

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, COURT-I, CHANDIGARH**

**I.A.(I.B.C)/585(CH)/2025
in
CP (IB) No. 98/Chd/Hry/2022
(Admitted)**

**Application under section 60(5) of the
Insolvency and Bankruptcy Code,
2016 read with Rule 11 of the
National Company Law Tribunal Rules,
2016**

IN I.A.(I.B.C) No. 585 of 2025:

1. Keshab Chand Gupta

Through his GPA Holder Veneet Gupta, son of Sh. Keshab Chand Gupta,
resident of House No. 31, Sector-15, Panchkula, Haryana
Mobile No. - 9316135485

...Applicant No.1

2. Veneet Gupta

Aged about 69 years, son of Sh. Keshab Chand Gupta,
Resident of House No. 31, Sector-15, Panchkula, Haryana
Mobile No.- 9316135485

...Applicant No.2

3. Abhinav Gupta

Aged about 37 years, son of Sh. Pradeep Gupta
R/o House No. 766, Sector-8, Panchkula, Haryana
Mobile No.- 9815474426

...Applicant No.3

Vs.

Rahul Jindal,

(Interim Resolution Professional), Osrik Resolution Pvt. Ltd.,
Office at 109, Surya Kiran Building, K.G Marg, New Delhi-110001

...Respondent No.1

M/s Samar Estates Pvt. Ltd,

through Interim Resolution Professional (Rahul Jindal),

Osrik Resolution Pvt. Ltd.,

Office at 109, Surya Kiran Building, K.G Marg, New Delhi-110001

...Respondent No.2

Virender Bagai & Rajinder Bagai,

Former Directors of M/s Samar Estates,

Site office at GHS-105, Near Sun City, Sector-20, Panchkula- 134112

(Second address- Registered office at 87, Sector-7, Panchkula, Haryana),

E-mail: mail@essveegroup.com,

Mobile No.- 9888914301

...Respondent No.3

IN THE MAIN MATTER OF:

Punjab and Sind Bank

...Financial Creditor

Vs.

Samar Estates Pvt Ltd.

...Corporate Debtor

Order delivered on: 11.06.2026

**Coram: MR. KHETRABASI BISWAL, HON'BLE MEMBER (JUDICIAL)
MR. SHISHIR AGARWAL, HON'BLE MEMBER (TECHNICAL)**

Present:

For the Applicant:

Mr. N.S. Swaitch, Advocate

Ms. Harshmir Kaur Swaitch, Advocate

For the RP/Respondent:

Mr. Aalok Jagga, Advocate

Mr. APS Madaan, Advocate

Mr. Sahil Lohan, Advocate

ORDER

The present Application has been filed by the Applicant No.1, 2 and 3 (collectively referred to as the Applicants) under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **the Code**) read with Rule 11 of the National Company Law Tribunal Rules, 2016 (hereinafter referred to as the NCLT Rules) praying to decide upon the claim of the Applicants relating to recovery of money consideration of Rs 60,00,000/- which is an advance paid to the Respondent No.2 against booking of 18 flats booked/allotted in favour of the Applicant no. 1 to 3 and the amount is a financial debt owed by the Respondent No.2 and that Respondents be directed to refund the above amount to the Applicants (financial creditor) along with interest @24% per annum from the date of advanced rendered i.e. 19.01.2006 till passing of the Order and further interest @ 6% from date of order till its realization.

The Applicants further prayed that necessary Orders be passed for trial as an offence to the Special Court seeking punishment for the Respondent No. 1 for contravening the provisions of the Code and for displaying misconduct in the course of corporate insolvency resolution process of corporate debtor under section 70 (2) of the Code by negating to decide upon the claims of applicants (home-buyers) despite repeated demands/claims raised before IRP.

2. BRIEF FACTS

(a) The Applicants, belonging to one family, and are also homebuyers in the ESS VEE Apartments project at Sector-20, Panchkula, developed by Respondent No. 2. The Applicant No. 1 booked 18 fully furnished flats in year

2006 at a cost of Rs. 48 lakhs per flat and paid an advance booking amount of Rs. 1,11,00,000/- on 19.01.2006. **The amount was credited to the accounts of Mr. Virendra Bagai and Mr. Rajinder Bagai i.e Respondent No.3.** The flats were booked in the names of Applicant No.1, 2 and 3.

(b) Specific flats were allotted to the Applicants against the booking amount, by the Respondent No.2 in the ESS VEE Apartments project, though no formal allotment letters or builder-buyer agreements were issued as the project was at an initial stage. Details of the allotted flats and corresponding payments have been provided in the Application which are annexed as annexure . The Applicants further stated that the project remained incomplete and possession was not delivered within time. Upon seeking refund, the Corporate Debtor refunded Rs. 51 lakhs out of Rs. 1,11,00,000/-, but failed to refund the remaining Rs. 60 lakhs or deliver possession of any flat.

(c) In February, 2024 Applicants came to know about initiation of CIRP against the Corporate Debtor. Respondent No. 1/IRP invited claims from homebuyers vide letter dated 12.02.2024, whereupon the Applicants submitted separate claims/demand notices dated 20.04.2024 along with supporting documents through post and e-mail which are annexed as Annexure P/5 and P/7.

(d) It is stated that Respondent No. 1/IRP, vide e-mail dated 06.05.2024 which is annexed as Annexure P/8, informed the Applicants that their claims were under verification and sought additional documents including allotment letters, builder-buyer agreements and payment receipts. The Applicants further

submit that despite filing their claims, their names were not reflected in the pay-out list of homebuyers.

(e) Additional documents including cancelled cheques, payment records and KYC documents were forwarded to the IRP vide e-mails dated 13.11.2024 and 27.11.2024, and hard copies were also sent through registered post on 28.11.2024 which are annexed as Annexure P/10, P/11 and P/12. However, no decision was taken on their claims and the amount allegedly due to them remained unpaid.

(f) The Respondent No. 1 failed to discharge his duties under the Code by not properly considering and verifying the claims submitted by the Applicants during the CIRP process. Through the present Application, the Applicants, claim to be financial creditors/homebuyers of the Corporate Debtor, seek admission of their claims dated 20.04.2024 and also seek action against Respondent No. 1 under Section 70(2) of the Code for alleged misconduct and contravention of the provisions of the Code.

(g) The Applicants relied upon Sections 18 and 25 of the Code to contend that the IRP/RP is duty bound to receive, collate and verify claims of creditors and maintain an updated list of claims. According to the Applicants, Respondent No. 1 failed to perform the aforesaid statutory duties in relation to their claims.

(h) The Applicants further contend that this Tribunal is empowered under Section 60(5) of the Code to adjudicate questions arising out of the CIRP process. According to the Applicants, a sum of Rs. 60,00,000/- remains due and payable by the Corporate Debtor to the Applicants.

3. REPLY OF THE RESPONDENT NO.1/RP

(a) The Respondent No.1 filed the reply and supplementary reply on behalf of the Corporate Debtor, whose CIRP was initiated vide Order dated 12.01.2024 of this Tribunal. The Respondent No.1 submitted that the Applicants filed I.A. No. 585 of 2025 seeking refund of ₹60,00,000/- allegedly paid as advance for booking of 18 flats. According to the RP, the present Application is misconceived, malicious, and filed only because the Applicants' claim was not admitted during the CIRP process.

(b) After admission of CIRP on 12.01.2024, a public announcement in Form-A was issued on 16.01.2024 in newspapers namely "Financial Express" and "Jansatta" inviting claims from creditors. The last date for submission of claims was 26.01.2024. Thereafter, the Respondent No.1 collated claims and constituted the Committee of Creditors ("CoC") on 03.02.2024 consisting of Punjab & Sind Bank and 94 unsecured financial creditors in a class. Due to low participation of homebuyers in appointment of the Authorized Representative ("AR"), the NCLT extended the time for filing claims till 13.02.2024. The RP thereafter conducted various CoC meetings, confirmed his appointment as RP, issued communication under Regulation 6A to creditors, published Form-G for invitation of Expression of Interest on 13.03.2024, and completed the CIRP process by receiving and evaluating 17 Resolution Plans. The Respondent No.1 stated that the present Application has been filed at a highly advanced stage when the Resolution Plan approval application is pending consideration before the Tribunal after getting approval of CoC and

therefore the application is a mala fide attempt to delay and derail the CIRP process.

(c) The Respondent No.1 specifically contended that the Applicants themselves admitted that the amounts of ₹51,00,000/- and ₹60,00,000/- were transferred to the personal accounts of Respondent No.3 i.e suspended directors Mr. Virender Bagai and Mr. Rajinder Bagai respectively, and not to the account of the Corporate Debtor. Therefore, according to the Respondent No.1, no disbursement was ever made to the Corporate Debtor. It was further submitted that since no money was credited to the Corporate Debtor's bank account, the alleged transaction cannot qualify as a "financial debt" under Section 5(8) of the IBC. The Respondent No.1 asserted that disbursement of money to the Corporate Debtor is an essential condition for existence of a financial debt and for admission of any claim in CIRP.

(d) The Applicants themselves admitted that no allotment letters were issued in their favour. Further, no valid Builder-Buyer Agreement, allotment letter, or proof of payment to the Corporate Debtor was produced by the Applicants at the time of claim verification. Referring to Regulation 8A of the CIRP Regulations, the Respondent No.1 stated that claims by creditors in a class must be supported by documents such as agreement for sale, allotment letter, and receipts of payment. Since the Applicants failed to submit these supported documents, the RP was justified in rejecting the claim. The Respondent No.1 further submitted that although the Applicants were requested vide letter dated 12.02.2024 and subsequent email dated 06.05.2024 to furnish supporting documents including Builder-Buyer Agreement, allotment letter, and proof of

payment to the Corporate Debtor, but they failed to provide the same despite opportunity given to them. It was further stated that after nearly seven months the Applicants merely furnished KYC documents like Aadhaar and PAN cards without supplying the essential transaction documents. Hence, the claim remained unsubstantiated. The Respondent No.1 relied upon Regulation 10 of the CIRP Regulations and submitted that the RP is empowered to seek clarification and evidence for substantiation of claims. Since the Applicants failed to substantiate the claim, the RP could not collate or verify the same.

(e) In the supplementary reply, the Respondent No.1 stated that this Tribunal vide Order dated 08.09.2025 directed for filing of a supplementary reply confined to newly filed documents in IA. The Respondent No.1 reiterated that the earlier reply dated 28.05.2025 should be read as part and parcel of the supplementary reply. The Respondent No.1 raised a preliminary objection regarding maintainability of the Application on the ground that the memo of parties is defective. It was pointed out that while the Application was filed by Keshav Chand Gupta, Vineet Gupta and Abhinav Gupta, the additional documents revealed that the alleged 18 flats were later adjusted in favour of four persons namely Abhinav Gupta, Akshita Gupta, Arjun Gupta and Nakul Gupta. According to the Respondent No.1, the Builder-Buyer Agreements placed on record pertain to Nakul Gupta, Arjun Gupta, Akshita Gupta and Abhinav Gupta, whereas three of these persons are not Applicants in the Application. Therefore, relief cannot be granted in favour of non-applicants. The Respondent No.1 further stated that Applicants No.1 and 2 themselves admitted through documents that they had transferred or adjusted their rights

in favour of the aforesaid four persons and therefore they no longer remained allottees of the Corporate Debtor.

(f) The alleged Builder-Buyer Agreements cannot confer the status of “financial creditor in a class” in absence of disbursement into the Corporate Debtor’s account. Mere execution of agreements without consideration flowing to the Corporate Debtor does not create a financial debt. The Respondent No.1 also relied upon Sections 5(7) and 5(8) of the Code and stated that a financial creditor is a person to whom a financial debt is owed, and a financial debt necessarily requires disbursement against consideration for time value of money. Reliance was placed on the judgment of the Hon’ble NCLAT in “Kesoram Industries Limited v. Pratim Bayal” decided on 05.01.2024 wherein it was held that in absence of disbursement, the essential ingredients of financial debt are missing.

(g) The ledger of the Corporate Debtor demonstrates that amounts allegedly paid by the Applicants were credited into the account of Mr. Virender Bagai and thereafter adjusted into the account of M/s SRV Investments, a proprietorship concern of the suspended director, and not into the account of the Corporate Debtor. It was further submitted that since the Corporate Debtor is a separate legal entity under the Companies Act, 2013, money paid and credited to personal accounts of directors cannot be treated as payment made to the Corporate Debtor.

(h) The Respondent No.1 also contended that merely because the Applicants’ names appeared in documents submitted before RERA would not automatically

confer upon them the status of financial creditors under the IBC, particularly when requirements under Section 5(8) are not satisfied.

(i) The other persons namely Nakul Gupta, Arjun Gupta and Akshita Gupta, in whose favour Builder-Buyer Agreements allegedly exist, never submitted claims before the RP and therefore the present application is in the nature of proxy litigation.

(j) Under the Indian Contract Act, 1872, an agreement without lawful consideration is unenforceable. Since no consideration was received by the Corporate Debtor, the alleged Builder-Buyer Agreements cannot be treated as valid and enforceable contracts against the Corporate Debtor. On these grounds, the Respondent No.1 prayed for dismissal of the application on account of defective memo of parties, absence of any disbursement into the Corporate Debtor's account, non-existence of financial debt, lack of maintainability, and absence of any valid claim capable of verification or admission under the IBC.

4. REPLY OF RESPONDENT NO.3

(a) The Respondent No.3 submitted that a total amount of Rs.1,11,00,000/- was received in their individual accounts as investment towards future projects, out of which Rs.51,00,000/- was returned to the Applicants. The remaining amount was transferred to the account of the Corporate Debtor, Samar Estates Pvt. Ltd., showing that Respondent No.3 merely facilitated the transactions and did not retain the funds for personal benefit. Subsequently, the Applicants agreed to adjust the balance amount of Rs.54,00,000/- towards booking of flats in Project Ess Vee Apartments, Sector-20, Panchkula, and flats

were duly allotted accordingly. Hence, the contention of Respondent No.1 that the amounts were never transferred to the Corporate Debtor is denied as false and baseless, and appears to be an attempt to shift liability upon Respondent No.3.

5. REJOINDER FILED BY THE APPLICANTS

(a) The Applicants submitted that by way of I.A No. 1189 of 2025, additional documents were placed on record in respect of IA/585/CH/2025 which are to be read as part of this Case. The Applicant denied para no. 18 to 20 of replies filed by Respondent no. 1, and it is submitted that the Applicants made valid payment of Rs. 1,11,00,000/- against the booking of 18 fully furnished flats to the Corporate Debtor as per the details provided by the Respondent No. 3 i.e. suspended board of directors. The Applicant paid a lump sum amount of Rs. 1.11 Crore through 2 cheques i.e. Cheque no. 892071 and 892702 dated: 19.01.2026 drawn on The Karnataka Bank Ltd. to Respondent No. 3 (suspended board of directors) as advance payment with CD for the purpose of booking 18 fully furnished flats in the name of the Applicants. The said payment has been directed by respondent no. 3 into the accounts of respondent no. 2 on 21.01.2006 vide 11 different cheques bearing numbers 614984, 613676, 614981, 614982, 614983, 613677, 613678, 613679, 613680, 613674, 613675 and cheque no. 614985 dated: 23.01.2006 drawn on UCO Bank. It is submitted that the applicants have also placed on record 18 receipts issued by Respondent No. 2 acknowledging the booking amount received from the Applicant No. 1 to 3 against booking of 18 fully furnished flats, Request Letter dated: 03.05.2016 vide which 4 flats have been allotted

and consequently the Buyers Agreement/Allotment Letter dated: 06.05.2016 and HRERA List.

(b) With the adjustment of the remaining booking amount, the Corporate Debtor agreed to allot 4 flats in lieu of the earlier 18 flats vide allotment/request letters dated 03.05.2016 and Buyer Agreements dated 06.05.2016. Accordingly:

- Flat No. I-804 was allotted to Nakul Gupta, son of Applicant No. 2;
- Flat No. I-803 was allotted to Arjun Gupta, son of Applicant No. 2;
- Flat No. I-801 was allotted to Applicant No. 3 Abhinav Gupta; and
- Flat No. I-802 was allotted to Akshita Gupta, wife of Applicant No. 3.

The said allotments were made on the request and consent of the Applicants and the allottees are lawful family heirs/assignees stepping into the shoes of the original allottees.

Analysis and Findings

6. We have considered the rival submissions and perused the record and have also gone through the Code and the rules and regulations made thereunder.

7. The main issue for consideration is Whether the Applicants are entitled to recovery/refund of Rs. 60,00,000/-, allegedly paid as advance consideration towards booking/allotment of 18 flats to the Corporate Debtor, and whether such amount qualifies as a “financial debt” under the provisions of the Code thereby entitling the Applicants to claim interest and seek directions against

the Respondents under Section 60(5) of the Code read with Rule 11 of the NCLT Rules.

8. In the present case, the Applicants have claimed that an amount of ₹1,11,00,000/- was paid in the year 2006 towards booking of 18 flats in the project of the Corporate Debtor, out of which ₹51,00,000/- was refunded by the Corporate Debtor and the remaining amount of ₹60,00,000/- remains payable as against the Corporate Debtor. It is also seen that the Applicants have admitted that the payments of the aforesaid amounts were credited into the bank accounts of the Directors of Corporate Debtor, that is, Mr. Virender Bagai, Rs. 51 lakhs, and Mr. Rajender Bagai, Rs. 60 lakhs, respectively and not into the bank account of the Corporate Debtor.

9. It is further noted that the 18 receipts annexed as Annexure - A1 in IA No. 1189 of 2025, are receipts for a total of Rs. 54 lakhs. Out of these, Rs. 51 lakhs is vide cheque No. 892071 and Rs. 3 lakhs is vide cheque no 892072. All these receipts (except one) pertain to the amount which has undisputedly been already repaid/refunded by the Corporate Debtor to the applicants. The claim of the Applicant relates to the amount of Rs 60 Lakhs, which allegedly has not been repaid/refunded by the Corporate Debtor. No receipt/ evidence in relation to this Rs 60,00,000/- having been disbursed to the Corporate Debtor, has been furnished by the Applicants. The Applicants have failed to place on record bank statements, receipts, ledger confirmations, or any other contemporaneous record conclusively showing transfer of the alleged amount into the account of the Corporate Debtor. Thus, the very foundation of the claim for recovery of ₹60,00,000/- remains unsupported by satisfactory proof of disbursement.

10. It is a settled law that the Corporate Debtor being the separate legal entity, any amount paid into the accounts of Directors of the Corporate Debtor cannot be said to be disbursed to the Corporate Debtor. Since no disbursement of funds has admittedly been made into the account of the Corporate Debtor, the alleged transaction cannot be termed as a "financial debt" qua the Corporate Debtor, within the meaning of the Code. Disbursement into the account of the Corporate Debtor is an essential condition for a debt to fall under the definition of "Financial Debt" of the Code. The contention of the Respondent No.1 that as per the books of account, no amount is shown to be disbursed by the Applicants. The RP is duty bound to accept claims based on the books of accounts of the Corporate Debtor or on the basis of relevant proof by documents such as payment receipt, builder buyer agreement, allotment Letter, etc submitted by the claimant.

11. It is further noticed that no allotment letters in favour of the Applicants and no valid Builder-Buyer Agreements pertaining to the Applicants were produced before the Resolution Professional within the prescribed period, despite repeated opportunities given. Regulation 8A of the CIRP Regulations contemplates that claims of creditors in a class are to be supported by documents such as agreement for sale, allotment letter, and evidence of payment. The Applicants failed to furnish the requisite documents when called upon to do so by the Resolution Professional.

12. The Applicants have subsequently relied upon certain Builder-Buyer Agreements placed on record by way of IA No. 1189 of 2025. However, these agreements, except builder buyer agreement of Abhinav Gupta, pertain to

persons who are not Applicants in the present proceedings. Therefore, the said documents do not advance the case of the present Applicants, for recognition of their status as financial creditors.

13. In view of the above discussion, this Tribunal is of the considered view that the Applicants have failed to establish existence of a financial debt owed by the Corporate Debtor and are, therefore, not entitled to recovery/refund of ₹60,00,000/- with interest or to any such relief.

14. Accordingly, **I.A. (I.B.C) No. 585 of 2025** is hereby **dismissed** and **disposed of**.

Sd/-

SHISHIR AGARWAL
MEMBER (TECHNICAL)
Sudesh

Sd/-

KHETRABASI BISWAL
MEMBER (JUDICIAL)