Grover	12,260,468/-
5.	Nipun Mahajan	14,780,177/-
6.	Subrata Sen, Meghna Sen	11,811,684/-
7.	Nihal Abraham Philip Koshie, Rachel Ninan	11,686,493/-
8.	Hosakote Ramachandra Praveen, Chandrashekora Sharma Ramachandra, H.R. Naveen	75,03,481/-
9.	Ravi Prakash, Monika Singh	89,56,216/-
10.	Rajiv Anand, Sonia Anand	89,77,474/-
11.	Nitin Kumar Jain	94,26,372/-
12.	Anuj Kokas, Jyotsna Kokas	94,41,013/-
13.	Arun Joshi, Shalini Joshi	75,30,862/-
14.	Rahul Upadhyay, Namrata Upadhyay	93,36,218/-
15.	Kapil Kataria, Nidhi Kataria	92,69,299/-
16.	Shams Tabrez	10,080,971/-
17.	Amit Kumar Sinha, Kanupriya Kumar	12,531,815/-
18.	Manish Bhutani	91,41,278/-
19.	Sachin Rawat, Shilpa Bisht	100,06,035/-
20.	Aman Ankit	46,64,348/-
21.	Shoyeb Irfan	91,44,861/-
22.	Minal Gupta, Raghav Aggarwal	89,70,629/-
23.	Vivek Kumar Garg	11,547,446/-
24.	Sanjeev Ghai	70,24,351/-
25.	Abhas Tandon, Ayush Tandon	10,681,195/-

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26.	Rachit Mohan, Kirti Pandey	96,48,445/-
27.	Sonal Agarwal, Himanshu Goyal	10,118,645/-
28.	Vineet Agarwal, Sonika Agarwal	98,23,436/-
29.	Shahrez Ahmed	40,45,086/-
30.	Sudhir Rawat	41,20,341/-
31.	Devbrat Anand	95,29,295/-
32.	Pramod Kumar Jain	10,243,572/-
33.	Irfan Khan, Kakkashan Banu	39,93,838/-
34.	Amit Kumar Gupta, Jayati Chandra	12,766,640/-
35.	Rishi Ahuja, Rita Ahuja	69,60,403/-
36.	Arun Chopra	60,48,271/-
37.	Ajay Kumar Panigrahi, Sarita Panigrahi	93,51,777/-
38.	Nupur Agarwal, Shobhit Singhal	54,34,806/-
39.	Sunit Kapur, Akshra Malhotra	99,96,126/-
40.	Tushar Gupta	93,68,016/-
41.	Saptha Rishi	101,80,125/-
42.	Md Tarique Anwar	97,85,568/-
43.	Biju Abraham, Susan Biju	95,95,454/-
44.	Brijesh Kumar Pandey	87,28,624/-
45.	Prashant Kumar Singh, Gajraj Singh	87,62,725/-
46.	Arjun Tiwari	88,50,102/-
47.	Durga Dutt	51,24,093/-
48.	Shiv Dutt	72,23,540/-
49.	Jitendra Kumar, Priyanka Kumari	52,60,727/-
50.	Krishna Mohan Tiwari	91,69,954/-
51.	Upkar Goyal	91,66,017/-
52.	Mohd. Khalid	86,29,577/-
53.	Anshul Mishra, Mansi Tiwari	38,91,946/-
54.	Abhishek Kumar, Jaya Bharti	84,27,589/-
55.	Deep Dhar Pathak, Sonal Pathak	10,957,890/-
56.	Om Prakash Jha, Nisha Jha	87,75,045/-
57.	Abhishek Garg, Richa Garg	1,34,29,713/-
58.	Rajneesh Dikshit, Tushar Dikshit	11,100,598/-
59.	Nitesh Singh	89,92,244/-
60.	Vaibhav Kumar Yadav, Vandana Yadav	119,82,419/-
61.	Abhishek Prashar	34,88,718/-
62.	Kumar Biplav Himwan, Vibha Sharan	13,085,140/-

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63.	Sachin Gautam	10,566,378/-
64.	Sachin Mohan Gupta, Akanksha Gupta	91,87,758/-
65.	Sumit Goyal, Santosh Goyal	10,098,892/-
66.	Deepak Malu	27,78,237/-
67.	Ajit Singh	90,47,460/-
68.	Saurabh Jain, Sweta Jain	10,693,076/-
69.	Pramod Gupta, Sanjeev Kumar Gupta	85,59,650/-
70.	Sanjay Verma, Renu Verma	10,434,741/-
71.	Pankaj Kumar, Anju Yadav	82,27,032/-
72.	Sumit Pal Singh Monga	10,244,929/-
73.	Geetesh Ghose, Arundhati Choudhary	11,726,542/-
74.	Rahul Rakesh, Tanaya Vashistha, Kumar Rabindra Singh	110,93,594/-
75.	Pawan Deep Singh, Deepika Kaur	95,12,539/-
76.	Mukesh Sharma, Naresh Kumar	10,293,058/-
77.	Bhoopendra Singh	83,62,647/-
78.	Gyanendra Kumar Gupta	97,45,807/-
79.	Chain Prakash Singh	37,34,885/-
80.	Radhey Shyam Mishra	95,08,059/-
81.	Sandeep Sharma	50,36,304/-
82.	Virendra Kumar Jain, Sadhana Jain	27,56,314/-
83.	Varun Sharma	48,93,573/-
84.	Bajrang Lal Jhawar, Manoj Jhawar	14,938,183/-
85.	Navendu Kumar, Payal Kanti	65,81,471/-
86.	Sunil Shah, Shweta	12,228,777/-
87.	Ramesh Choudhary	60,80,121/-
88.	Anit Kumar Singh, Arpita Singh	12,834,900/-
89.	Surendra Choudhary	95,71,395/-
90.	Saurabh Sharma, Shweta	51,64,987/-
91.	Sunil Kumar Suman, Asha Kumari	10,085,404/-
92.	Mohd. Ahmad	96,52,235/-
93.	Payal Sakuja	95,37,187/-
94.	Skand Kumar Khurmi, Gitika Khurmi	10,407,595/-
95.	P. Anandaraj, S. Muruga Jeyalakshmi	11,817,295/-
96.	Rohit Singh, Prabhawati Singh	44,25,712/-
97.	Pankhuri Agarwal	95,65,423/-

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98.	Shubhra Maheshwari, Misha Garg	85,20,217/-
99.	Ankur Goyal, Neha Garg	84,62,950/-
100.	Vinay Bapna	11,850,384/-
101.	Rajendra Gupta, Sarita Gupta	89,59,152/-
102.	Vineet Kumar	90,40,859/-
103.	Nikhil Raghuvanshi	83,25,335/-
104.	Deepanshu Bajaj, Bharti Arora	97,92,690/-
105.	Vikas Kodesia, Sugandha Kodesia	85,37,294/-
106.	Arunda Verma, Anjali Verma	103,49,362/-
107.	Amit Raina, Neha Rathi	55,08,813/-
108.	Udit Garg, Sonali Gupta	87,69,847/-
109.	Rajan Kant	80,13,953/-
110.	Nitin Nagpal, Pooja Dhall	10,300,656/-
111.	Mohit Trivedi	94,39,958/-
112.	Shruti Tripathi, Nitin Prashar	95,13,686/-
113.	Anju Kapur	93,70,444/-

Therefore, the Financial Creditor(s) is constrained to approach this Hon'ble Tribunal.

2.	<p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED</p> <p>(ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR</p>	<p>Amount in Default Rs.100,59,53,480/- [Rupees one hundred crores fifty nine lakhs fifty three thousand four hundred eighty only]</p> <p>Date of default The default has been continuing as soon as since the year 2017.</p> <p>That the default has been committed by the Corporate Debtor as soon as since the year 2017 [being the latest date of default committed by the corporate debtor as per the builder buyer agreement]. The maximum time, in accordance to the BBA's of the Applicants/Allottee(s) for delivering the possession was 2019. Further, the default is</p>
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	FORM)	<p>being continued even till date, as the construction of the project is not complete and the possession thus has not been handed over.</p> <p>A true copy of a combined computation for all of the Allottees(s) default is annexed as <u>ANNEXURE- A4.</u></p>
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7. That from the perusal of Part IV of the Application, it is observed that the Applicants/Financial Creditors have claimed an amount of Rs. 100,59,53,480/- as an unpaid financial debt and the default continuing since the year 2017.

8. The Applicant/Financial Creditors have relied on the following documents to prove the existence of financial debt -

- a) True Copy of the RERA registration details of the project Ajnara Ambrosia at the UPRERA Website; and
- b) True copies of the Allotment Letters and Builder Buyer Agreements executed by the Respondent with Mr. Manish Kumar Gupta & Smt. Yashoda Devi on 25.01.2014.

9. Basing on the aforesaid facts and documents, the Applicant/Financial Creditors have prayed for initiation of CIRP against the Respondent.

10. On issuance of notice, the Respondent has filed its reply on 13.10.2021 and raised objections viz., the application not being filed in Form 1, non-mentioning of date of default and details of alleged default etc. Furthermore, it has argued that the applicant is not properly authorized on behalf of other applicants to file the present application.

10.1 Further, the Respondent has submitted that the present application is not maintainable and is liable to be dismissed as the all the applicants are not the creditors in the same class and they belong to different classes of creditors. The applicants have booked their units /flats in different Towers namely A, B, C, D, E, F, G, H, J, K of the Respondent's project and applicants in each Tower constitutes different class of creditors.

10.2 It is further stated by the Respondent that it has offered the possession of the units/flats in Tower F and H to all the allottees including 17 applicants herein (being at Sl no. 23,25,29,34,57, 60, 62, 68,71,83,85,86,88,90,96,106&107), on whose behalf the present application is allegedly filed. Therefore, there is no default on the part of the Corporate Debtor as on date qua these 17 applicants. The strength of the present applicants, therefore, comes down to 96, which is below the minimum threshold prescribed under Section 7. Furthermore, it is argued that the applicant is not properly authorized on behalf of other applicants to file the present application.

10.3. The Respondent has further stated that the instead of invoking the provisions of the Arbitration and Conciliation Act in terms of the clause contained in respective Builder-Buyer Agreements, the applicants have filed the present application under Section 7 of IBC, which is liable to be dismissed.



10.4 The Respondent has submitted that the present application is not maintainable as the claims of the applicants are barred by limitation.

10.5 The Applicants do not fall under the category of financial creditors as there were only sale and purchase transactions between the parties having no effect of commercial borrowing and no element of time value of money.

11. The Applicant has filed its rejoinder on 20.11.2021 and denied all the contentions raised by the Respondent in its reply. The applicants have reiterated all the facts as mentioned in the application, except the following :

11.1 The applicants have submitted that the petition has been filed in prescribed Form-1. As per section 7 of IBC, petition can either be filed severally or jointly with other financial creditors. The present petition has been jointly filed by 128 financial creditors/ homebuyers. The Applicants have filed the application as per the format available and by appointing an Authorized Representative for signing the documents for all the others homebuyers.

11.2 It is submitted that the "Ajnara Ambrosia" is one Real Estate Project with multiple Towers and units in it. The Respondent itself has already confirmed the project "Ajnara Ambrosia" as one Group Housing Project in the Allotment Letter of the Home Buyers. It can be verified from page no.218 of the main petition. Further, the allotment

letter and Builder-Buyer Agreement executed portray the whole project as the one Real Estate Project.

11.3 The Applicant has submitted that whereas the present application has been filed by 113 homebuyers, another group of 15 homebuyers was allowed to be part of the main petition by this Hon'ble Bench vide order dated 09.08.2021 in IA-3362/2021. Hence, a total of 128 applicants/ financial creditor(s) have approached this Tribunal praying to initiate CIR Process under section 7 of the Code against the Respondent.

11.4 It is the settled law that the Arbitration is not required before filing a petition under IBC. The hon'ble Supreme Court, in the matter of "M/s. Innovative Industries Ltd. Versus ICICI Bank & Anr." held that the IBC has overriding effect and the Arbitration is not a pre-requisite to file any petition under IBC.

11.5 It is submitted that the default of non-possession of the said units is still continuing in nature and being renewed every day, hence, not barred by the limitation act.

11.6 The Applicants in the present petition are the Financial Creditors as "Allottees in a class". The Applicants are covered under the definition of 'Financial Creditor' under Section 5(7) and their debt is covered under the definition of 'Financial Debt' under Section 5(8) of IBC. More, particularly explanation to clause 'f' of Section 5(8) clearly

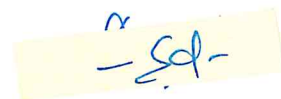


states that the amount raised from allottees shall be deemed to have commercial effect of borrowing and hence, Financial Debt.

12. This Bench has heard the submission made by both the parties and perused the documents placed on record. The primary objection raised by the Respondent is that the Applicant No.1 is not properly authorized by the other applicants to proceed in the present matter. In this regard, when we peruse the letters of authorization (annexed from page no.76-209 of the application), it is found that the authority by the other applicants has been properly given in favour of Applicant No.1.

13. Another objection raised by the Corporate Debtor is that the applicants are not the creditors in the same class and they belong to different classes of creditors. However, on going through the record, it is found that all the applicants belong to the same project namely, 'Ajnara Ambrosia' promised to have been developed by the Respondent. Hence, this objection is not maintainable.

14. Furthermore, the Respondent has contented that the matter is required to be referred to the arbitration as per clause mentioned in the Builder-Buyer Agreements. It is pertinent to mention here that the present application has not been filed by the applicants to resolve any dispute but for initiating the Corporate Insolvency Resolution process of the Respondent, who has defaulted in giving possession to the applicants/financial Creditors/homebuyers within the time stipulated in the respective Builder-Buyer Agreements. Therefore, we



do not find any force in that argument. Further, remedy under Arbitration and Reconciliation Act does not create any bar for the applicants to prefer an application under Section 7 of IBC as the IBC by virtue of Section 238 has the overriding effect over all other laws inconsistent with the IBC.

15. The Respondent has also raised another objection as regards to limitation. In the present application, the first date of default relied on by majority of the applicants is the promised "date of possession" i.e., July, 2017, considering which the period of limitation ends in July, 2020. We are aware that vide Order dated 10.01.2022 in Suo Motu Writ Petition (C) No.3 of 2020, the Hon'ble Supreme Court has excluded the period from 15.03.2020 to 28.02.2022 for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. Further, in this regard the Hon'ble NCLAT vide its order dated 10.01.2022 in the matter of **M/s. Essjay Ericsson Private Limited vs. M/s. Frontline (NCR) Business Solutions Pvt. Ltd. in Company Appeal (AT) (Insolvency) No. 936 of 2021** has also held that :

"12. When the Hon'ble Supreme Court in exercise of jurisdiction of Article 142 of the Constitution of India has directed for extension of period of limitation, a litigant is entitled for the benefit of extended period of limitation and if the petition, application, suit, appeal etc. are filed within extended period of limitation, the application, appeal, suit etc. shall be treated within period of limitation. When the Hon'ble Supreme Court has granted extension of period of limitation, it cannot be said that appeal, suit or application which is filed during the

relevant period is barred by time so as requiring an Application under Section 5 of the Limitation Act, 1963 for condonation of delay. When the appeal, suit, application etc. is filed within period of limitation as extended by the Hon'ble Supreme Court, there does not arise any occasion to pray for condonation of delay for filing suit, application or appeal. However, if a litigant being over cautious files an Application under Section 5 of the Limitation Act, 1963, no exception can be taken to that proceeding but there is no requirement in law to file an application under Section 5 of the Limitation Act, 1963.

13. Further, when an application, appeal or suit etc. is filed within extended period of limitation as directed by the Hon'ble Supreme Court, as noted above, there is no discretion left with the Court or Tribunal to hold that application, appeal or suit is delayed when there is no requirement of filing application under Limitation Act. In above circumstances, discretion of Court to consider sufficient cause does not arise.”

(Emphasis Placed)

In view of the aforesaid position of law, we find that the present Application having been filed on 10.02.2021, is well within the limitation period.

16. Now, we would like to examine whether the applicants, being the Financial Creditors/allottees fulfil the threshold limit as prescribed under section 7 of IBC, 2016. At this stage, we consider it appropriate to refer to the Proviso of Section 7(1) of the IBC, 2016, which lays down as under :

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

(1) A financial creditor either by itself or jointly with [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:

.....”

(Emphasis Placed)

As already noted earlier, the present application has been filed by 113 Financial creditors/homebuyers. As also submitted by the Applicant in its Rejoinder, we find from the record that vide order dated 09.08.2021 in IA-3362/2021, 15 more homebuyers/allottees were allowed to be impleaded with the other Applicants in the present petition IB-194/2021. The relevant order is reproduced overleaf :

ORDER

New IA-3362/2021: By filing this application, the Applicant has prayed the following relief:

- i) Allow the proposed applicants/Financial Creditors to implead/intervene in Company Petition IB No. 194(ND)/2021; and/or
- ii) Allow the amended memo of parties and the amended Form 1 to be taken on record as a part and parcel of Company Petition IB No. 194(ND)/2021; and/or

Heard the Ld. Counsel for the Applicant and perused the averments made in the application.

Ld. Counsel for the Applicant submits that the main Application No. IB-194/2021 is listed for hearing on 7th September, 2021, in which more than 100 allottees of a project are the Applicants. She further submits that the Applicants in the present IA are also allottees under that project. So, the

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Applicants may be permitted to be impleaded as Petitioners in the main IB Application.

Considering the submissions and on perusal of the provision contained under Section 7, we are inclined to permit the Applicants as Petitioners in the main Application. Accordingly, we hereby allow the prayer of the Applicants to be impleaded them as Petitioners along with the other Petitioners in the main Petition IB-194/2021.

With this, the present IA stands disposed off.

Thus, the total number of Applicants in the present Application has increased to 128. We notice that the Respondent in its Reply has also stated that they have already offered letter of possession to 17 allottees of Tower F and H. For the sake of argument, even if we exclude these 17 applicants to whom the Respondent is stated to have offered possession of the flats, still there remain $(128-17) = 111$ number of Applicants/allottees of the same real estate project i.e., 'Ajnara Ambrosia', who have preferred the present application. In this context, we would like to refer

to the judgement of the Hon'ble Supreme Court in **Writ Petition (Civil) No. 26 of 2020 dated 19.01.2021, in the matter of Manish Kumar Vs. Union of India**, whereby the Hon'ble Apex Court has held that :

"143. In the matter of presentation of an application under Section 7, if the threshold requirement, under the impugned provisos, stands fulfilled, the requirement of the law must be treated as fulfilled. The contention, relating to the ambiguity and consequent unworkability and the resultant arbitrariness, is clearly untenable and does not appeal to us. If an allottee is able to, in other words, satisfy the requirements, as on the date of the presentation, the requirement of the impugned law is fulfilled."

17. Thus, as per the conjoint reading of the Proviso under Section 7(1) of the IBC, 2016 and the principle laid down in the judgement of the Hon'ble Apex Court (supra), what this Adjudicating Authority is required to see whether the number of applicants at the time of presentation of the Application have met the threshold limit or not? We find that in the instant case, they have met this threshold limit being 113 Applicants/allottees of the same real estate project i.e., 'Ajnara Ambrosia'. Hence, in our considered view, the present application filed by 113 allottees is maintainable.

18. Furthermore, as per the Builder-Buyer Agreements, the Corporate Debtor was bound to give possession to Homebuyers/ Allottees of their respective units within a period of 3 years, details of which are mentioned in paragraph 4 of this order. The Corporate Debtor

has defaulted in handing over the units to the respective homebuyers/allottees as per the terms of the Builder-Buyers Agreements. It is also noted that as per Form-2 dated 10.02.2021, no disciplinary proceeding is pending against the proposed Interim Resolution Professional. Since, the applicants fulfil all the requirement of section 7 of IBC, 2016, therefore, it is a fit case for admission.

19. In the given facts and circumstances, the present Application being complete and the Applicants/Financial Creditors having established the default on the part of Respondent/Corporate debtor in payment of the financial debt being committed above the threshold limit, **the present Application is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- “(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 Securitization 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.”

20. As proposed by the Financial Creditor, this Bench appoints Mr. Amarpal as IRP having Registration No. IBBI/IPA-001/IP/P-01584/2018-19/12411 (Email: amarpal@icai.org) subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. This Adjudicating Authority orders that:

“Mr. Amarpal, IRP having Registration No. IBBI/IPA-001/IP/P-01584/2018-19/12411 (Email: amarpal@icai.org) is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.”

21. The Financial Creditor is directed to deposit Rs. 2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.



22. A copy of this Order shall be communicated to the Financial Creditor, the Respondent and the IRP mentioned above by the Court Officer/Registry of this Tribunal. In addition, a copy of the order shall also be forwarded by the Court Officer/Registry to the IBBI for their record.

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(L. N. GUPTA)
MEMBER (T)

 -Sd/-

(DHARMINDER SINGH)
MEMBER (J)