



IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

[Through Physical hearing/VC Mode (Hybrid)]

**ITEM No.08
IA (IBC) 107/2026
CP(IB) No. 119/BB/2021**

IN THE MATTER OF:

Mr . Sethuraman Mahadevan & 183 others ... Petitioners

Vs.

M/s Ozone Urbana Infra Developers Pvt Ltd ... Respondent

Petition under Sec 7 of I & B Code 2016

Order delivered on: 10.06.2026

CORAM:

**SHRI SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)**

**SHRI RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)**

COUNSELS PRESENT:

For the Petitioner : Adv. DR Vandana PL
For the Financial Creditor : Adv. S.K. Ravi

ORDER

1. Heard the Ld. Counsel for the Petitioner and Financial Creditor.
2. **IA (IBC) 107/2026 is dismissed.**
3. **CP (IB) No. 119/BB/2021 is admitted to CIRP vide separate order.**
4. List the case on 12.08.2026 for IRP report.

**-Sd-
RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)**

**-Sd-
SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)**



IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

(Exercising powers of Adjudicating Authority under

The Insolvency and Bankruptcy Code, 2016)

(Through Physical Hearing/ VC Mode (Hybrid))

CP (IB) No. 119/BB/2021

Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

IN THE MATTER OF:

Mr. Sethuraman Mahadevan & 183 Other

- Financial Creditor/Petitioner

VERSUS

M/s Ozone Urbana Infra Developers Pvt. Ltd.

No. 38, Ulsoor Road,

Bangalore -560 042

- Corporate Debtor/Respondent

Order delivered on: 10.06.2026

CORAM:

Shri Sunil Kumar Aggarwal, Hon'ble Member (Judicial)

Shri Radhakrishna Sreepada, Hon'ble Member (Technical)

COUNSELS PRESENT

For the Petitioner : Shri S.K Ravi

For the Respondent : Shri M.S Shyam Sundar Sr. Adv

ORDER

1. The present Company Petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code") by the Petitioners/Financial Creditors seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against the Respondent/Corporate Debtor, namely M/s Ozone Urbana Infra Developers Pvt. Ltd., on account of the alleged default committed by the Corporate Debtor in relation to a real estate project developed by it.



2. Background of the case:
 - i. This Petition has been filed by a group of homebuyers/allottees of the real estate project known as "**Ozone Urbana**" developed by the Respondent/Corporate Debtor for initiation of CIRP for the alleged failure to complete the project and hand over possession of the units purchased by them within the stipulated timelines.
 - ii. The Petition was instituted in the year 2021 by 169 homebuyers/allottees, represented through Mr. Sethuraman Mahadevan and Mr. Bipul Bhattacharya, who were stated to have been authorised to act on behalf of the remaining Petitioners. The Petitioners claimed that they had entered into various Agreements for Sale, Construction Agreements, Tripartite Agreements, Subvention-cum-Buy Back Agreements and allied arrangements with the Corporate Debtor in respect of units in the Ozone Urbana project and had paid substantial amounts towards the consideration thereof.
 - iii. During the pendency of the proceedings, certain similarly situated homebuyers were impleaded in the Company Petition vide order dated 24.05.2022 passed in I.A. No. 128/2022. Consequently, the total number of Petitioners increased from 169 to 184.
 - iv. On completion of pleadings, issues arising for consideration were framed. While adjudicating the maintainability of the Petition, this Authority had dismissed the petition on 24.06.2022 holding that it has not been validly instituted on behalf of all the home-buyers as the authorisation letters filed in favour of Mr. Sethuraman Mahadevan and Mr. Bipul Bhattacharya were not duly authenticated or notarised. The Petition was thus treated as one filed by only two individuals and fell short of statutory threshold prescribed under the first proviso to Section 7(1) of the Code in respect of real estate allottees. The issues concerning debt, default, limitation and other objections raised by the parties were not adjudicated upon.
 - v. Aggrieved thereby, the Petitioners had preferred Company Appeal (AT) (Ins.) No. 330 of 2022 before the Hon'ble National Company Law Appellate Tribunal (NCLAT). The principal grievance raised by the Appellants was that the Petition had been dismissed solely on account of alleged defects in the authorisation letters without affording an opportunity to cure the defects and without adjudicating the



substantive issues involved in the matter. It was contended that the alleged deficiencies in the authorisations, even if assumed to exist, were curable in nature and could not have resulted in outright dismissal of the Petition.

- vi. The Corporate Debtor had defended the dismissal order and reiterated its objections regarding the validity of the authorisation letters. It had also been contended that various objections raised by the Corporate Debtor, including objections relating to the status of certain Petitioners and the nature of their transactions with the Corporate Debtor, remained undecided by the Adjudicating Authority.
 - vii. Upon consideration of the rival submissions, the Hon'ble NCLAT, vide Judgment dated 15.02.2024 in Company Appeal (AT) (Ins.) No. 330 of 2022, set aside the order dated 24.06.2022 and remanded the case for fresh consideration by identifying certain issues observing that the Petition was dismissed without adjudication of the remaining substantive issues arising in the proceedings.
 - viii. On taking up the case for re-consideration, the Petitioners filed fresh Letters of Authorisation executed by the home-buyers vide dy. no. 4482 dated 29.07.2024 of which copies were subsequently served on the corporate debtor. The parties were afforded the opportunity to place additional documents and written submissions on record.
3. It is pertinent to note that pursuant to the remand order dated 15.02.2024 passed by the Hon'ble NCLAT, the Petitioners did not file any amended or revised Company Petition. They elected to proceed on the basis of the pleadings and documents already forming part of the record.
 4. The necessary details of the case set out in the petition are as follows:
 - i. The Company Petition has been filed by/on behalf of 184 homebuyers/allottees of the project known as “Ozone Urbana” developed by the Corporate Debtor, seeking initiation of CIRP under Section 7 of the Code, 2016. According to the Petitioners, the Corporate Debtor had launched a large residential township project known as “Ozone Urbana” situated at Devanahalli, Bengaluru and stated to comprise 1862 units and registered with the Karnataka Real Estate Regulatory Authority. The Petitioners had



booked various residential units in the said project by entering into Agreements for Sale, Construction Agreements, Tripartite Agreements, Subvention-cum-Buy Back Agreements and other ancillary arrangements with the Corporate Debtor during the years 2015 to 2017.

- ii. The Corporate Debtor had undertaken to hand over possession of the respective units **within a period of three years** from the date of execution of the agreements. The Petitioners had paid substantial amounts towards the consideration of their respective units aggregating to approximately **Rs.138,65,41,004/-** to the Corporate Debtor. Despite receipt of the consideration amounts and repeated demands, the Corporate Debtor failed to complete the project and deliver possession of the units within the agreed timelines. The amount paid by the allottees was also not refunded. Many of the Petitioners had availed housing loans from financial institutions and continued to bear the burden of repayment of EMIs and interest despite not receiving possession of the units. Even the commitments under various buy-back arrangements and similar schemes were not honoured by the Corporate Debtor.
- iii. According to the Petitioners, the delay in completion of the project continues and the cause of action remains subsisting as possession has not been handed over. It is their contention that the amounts raised from the allottees have the commercial effect of borrowing and constitute financial debt within the meaning of Section 5(8)(f) of the Code and that all the Petitioners qualify as allottees/financial creditors entitled to invoke Section 7 of the Code.
- iv. The threshold requirement prescribed under the first proviso to Section 7(1) of the Code stands duly satisfied. According to them, the Petition has been instituted by more than one hundred allottees and the details of all 184 Petitioners, their respective units, possession dates and amounts paid has been placed on record. Mr. Sethuraman Mahadevan and Mr. Bipul Bhattacharya are claimed to be duly authorised through Letters of Authorisation executed by the Petitioners to represent them in the present proceedings.



material facts relating to such proceedings have been suppressed from the petition. Further, Some of the Petitioners have already received partial or complete returns under the investment arrangements. The figures relating to the amounts allegedly paid are claimed to be inaccurate.

- v. The allegation that the project is substantially incomplete has been disputed contending that occupancy certificates has already been obtained for various portions of the project and that completion timelines stood extended in accordance with permissions granted by the regulatory authorities. Objections is also raised regarding admissibility of documents relied upon by the Petitioners including for the deficiencies in the certificate under Section 65B of the Evidence Act, and non-production of complete contractual documentation. On the aforesaid grounds, the Corporate Debtor sought dismissal of the Company Petition.
 - vi. In support of its contentions, the Corporate Debtor relied upon the decisions of the Hon'ble Supreme Court in ***Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Ltd. & Ors. Civil Appeal Nos. 8512-8527 of 2019, Murlidhar Aggarwal v. State of Uttar Pradesh (2017) 1 SCC 487, All India Power Engineer Federation v. Sasan Power Ltd. (1988) 1 SCC 70, Shalimar Tar Products Ltd. v. H.C. Sharma (1971) 1 SCC 619 and Lachoo Mal v. Radhey Shyam.***
6. In their rejoinder dated 20.04.2022 the petitioners have stated following:
- i. It is denied that they are speculative investors asserting that each of them has been allotted specific units in the project pursuant to allotment letters, sale agreements and construction agreements executed by the Corporate Debtor. Various schemes, including buy-back arrangements and other incentive schemes, were devised and offered by the Corporate Debtor itself as a means of mobilising funds for the project. Merely because certain units were booked under such schemes would not deprive the allottees of their status as homebuyers or financial creditors under the Code.
 - ii. The booking of more than one unit by certain allottees did not alter the nature of the transaction. Separate allotment letters, separate agreements



and separate consideration amounts existed in respect of each unit. So far as joint allottees are concerned, several units had been booked jointly with spouses and any one of the co-allottees is competent to maintain proceedings under the Code. The exclusion of co-allottees from the array of parties does not affect the maintainability of the Petition or the satisfaction of the statutory threshold requirement under Section 7 of the Code.

- iii. The challenge to the Letters of Authorisation has been controverted. According to the Petitioners, this Petition has been jointly instituted by them and the Letters of Authorisation merely enabled Petitioners No. 1 and 2 to act as their representatives for the purposes of conducting the proceedings. Reliance has been placed upon Section 424 of the Companies Act, 2013 contending that there exists no prescribed procedure under the Code for institution of a petition by more than one hundred allottees. Owing to a large number of allottees and voluminous nature of the documents, only sample agreements were initially annexed to the Petition along with relevant particulars of all the Petitioners.
- iv. The Corporate Debtor had, in fact, admitted liability towards several allottees by making part payments and by participating in proceedings before the Real Estate Regulatory Authority. Although certain allottees had obtained orders directing refund along with interest yet the order remained un-complied. Once liability had been acknowledged and part payments was made, the Corporate Debtor cannot dispute the existence of debt and default. Lastly, the Petitioners asserted that this petition has not been initiated as a recovery mechanism but intended to invoke the insolvency resolution process on account of the Corporate Debtor's inability to complete the project and hand over possession of the units, in accordance with the objectives of the Code.

7. Pursuant to the remand of the matter by the Hon'ble NCLAT submission were given from both sides. The Corporate Debtor filed additional objections dated 24.11.2024 reiterating the earlier objections and raising following points:

- i. The Petitioners seeking to project themselves as allottees and financial creditors under Section 5(7) and Section 5(8)(f) of the Code are, in reality



investment customers who have invested in the project for earning returns and not for acquiring residential accommodation.

- ii. The fresh Letters of Authorisation obtained during 2023-24 cannot retrospectively validate a petition instituted in the year 2021. The defect goes to the root of maintainability and is not curable.
- iii. The majority of the Petitioners are speculative investors and not genuine allottees. Reliance is placed upon the decision of the Hon'ble NCLAT in ***Shubha Sharma v. Mansi Brar Fernandes & Ors. COMP AP No. 83/2020*** to contend that speculative investors are not entitled to invoke the provisions of the Code as financial creditors. Out of 184 Petitioners, approximately 130 had entered into Buy-Back Agreements with the Corporate Debtor and had consciously invested under schemes intended to generate profits through repurchase of units by the Corporate Debtor. Such persons never intended to take possession of the units and therefore cannot claim the status of bona fide allottees under RERA or the Code.
- iv. The Petitioners have artificially inflated their numbers in order to satisfy the threshold prescribed under the first proviso to Section 7(1) of the Code. Out of the original 169 Petitioners, at least 23 persons had booked multiple units such as Petitioner No.25, Mr. Uday Kiran Chaka, who is represented multiple times as Petitioner Nos. 25, 40, 41 and 42, and Mrs. Meera Chaka, who is represented as Petitioner Nos. 43, 86, 87 and 88. Members of the same family are shown as multiple applicants in respect of multiple units and an artificial numerical strength is created to satisfy the statutory threshold. The expression "allottees" in Section 7 contemplates individual bona fide allottees and not multiplication of numbers on the basis of ownership of multiple units. The Petition thus is an attempt to create a "number game" and defeat the legislative intent underlying the amendment to Section 7.
- v. The Petition suffers from non-joinder of necessary parties. A substantial number of units were jointly purchased by spouses or family members but only one of the co-purchasers had been arrayed as a Petitioner. Illustratively, Petitioner No.1, Mr. Sethuraman Mahadevan, had jointly



purchased the unit with his wife Mrs. Chitra Sethuraman Mahadevan and Petitioner No.2, Mr. Bipul Bhattacharya, had jointly purchased the unit with Mrs. Pampa Bhattacharji and there is a whole list of similar joint purchases but co-allottees have not been impleaded. If such improperly represented Petitioners and duplicated applicants were excluded from consideration, the Petition would fail to satisfy the statutory threshold requirement under Section 7 and despite the pendency of the matter for several years, the defect has not been rectified.

- vi. Further, the Petitioners have adopted inconsistent positions before different forums. The 184 homebuyers had jointly instituted P.C.R. No.20/2022 before the competent criminal court alleging offences under Sections 406, 409, 417, 418, 420 and 120B read with Section 34 of the IPC as well as Section 9 of the Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004. There the Petitioners had projected themselves as "depositors". The complaint resulted in registration of **Crime No.143/2022** which the Corporate Debtor and its directors had challenged before Hon'ble High Court of Karnataka in **W.P. No.14484/2022**. The Petitioners cannot simultaneously claim the status of depositors in one proceeding and allottees/financial creditors in another.
- vii. The Corporate Debtor also disputes the quantum of debt claimed in the petition. While the Petitioners claim to have paid approximately Rs.127.05 crore and set-up a claim of about Rs.191.65 crore inclusive of interest, they have not actually contributed the entire amount reflected in the Petition. Only about 10% of the consideration was paid by the purchasers from their own resources and the balance amounts were funded by banks and financial institutions. Many of the Petitioners have already received refunds, profits and returns on their investments but had failed to disclose the same. The Corporate Debtor had been servicing pre-EMI obligations on behalf of several purchasers and numerous Petitioners have approached the Hon'ble High Court of Karnataka seeking directions against banks and financial institutions to refrain from recovering loan instalments from them.



Reference is made to orders passed by the Hon'ble High Court in **W.P. No.7844/2024** and other connected proceedings.

- viii. The Petitioners have incorrectly portrayed the project as substantially incomplete. In fact, occupancy certificates have already been obtained in respect of several portions of the project and substantial construction and infrastructure facilities stood completed. The Petitioner No.1 himself has been residing in the Ozone Urbana project while simultaneously alleging that possession has not been given and only 47% of the project has been completed. These facts demonstrate that the Petitioners are not distressed homebuyers but investors seeking recovery of money through insolvency proceedings.
 - ix. The Corporate Debtor has also questioned the evidentiary basis of the Petition as the documents relied upon by the Petitioners are not supported by proper certificates under Section 65B of the Evidence Act. The documents downloaded from Uttar Pradesh Real Estate Regulatory Authority have no connection with the Karnataka project in question. The complete Sale Agreements, Construction Agreements, Tripartite Agreements, Buy-Back Agreements and other contractual documents of all Petitioners have not been produced. Several documents appear incomplete, selective, tampered with or incapable of establishing the alleged payments. The transactions essentially involved transfer of undivided share in land coupled with construction contracts and, in many cases, Buy-Back Agreements, thereby taking the Petitioners outside the ambit of "allottees" as contemplated under RERA and the Code. **Lastly**, the Petitioners have suppressed several material facts and subsequent developments and even the memo filed on 18.06.2024 contains particulars of only 133 alleged financial creditors. On the aforesaid grounds, dismissal of the Company Petition is sought.
8. The Petitioners have filed detailed Rejoinder dated 13.12.2024 controverting the objections raised by the Corporate Debtor stating:
- i. That the requirements for initiation of CIRP under Section 7 of the Code are fully satisfied. The objections are devoid of merits and intended only to



delay adjudication of the matter. As the Corporate Debtor has not disputed the fundamental facts regarding receipt of monies from the allottees, failure to complete the project within the promised timelines and failure to hand over possession of the units or honour the commitments undertaken under the various schemes floated by it.

- ii. Reference to the Judgment dated 15.02.2024 passed by Hon'ble NCLAT in Company Appeal (AT) (Ins.) No.330 of 2022 is made to say that the Hon'ble Appellate Tribunal has remanded the matter for a de novo consideration and specifically directed this Authority to examine and decide all the issues enumerated in paragraph 78 of the said Judgment. The remand restored the proceedings for fresh adjudication on merits and consequently permitted them to cure procedural defects, if any, relating to authorisations and representation. Accordingly, fresh Letters of Authorisation, including apostilled authorisations wherever required, have already been placed on record. The alleged defects in authorisation were merely procedural in nature and could not defeat substantive rights. Reliance has been placed upon the decision of Hon'ble Supreme Court in ***United Bank of India v. Naresh Kumar & Ors., (1996) 6 SCC 660***, to contend that curable procedural defects ought not to result in dismissal of an otherwise maintainable proceeding.
- iii. Further, the Petitioners are bona fide allottees and fall squarely within the definition of "allottee" under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016. It is submitted that allotment letters are issued in their favour besides executing sale agreements and construction agreements and substantial consideration amounts have been paid by them. Consequently, the amounts raised by the Corporate Debtor from the Petitioners constitute "financial debt" within the meaning of Section 5(8)(f) of the Code and the Petitioners are financial creditors under Section 5(7) thereof. Reliance is placed on the judgments of the Hon'ble Supreme Court in ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India (supra)*** and of Hon'ble NCLAT in ***Everlike Real Estate & Developers Pvt. Ltd. v. Mohit Goyal CA [Company Appeal (AT) (Insolvency) No. 978 of 2024]*** to



assert that the homebuyers/allottees remain financial creditors notwithstanding allegations that they are investors and that monies raised from allottees have the commercial effect of borrowing. The Petitioners have approached this Tribunal seeking possession of their units and redressal of defaults committed by the Corporate Debtor and not for recovery of investment returns.

- iv. Regarding the allegation that a large number of Petitioners are speculative investors who had entered into Buy-Back Agreements, it is averred that the buy-back and subvention schemes were themselves devised and marketed by the Corporate Debtor for raising funds for the project. The Corporate Debtor could not, after accepting the monies and issuing allotments, deny the status of the purchasers as allottees merely because they had enrolled under schemes promoted by the Corporate Debtor itself. Several of the schemes involved upfront disbursement of substantial loan amounts directly to the Corporate Debtor and the Corporate Debtor had simultaneously undertaken obligations to service pre-EMI liabilities until possession or buy-back. The Corporate Debtor subsequently defaulted in fulfilling these obligations, thereby causing severe financial hardship to the purchasers.
- v. The Petitioners have denied the allegation that the threshold requirement under the first proviso to Section 7(1) of the Code has been achieved through artificial multiplication of numbers. It is submitted that each allotment constituted a separate allotment supported by independent allotment letters, separate consideration and separate contractual documentation. Even assuming that multiple units held by the same individual or family are counted as one allottee, the number of Petitioners would still exceed the statutory requirement of one hundred allottees. Reliance is placed upon the judgment of the Hon'ble Supreme Court in *Manish Kumar v. Union of India(supra)* to contend that independent allotments are to be recognised independently while computing the statutory threshold and that only joint allottees of the same unit are to be treated as one allottee. The Petitioners also produced a tabulated statement



detailing the allottees, allotted units, possession dates and proceedings initiated before various forums.

- vi. As regards the objection concerning joint allottees and alleged non-joinder of necessary parties, the Petitioners answered that the rights of co-allottees are not inseparable and that one allottee is competent to prosecute proceedings in relation to the allotted unit. Most of the units were jointly booked with spouses or family members and that absence of every co-allottee as a party does not render the proceedings defective. Reliance in this behalf is placed on the judgment of the Hon'ble Supreme Court in ***Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay 1992 SCR (2) 1*** to say that only necessary parties are required to be impleaded and that the question of impleadment lies within the judicial discretion of the adjudicating forum.
- vii. The criminal proceedings initiated by certain purchasers under Indian Penal Code and the Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004 has no bearing upon the maintainability of present proceedings under Section 7 of the Code as civil and criminal remedies simultaneously proceed and initiation of criminal proceedings does not bar the insolvency proceedings. Reliance has been placed on the decisions of the Hon'ble Supreme Court in ***Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corporation of India Ltd. (2023) 10 SCC 545, P. Swaroopa Rani v. M. Hari Narayana AIR 2008 SC 1884*** and ***Arun Bhandari v. State of Uttar Pradesh 2013 2 SCC 801*** in support of the proposition that criminal proceedings and civil proceedings may continue concurrently.
- viii. With regard to the Corporate Debtor's contention that only a small portion of the consideration had been paid by the allottees and the balance had been funded by banks, the Petitioners submit that the financing structure was itself designed by the Corporate Debtor under Subvention Schemes and tripartite arrangements executed between the purchasers, lending institutions and the Corporate Debtor. The Corporate Debtor had undertaken contractual obligations to service pre-EMIs and EMIs for



specified periods but subsequently defaulted. The Petitioners were compelled to approach the Hon'ble High Court against the banks because of the Corporate Debtor's failure to honour its commitments. Even the amounts admittedly paid directly by the Petitioners constituted financial debt far in excess of the minimum threshold prescribed under the Code. Reliance in this behalf is placed upon *Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Ltd. Civil Appeal Nos. 8512-8527 of 2019* to support that the monies advanced ultimately stood utilised by the Corporate Debtor and therefore satisfy the requirements of financial debt.

- ix. The Petitioners have refuted that the project has substantially been completed. According to them, the Corporate Debtor itself had acknowledged repeated extensions of timelines and it remained incomplete despite the original possession dates having fallen due during the period 2017-2019. Obtaining occupancy certificates for certain portions of the project did not amount to completion of the entire project or discharge the Corporate Debtor from its obligations towards the remaining allottees. The Petitioners asserted that the prolonged delay in completion itself constituted a default giving rise to the present proceedings.
- x. The allegations regarding fabrication of documents, absence of complete agreements and defects in evidentiary certification are denied. The Petitioners have filed only representative documents to avoid voluminous records and that complete details regarding allottees, amounts paid and defaults are separately furnished. The Petitioners undertook to produce any additional documents that may be required by the Tribunal. They also explained that any reference to the Uttar Pradesh RERA website was merely a typographical error and sought leave to rectify the same.
- xi. Lastly, the Petitioners reiterated that the present proceedings are not in the nature of debt recovery proceedings but for resolution of a financially distressed corporate debtor. Reliance has again been placed upon the judgment of the Hon'ble Supreme Court in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India (supra)* to contend that a homebuyer



invoking Section 7 takes the risk inherent in insolvency proceedings and therefore cannot be equated with a person merely seeking recovery of money. The very fact that the allottees had invoked the Code demonstrated complete loss of confidence in the management of the Corporate Debtor and justified initiation of CIRP. Accordingly, the Petitioners prayed that the Company Petition be admitted and CIRP be commenced against the Corporate Debtor.

9. The Petitioners have also filed detailed written submissions on 20.02.2026 stating:
- i. The scope of enquiry under Section 7 of the Code is limited to determination of the existence of a financial debt and occurrence of default. Relying upon the judgments of the Hon'ble the Apex Court in *Innoventive Industries Limited v. ICICI Bank and Another (2018) 1 SCC 40, E.S. Krishnamurthy & Ors. v. Bharath Hi Tech Builders Pvt. Ltd. (2022) 3 SCC 161* and *M. Suresh Kumar Reddy v. Canara Bank & Ors. (2023) ibclaw.in 67 SC*, it is contended that once a financial debt and default is established, the Adjudicating Authority has little discretion except to admit the application. The Petitioners have also relied upon the decision of NCLT, New Delhi in *Punjab & Sind Bank v. Supertech Township Projects Ltd. C.P. No. (IB) 462 of 2023* to submit that admission must follow where debt and default stand proved. According to the Petitioners, the monies paid by the allottees constitute "financial debt" under Section 5(8)(f) of the Code and even assuming only 10% of the consideration was paid directly by the homebuyers, the amount of default would still be substantially above the statutory threshold prescribed under the Code. The Petitioners further submit that the fresh Letters of Authorisation filed after remand are merely supplemental to the authorisations already on record and constituted curing of procedural defects rather than introduction of any new cause or claim.
 - ii. The Petitioners strongly dispute the allegation that they are speculative investors. All the Petitioners are allottees within the meaning of Section 2(d) of RERA and consequently financial creditors under Section 5(8)(f) of the Code. According to them, they continue to seek possession of their respective units and have approached this Tribunal for resolution of the



Corporate Debtor and completion of the project rather than for recovery of investment returns. Reliance has been placed on the decision of Hon'ble NCLAT in *Everlike Real Estate & Developers Pvt. Ltd. v. Mohit Goyal (supra)*, wherein it is observed that irrespective of whether a homebuyer is alleged to be speculative or genuine, amounts paid towards acquisition of units constitute financial debt and the allottee remains a financial creditor. The Petitioners have also relied upon the observations of the Hon'ble Supreme Court in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India (supra)* to submit that the expression "speculative investor" refers only to persons who seek to misuse the Code as a debt recovery mechanism and not to genuine allottees who seek completion of the project and possession of their units. It is averred that the Petitioners have no alternative option either to obtain possession or secure refund and therefore could not be categorised as speculative investors.

- iii. Addressing the allegation of forum shopping, the Petitioners contend that proceedings initiated before RERA, Consumer Forum, the Hon'ble High Court and other authorities arose from distinct causes of action and for different reliefs. Reliance is placed upon *Union of India v. Cipla Ltd. (2017) 5 SCC 262* to contend that forum shopping can be inferred only where proceedings are functionally identical and pursued to secure conflicting remedies. According to the Petitioners, proceedings before RERA were directed towards possession, refund and compensation, whereas the present proceedings under the Code seek insolvency resolution of the Corporate Debtor. Reliance in this behalf has further been placed on *Pioneer Urban Land and Infrastructure Ltd. v. Union of India (supra)* wherein the Hon'ble Supreme Court recognised that remedies under RERA, Consumer Protection legislation and the IBC are concurrent remedies available to homebuyers. The Petitioners have also referred to writ proceedings instituted before the Hon'ble High Court challenging recovery of EMIs under subvention schemes and contended that such proceedings had no bearing upon the maintainability of the present Section 7 Petition.



- iv. They additionally relied upon the observations of Hon'ble Delhi High Court in *Sanjay Raghunath Piplani v. National Buildings Construction Corporation 2024 SCC Online Del 343*, wherein the difficulties faced by homebuyers in pursuing multiple remedies against delayed projects were recognised. The Petitioners also referred to criminal proceedings initiated under the KPIDFE Act and cited *P. Swaroopa Rani v. M. Hari Narayana (AIR 2008 SC 188)* to submit that civil and criminal proceedings may continue simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case.
- v. The Petitioners have also specifically addressed each of the issues framed by the Hon'ble NCLAT in paragraph 78 of its judgment dated 15.02.2024. They claimed to have locus standi to maintain the present Petition as they are homebuyers/allottees constituting financial creditors under Section 5(8)(f) of the Code; that the Petition is supported by 184 allottees and therefore satisfies the threshold requirement under the second proviso to Section 7(1); that there exists debt and default exceeding the statutory minimum threshold; and that Appellant Nos. 1 and 2 are duly authorised representatives of all the Petitioners. It was further submitted that fresh Letters of Authorisation had been filed on 05.08.2024 and the authorisations executed outside India are duly apostilled under the Hague Apostille Convention, while those executed in India are notarised and stamped in accordance with applicable law. Thus the authorisations are validly executed, appropriately stamped, and even if construed as possessing characteristics of powers of attorney, complied with all legal requirements. Further the threshold requirement of one hundred allottees stood satisfied and reiterated that the Petitioners cannot be treated as speculative investors for the reasons already advanced.
- vi. The Petitioners also sought to rely upon subsequent developments concerning the affairs of the Corporate Debtor. It is submitted that multiple FIRs had been registered against the Corporate Debtor and its directors for cheating and related offences and enforcement agencies have conducted



search proceedings at the premises of the Corporate Debtor during August 2025. These developments demonstrate serious concerns regarding the management and affairs of the Corporate Debtor and supported the need for commencement of a resolution process under the Code. The Insolvency and Bankruptcy Code is a complete code in itself and Section 238 gives overriding effect to the Code over inconsistent laws. (relied - ***Indian Overseas Bank v. RCM Infrastructure Ltd. (2022) ibclaw.in 39 SC***). They also referred to Section 32A of the Code and the principle that, upon approval of a resolution plan and change of management, the corporate debtor may obtain the benefit of a "clean slate" while preserving liability of persons responsible for prior misconduct.

- vii. The consideration amounts had substantially been disbursed by banks under subvention schemes. The loans were sanctioned on the strength of allotments and project documentation and the burden of repayment ultimately falls upon the homebuyers. The Petitioners made reference to the pending proceedings in ***Himanshu Singh & Ors. v. Union of India & Ors. SLP(C) 9497 of 2023***, wherein issues relating to builder-bank subvention arrangements are under examination. Reliance is also placed on ***Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Ltd. (supra)*** to stress that the persons whose monies ultimately reach and finance the corporate debtor are entitled to be treated as financial creditors. Even on the Corporate Debtor's own case that only 10% of the consideration was paid directly by the homebuyers, the amount of default remains well above the statutory threshold and the requirements of Section 7 stand fully satisfied. The Petitioners, accordingly prayed for admission of the Company Petition and initiation of CIRP against the Corporate Debtor.
10. Guided by the Judgment dated 15.02.2024 passed by Hon'ble NCLAT in Company Appeal (AT) (Ins.) No.330 of 2022, the pleadings of the parties, the additional objections, rejoinder and written submissions filed after remand, following issues emerge for consideration in the present Company Petition:
 - i. Whether the Petitioners have the requisite locus standi to maintain the present Company Petition under Section 7 of the Code, 2016?



- ii. Whether the Letters of Authorisation relied upon by the Petitioners are validly executed and authenticated in accordance with applicable law?
 - iii. Whether the Letters of Authorisation executed by Petitioners residing outside India require payment of stamp duty and comply with the provisions of Indian Stamp Act, 1899 and, if so, whether such requirement is satisfied?
 - iv. Whether the Letters of Authorisation are liable to be adjudicated under the provisions of the Indian Stamp Act, 1899 and whether the same affect the maintainability of the present proceedings?
 - v. Whether the Petitioners satisfy the minimum threshold requirement prescribed under the provisos to Section 7(1) of the Code, 2016?
 - vi. Whether the Letters of Authorisation possess the attributes of a Power of Attorney and the same invalidate the institution of the present proceedings?
 - vii. Whether Petitioner Nos.1 and 2 are competent and duly authorised to maintain the present Company Petition on behalf of remaining Petitioners?
 - viii. Whether the Petitioners are genuine allottees/homebuyers constituting Financial Creditors under Section 5(8)(f) of the Code or whether they are speculative investors as contended by the Corporate Debtor?
 - ix. Whether there exist a financial debt and default within the meaning of the Code, 2016?
 - x. Whether the present Company Petition deserves admission under Section 7 of the Code?
11. Since Issue Nos. (ii), (iii), (iv), (vi) and (vii) are interconnected and pertain to the authorisation for institution of the Petition, they are taken up together for consideration.

12. ISSUE NOS. (ii), (iii), (iv), (vi) & (vii)

Validity of Letters of Authorisation, Requirement of Stamp Duty, Nature of Authorisation and Competence of Petitioner Nos.1 and 2

- a. The principal objection of the Corporate Debtor, both before the initial adjudication as well as after remand, is that the present Company Petition was not validly instituted since Petitioner Nos.1 and 2 lacked authority to represent the



remaining Petitioners. According to the Corporate Debtor, the Letters of Authorisation are neither valid authorisations nor valid powers of attorney; that several authorisations executed outside India were not duly authenticated, stamped or adjudicated; and that defects existing on the date of filing of the Petition cannot be retrospectively cured by subsequent authorisations filed after remand.

- b. The Petitioners, on the other hand, contend that the Company Petition was always intended to be a joint petition by all the allottees and that the authorisations merely enabled Petitioner Nos.1 and 2 to act as representative petitioners for the purposes of conducting these proceedings. It is their case that any procedural defect, if at all existing, stood cured by filing fresh authorisations after remand and that such defects cannot defeat substantive rights of a large body of homebuyers.
- c. Before examining the rival contentions, it is essential to note that the Hon'ble NCLAT while remanding the matter had specifically directed to consider the validity of the authorisations and all ancillary issues arising therefrom. Therefore, the said issue requires detailed independent examination.
- d. The petition was originally instituted by 169 allottees to which 15 homebuyers got added pursuant to the order dated 24.05.2022. It is not in dispute that the names, unit details and particulars of all such allottees were disclosed in the Petition itself. Neither the petition could have been filed by the Petitioners No. 1 & 2 nor the present petition intended or projected to be only on their behalf. It is rather a collective venture instituted by and on behalf 184 allottees. Since the Petitioner homebuyers are settled in different parts of the country and world, for the need of statutory benchmark and ease of follow-up/prosecution, it was filed through the façade of Petitioner Nos.1 and 2 by conveying their authorisations in their favour. The petition thus is deemed to have been signed, verified and instituted by Petitioners No. 1 & 2 not only on their individual behalf but also on behalf of rest of the homebuyers.
- e. The Corporate Debtor has argued that the authorisations suffer from deficiencies relating to execution, attestation and stamping and therefore the Petition itself must fail. Although there are few technical glitches in the authorisations yet we are not convinced to accept such a broad and sweeping proposition.



- f. The IBC, is a special legislation enacted for resolution of insolvency and not a procedural statute intended to defeat substantive claims on technical grounds. The Hon'ble Supreme Court in *United Bank of India v. Naresh Kumar (1996) 6 SCC 660* has held that procedural defects relating to authorisation or institution of proceedings are curable and that substantive rights ought not to be defeated merely on account of technical irregularities where authority can subsequently be demonstrated.
- g. The significance of the aforesaid principle becomes greater in the present case where the Petition is filed not by a commercial creditor but by a large body of homebuyers spread across different jurisdictions, including outside India. The material on record reflects that after remand of the case, fresh Letters of Authorisation have been filed and the Corporate Debtor is afforded full opportunity to contest the same.
- h. The Corporate Debtor has contended that the authorisations executed abroad ought to have been adjudicated under the Indian Stamp Act within the prescribed period and that failure to do so renders the Petition non-maintainable. We find little merit in the said contention.
- i. The issue before this Authority is not enforcement of a power of attorney in a civil suit involving proprietary rights. The issue is whether the allottees intended to authorise Petitioner Nos.1 and 2 to represent them in proceedings under the Code. The existence of such authority is evident from the subsequent authorisations placed on record and execution thereof by the concerned Petitioners has not been seriously disputed on facts. The objection raised is essentially technical in nature.
- j. When the relationship with Petitioners as allottees of home units in the project of Corporate Debtor by making part payments and execution of various agreements is admitted, mere deficiency in stamp duty on some of the Authorisations cannot be termed to constitute prejudice to the Corporate Debtor. Even otherwise the matter of sufficiency of Stamp Duty and its realisation is between the executant and State and the latter can always ensure payment of due Stamp Duty in appropriate proceedings. It is well settled that the questions relating to stamping and adjudication ordinarily concern admissibility and evidentiary value of the



instrument and do not automatically extinguish the underlying authority or substantive rights of parties.

- k. The next contention of the Corporate Debtor is that the Letters of Authorisation possess the characteristics of powers of attorney and therefore must satisfy all formal requirements applicable to powers of attorney.
- l. Even assuming that the authorisations possess certain attributes of a power of attorney, the question remains whether such alleged defect is sufficient to non-suit 184 allottees without examining their substantive claims. While exercising summary jurisdiction, we will abhor such concept. The order of Hon'ble Appellate Authority contains specific observation that all factual and legal issues ought to be examined on merits and that the Petition should not be disposed of solely on technical grounds. The remand itself indicates that the Hon'ble Appellate Tribunal was not inclined to permit the controversy to be concluded merely on the basis of defects alleged in the authorisations.
- m. The proceedings under Section 7 being summary in nature, the Adjudicating Authority is required to determine whether there exists a financial debt and whether default has occurred. The focus of enquiry is not intended to be diverted towards hyper-technical procedural objections unless such objections strike at the very root of jurisdiction.
- n. We also find that the Petitioners have produced fresh authorisations after remand and have specifically addressed the concerns noted in the earlier order. Authorisations executed abroad are found to be appropriately apostilled, while those executed in India have been duly notarised and stamped. These facts have not been effectively rebutted by the Corporate Debtor through any cogent material.
- o. In these circumstances, we are of the considered view that the objections relating to execution, stamping, notarisation and alleged defects in authorisation do not exist uniformly nor render the present Company Petition non-maintainable.

13. **ISSUE NO. (v)**

Whether the statutory threshold under Section 7(1) stands satisfied:

- a. The Corporate Debtor has contended that the threshold is not satisfied for three principal reasons:



- (a) several Petitioners have booked multiple units and have been counted repeatedly;
 - (b) several units are jointly held and co-allottees have not been impleaded;
 - (c) if such allegedly duplicated or defective allotments are excluded, the number of allottees would fall below the statutory threshold.
- b. The Petitioners, on the other hand, contend that the Petition is supported by 184 allottees and that even after excluding every disputed category identified by the Corporate Debtor, the threshold of one hundred allottees is satisfied.
 - c. The issue requires examination in light of the law laid down by the Hon'ble Supreme Court in *Manish Kumar v. Union of India* (*supra*). The Hon'ble Supreme Court while upholding the constitutional validity of the amendment introducing the threshold requirement observed that in a real estate project, the application under Section 7 must be supported by not less than one hundred allottees or ten per cent of the total allottees, whichever is less. The object behind the amendment was to prevent misuse of the insolvency process by a small number of disgruntled allottees while simultaneously preserving the rights of genuine homebuyers.
 - d. The material on record shows that the present Petition is shouldered by 184 Petitioners. The details of the Petitioners, allotted units and amounts paid have been furnished in the Petition.
 - e. The Corporate Debtor has pointed out certain instances where one individual or members of the same family have booked multiple units. However, the Corporate Debtor has not produced any precedent to show that ownership of multiple units automatically disqualifies a person from being treated as an allottee under the Code.
 - f. Likewise, the objection regarding joint allottees does not substantially advance the case of the Corporate Debtor. Even assuming that certain joint allottees are required to be counted as one allottee for threshold purposes, the Corporate Debtor has not demonstrated that the number would fall below the statutory threshold.
 - g. On the contrary, the Petitioners have specifically contended that even after exclusion of all disputed categories relied upon by the Corporate Debtor, the



number of allottees remains substantially above the threshold prescribed under Section 7. At this stage, therefore, we are satisfied that the Petition satisfies the numerical requirement prescribed under the provisos to Section 7(1) of the Code. Accordingly, Issue No. (v) is answered in favour of the Petitioners.

14. **ISSUE NOS. (i) & (viii)**

Whether the Petitioners have locus standi to maintain the present Petition and whether they are genuine allottees/financial creditors or speculative investors?

- a. The aforesaid issues constitute the principal dispute between the parties and form the core defence of the Corporate Debtor. The Corporate Debtor has consistently contended that a substantial number of the Petitioners are not genuine homebuyers but speculative investors who entered into the project solely for earning assured returns under various Buy-Back Schemes, Subvention Schemes and investment-linked arrangements. It is contended that nearly 130 out of the 184 Petitioners had entered into Buy-Back Agreements and that several Petitioners had booked multiple units. According to the Corporate Debtor, such persons cannot be treated as allottees or financial creditors within the meaning of the Code.
- b. Per contra, the Petitioners contend that each of them was allotted specific units in the Ozone Urbana project; that allotment letters, sale agreements and construction agreements were executed in their favour; that substantial monies were paid to the Corporate Debtor towards the project; and that the amounts raised from them have the commercial effect of borrowing and therefore constitute financial debt under Section 5(8)(f) of the Code.
- c. At the outset, it is necessary to examine the statutory framework. The relevant portion of statute is extracted below:

5. In this Part, unless the context otherwise requires-

(8) “financial debt” means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes-

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;



- d. Section 5(8)(f) of the Code specifically includes within the definition of "financial debt" any amount raised from an allottee under a real estate project and deems such amount to have the commercial effect of borrowing. The explanation inserted by the legislature expressly incorporates the concepts of "allottee" and "real estate project" from the Real Estate (Regulation and Development) Act, 2016.
- e. The legal position concerning homebuyers stands settled by the judgment of the Hon'ble Supreme Court in *Pioneer Urban Land and Infrastructure Limited v. Union of India (supra)*, wherein it was held that amounts raised from allottees constitute financial debt and that homebuyers are financial creditors under the Code. The Hon'ble Supreme Court recognised that money raised from allottees are utilised by real estate developers as a means of financing projects and therefore possess the commercial effect of borrowing.
- f. The constitutional validity of the threshold requirement introduced for real estate allottees was subsequently upheld by the Hon'ble Supreme Court in *Manish Kumar v. Union of India (supra)*. While upholding the amendment, the Hon'ble Supreme Court reinforced the status of homebuyers as financial creditors. The Hon'ble Court recognised that once the statutory threshold is satisfied, homebuyers are fully entitled to invoke the insolvency process under Section 7 of the Code.
- g. The Corporate Debtor has placed considerable reliance on the argument that many Petitioners are speculative investors. However, a mere allegation of investment motive cannot by itself determine the legal status of an allottee. The test is not whether the allottee expected appreciation in value or entered into the transaction with an expectation of returns. The test is whether the person falls within the statutory definition of allottee and whether money was raised from such a person in connection with a real estate project.
- h. The material placed before us amply indicates that the Petitioners were allotted specific units in the project. The Corporate Debtor itself had executed allotment documents, agreements for sale, construction agreements and other project-related documents in favour of the Petitioners. Consideration amounts were received by the Corporate Debtor from the Petitioners for being utilised in connection with the project. These foundational facts are not disputed.



- i. The Corporate Debtor seeks to distinguish the Petitioners on the basis that several of them entered into Buy-Back Agreements. We are unable to accept the proposition that execution of a Buy-Back Agreement automatically destroys the character of an allottee.
- j. The Buy-Back Schemes relied upon by the Corporate Debtor were admittedly floated by the Corporate Debtor itself as part of the project structure. Such schemes were used as a mechanism to attract purchasers and mobilise funds. The Corporate Debtor cannot simultaneously receive monies from purchasers as allottees under the project, issue allotments and execute project documents, and thereafter contend that the same persons cease to be allottees merely because an additional buy-back arrangement was offered by the developer. Accepting the arguments on behalf of the Corporate Debtor, in this background, would not only mar the object of Code but also provide an easy leeway to real estate developers to escape from or by-pass their obligation without retribution. We also find merit in the submission of the Petitioners that the distinction sought to be drawn by the Corporate Debtor would effectively permit a developer to defeat the provisions of Section 5(8)(f) simply by incorporating return-based clauses in project documentation. Such an interpretation would be contrary to the legislative intent underlying the recognition of homebuyers as financial creditors.
- k. The Corporate Debtor has relied upon the decision in ***Shubha Sharma v. Mansi Brar Fernandes & Ors(supra)***. However, the said decision cannot be read as laying down an absolute proposition that every allottee participating in a buy-back arrangement becomes disentitled to invoke the Code. Whether a person is an allottee must necessarily be examined on the facts of each case.
- l. In the present case, the Corporate Debtor has not produced material establishing that the transactions were independent investment contracts wholly disconnected from the real estate project. On the contrary, the documents placed on record indicate that the transactions arose directly out of allotments in the Ozone Urbana project itself. In any case, the argument cannot be used to overcome the real estate development defaults committed by the Corporate Debtor.
- m. The Corporate Debtor has also argued that certain Petitioners have booked multiple units. In our considered view, booking of multiple units may be relevant for



examining threshold computation in a given case, but does not by itself extinguish the status of a person as an allottee. Neither the Code nor RERA creates a distinction between a person holding one unit and a person holding multiple units. So long as the allotments arise out of a real estate project, the status of allottee is not lost merely because some have booked more than one unit in the project.

- n. Similarly, the contention that some Petitioners have approached RERA, Consumer Forum, Criminal Courts or Constitutional Courts does not disentitle them from invoking the provisions of the Code. The Hon'ble Supreme Court in *Pioneer Urban Land and Infrastructure Limited v. Union of India (supra)* specifically recognised the concurrent availability of remedies under different statutes. Proceedings under RERA, consumer legislation and the IBC operate in distinct spheres and pursuit of one remedy does not automatically bar invocation of another.
- o. The Corporate Debtor has further sought to rely upon criminal proceedings initiated by the allottees under the IPC and the Karnataka Protection of Interest of Depositors in Financial Establishments Act. We find no substance in the argument that initiation of such proceedings destroys the Petitioners' status as allottees. Criminal proceedings are intended to address alleged offences and do not control the civil consequences of financial debt under the Code.
- p. The contention that Petitioner No.1 is residing within the project, even if taken to be correct, does not resolve the controversy regarding the remaining allottees nor does it establish completion of the project vis-à-vis all the Petitioners.
- q. Upon an overall consideration of the material on record, we are satisfied that the Petitioners are allottees within the meaning of the Real Estate (Regulation and Development) Act, 2016 and consequently constitute financial creditors under Section 5(8)(f) read with Section 5(7) of the Code. Accordingly, Issue Nos. (i) and (viii) are answered in favour of the Petitioners and against the Corporate Debtor.

15. **ISSUE NOS. (ix)**

Whether there exists financial debt and default within the meaning of the Code, 2016?



- a. The scope of enquiry under Section 7 of the Code is no longer *res integra*. In ***Innoventive Industries Limited v. ICICI Bank & Anr. (supra)***, the Hon'ble Supreme Court has held that while considering an application under Section 7, the Adjudicating Authority is required to ascertain the existence of a financial debt and occurrence of default from the records placed before it. It was further observed that once the Adjudicating Authority is satisfied that a default has occurred, the application must ordinarily be admitted unless it is incomplete.
- b. The same principle was reiterated in ***E.S. Krishnamurthy & Ors. v. Bharath Hi Tech Builders Pvt. Ltd., (supra)***, by holding that the jurisdiction of Adjudicating Authority at the admission stage is confined to determining the existence of debt and default and that considerations extraneous thereto cannot be imported into the statutory scheme.
- c. In the present case, the material placed on record clearly establishes that the Petitioners had entered into various Agreements for Sale, Construction Agreements, Tripartite Agreements, Subvention Agreements, Buy-Back Agreements and related contractual arrangements with the Corporate Debtor in relation to the Ozone Urbana Project. The details of the allottees, allotted units and amounts paid have been furnished as part of the pleadings and supporting documents.
- d. The Corporate Debtor has nowhere disputed the receipt of substantial amounts from the Petitioners. On the contrary, the defence of the Corporate Debtor proceeds on the basis that such amounts were indeed received under various schemes floated by it. Their contention is not that monies were not received, but that many of the Petitioners were investors and therefore not entitled to invoke the Code. That argument has already been considered and repelled in deciding Issue No. (viii).
- e. The explanation to Section 5(8)(f) of the Code expressly provides that any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of borrowing. Therefore, once it is established that monies were raised from allottees in connection with a real estate project, the requirement of financial debt stands satisfied.
- f. The documents placed on record establish that substantial sums were paid by the Petitioners either directly from their own resources or through financial institutions



under tripartite and subvention arrangements. The fact that a portion of the consideration amount was financed by banks or financial institutions does not alter the character of the transaction. The ultimate beneficiary of the disbursement was the Corporate Debtor and the funds were utilised for the purposes of the project. Consequently, the source from which the funds originated becomes immaterial for determining whether a financial debt exists.

- g. The Corporate Debtor has sought to contend that several Petitioners have obtained housing loans and that the relationship of creditor and debtor exists primarily between the lending institutions and the Petitioners. This contention cannot be accepted. The liability of the lending institution and the liability of the Corporate Debtor operate in different spheres. The monies disbursed by banks ultimately flowed to the Corporate Debtor towards consideration of the allotted units. Such monies squarely fall within the ambit of Section 5(8)(f) of the Code.
- h. The Corporate Debtor has also contended that some Petitioners have received partial refunds, assured returns, buy-back payments or other amounts from time to time. However, partial discharge of liability cannot extinguish the debt unless the entire contractual obligation has been satisfied. No material has been placed before this Adjudicating Authority to demonstrate that the obligations of the Corporate Debtor towards all the Petitioners stand fully discharged. In fact, the very defence of the Corporate Debtor proceeds on the footing that the project remains under development and that completion is expected pursuant to extensions granted by the regulatory authorities.
- i. Coming to the question of default, the Petitioners have consistently asserted that possession was not delivered within the contractual timelines agreed between the parties. The record reveals that the project was launched several years ago and the Petitioners had invested substantial amounts in anticipation of receiving possession of their respective units. The Petitioners have produced material to show that despite the lapse of considerable time, possession has not been delivered in respect of numerous units and that several contractual commitments remain unfulfilled.
- j. The Corporate Debtor has sought to defend itself by contending that occupancy certificates have been obtained for certain portions of the project and that substantial construction has already been completed. While this may indicate



progress of construction, it does not answer the specific allegations of the Petitioners regarding non-delivery of possession, non-completion of the project in accordance with contractual timelines and failure to honour commitments undertaken under the project documentation.

- k. The Corporate Debtor has further relied upon extensions granted under RERA and other regulatory relaxations. However, the very reliance upon such extensions demonstrates that the project could not be completed within the originally contemplated timelines. Extensions may explain the reasons for delay; they do not obliterate the fact of delay itself.
- l. The record further reveals that several allottees approached the Karnataka Real Estate Regulatory Authority and obtained orders directing refund and other reliefs. Certain allottees also obtained recovery certificates. While the present proceedings are independent of such proceedings, the same constitute relevant material indicating continuing disputes and non-fulfilment of obligations by the Corporate Debtor.
- m. This Adjudicating Authority is conscious that insolvency proceedings are not intended to be converted into recovery proceedings. However, the present Petition is not founded merely upon a claim for refund. The grievance of the Petitioners is that despite raising substantial funds from homebuyers over a prolonged period, the Corporate Debtor failed to complete and deliver the project in accordance with its contractual obligations and failed to honour commitments made to the allottees. Such circumstances fall squarely within the scope of Section 7 of the Code.
- n. Upon a cumulative consideration of the agreements executed between the parties, the amounts admittedly received by the Corporate Debtor, the prolonged delay in fulfilment of project obligations, the materials relating to RERA proceedings, and the absence of any evidence demonstrating complete discharge of obligations towards the Petitioners, this Adjudicating Authority is satisfied that:
 - (a) the amounts raised from the Petitioners constitute financial debt within the meaning of Section 5(8)(f) of the Code;
 - (b) the Petitioners are financial creditors within the meaning of Section 5(7) of the Code; and
 - (c) default has occurred within the meaning of Section 3(12) of the Code.



- o. Issue No. (ix) is accordingly answered in favour of the Petitioners and against the Corporate Debtor.

16. **ISSUE NOS. (x)**

Whether the present Company Petition deserves admission under Section 7 of the Code, 2016?

- a. Having considered all the issues framed in the matter, including the specific issues directed to be examined by the Hon'ble NCLAT in its Judgment dated 15.02.2024, the following findings emerge:
 - (i) The Petitioners possess the requisite locus standi to maintain the Petition;
 - (ii) The Letters of Authorisation are sufficient and valid for the purposes of maintaining the present proceedings;
 - (iii) The objections raised regarding stamping, adjudication and form of authorisation do not render the Petition non-maintainable;
 - (iv) Petitioner Nos.1 and 2 are duly authorised to represent the remaining Petitioners;
 - (v) The statutory threshold requirement prescribed under the provisos to Section 7(1) of the Code stands satisfied;
 - (vi) The Petitioners are allottees and financial creditors within the meaning of Section 5(8)(f) read with Section 5(7) of the Code;
 - (vii) The contention of the Corporate Debtor that the Petitioners are merely speculative investors and not allottees could not be substantiated;
 - (viii) Financial debt exists; and
 - (ix) Default has occurred.
- b. Once the existence of financial debt and occurrence of default is established, the consequences under Section 7 necessarily follow. In ***Innoventive Industries Limited v. ICICI Bank & Anr.*** (*supra*), the Hon'ble Supreme Court has held that the Adjudicating Authority, upon being satisfied that a default has occurred, is required to admit the application. The proposition has been reiterated in ***E.S. Krishnamurthy & Ors. v. Bharath Hi Tech Builders Pvt. Ltd.*** (*supra*) and ***M. Suresh Kumar Reddy v. Canara Bank & Ors.*** (*supra*).



- c. The Code is intended to ensure timely resolution of insolvency and maximisation of value of assets. Where the statutory requirements stand fulfilled, the Adjudicating Authority cannot refuse admission on equitable considerations or on grounds not recognised by the statute.

17. Examined qua all relevant parameters, we are satisfied that the present Company Petition is complete in all respects and has been filed within the period of limitation. It fulfils all requirements prescribed under Section 7 of the Insolvency and Bankruptcy Code, 2016. The amount of default being above the threshold prescribed under Section 4 of the Code, the Petition deserves to be admitted.

18. Accordingly, **CP (IB) No. 119/BB/2021 is hereby admitted and the Corporate Insolvency Resolution Process is ordered to be initiated against M/s Ozone Urbana Infra Developers Pvt. Ltd.** Consequently, moratorium is declared in terms of Section 14 of the Code, imposing following prohibitions from the date of this order:
 - i. 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;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. 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;
 - iv. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;

19. It is directed that the supply of essential goods or services to the CD, shall not be terminated or suspended or interrupted during the moratorium period in accordance with subsection (2) of Section 14 of the Code;

20. The provisions of Sub- section (3) of Section 14 of the Code shall however, not apply to such transactions as may be notified by the Central Government in



consultation with any financial sector regulator and to a surety in a contract of guarantee to a CD;

21. The order of moratorium becomes effective forthwith till completion of the CIRP or until this Authority approves the Resolution Plan under sub-section (1) of Section 31 of the Code, or passed an order for liquidation of CD under Section 33 of the Code, 2016 as the case may be;
22. In Part-III of Form No.1, **Mr. Amarpal**, IBBI/IPA-001/IP-P01584/2018-2019/12411 (the validity of whose registration has been verified from the website of the Insolvency and Bankruptcy Board of India), having address at Plot No. 3C, Mandakini Apartments, Sector-2, Dwarka, New Delhi - 110075, email id - **amarpal@icai.org** has been proposed as the Interim Resolution Professional ("IRP"). His written communication in Form No.2 along with an affidavit dated 18.03.2025 has been placed on record, wherein he has affirmed that he is eligible for appointment as Interim Resolution Professional, that no disciplinary proceedings are pending against him before the Insolvency and Bankruptcy Board of India or the concerned Insolvency Professional Agency, and that he is qualified to act as an Insolvency Professional.
23. Accordingly, **Mr. Amarpal**, is hereby appointed as the Interim Resolution Professional of Corporate Debtor to carry out the functions as contemplated under the Insolvency and Bankruptcy Code, 2016. The IRP is directed to take all necessary steps as mandated under the Code, particularly under Sections 15, 17, 18, 20 and 21 of the Code, 2016, and to perform his duties strictly in accordance with the provisions of the Code and the Regulations framed thereunder.
24. The Financial Creditor shall deposit a sum of **Rs.2,50,000/-** (Rupees Two Lakhs Fifty Thousand Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors. **In addition, the RP shall issue individual notices to the Jurisdictional Income Tax Authority; Principal Commissioner of Income Tax (Judicial), Bengaluru; Regional Provident Fund Commissioner; GST Commissioner; Commercial Tax Authority; recognized Labour Unions, ESI**



and others whose claims qua the subject project are found subsisting in the records of Corporate debtor.

25. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send **monthly progress** reports to this Authority along with inside & outside photographs of project, office, installations, equipment etc. of the Corporate Debtor. On taking control of assets and management of Corporate Debtor, the IRP/RP shall affix a Board outside the premises of CD specifying that the CD is undergoing CIRP with number and title of this case; complete name and particulars including contact details of IRP/RP to enable them to make enquiry and/or to lodge their claims, if any, within specified timelines.
26. A copy of the order shall be communicated to both the parties. Learned Counsel for the Petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. **The Registry is also directed to forward a softcopy hereof to the Interim Resolution Professional at his e-mail address.**

-Sd-

**(RADHAKRISHNA SREEPADA)
MEMBER (TECHNICAL)**

-Sd-

**(SUNIL KUMAR AGGARWAL)
MEMBER (JUDICIAL)**