IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

CP (IB) No.112/ALD/2022 with I.A. No. 233 of 2023

(An application filed under Section 7 R/w Sections 14, 33 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016 and R/w Rule 4 of the Insolvency and Bankruptcy Rules, 2016)

IN THE MATTER OF:

1. **Mr. Pradeep Sharma**
S/o Mr. Tilak Ram Sharma Mrs. Archana Sharma,
D/o Mr. Ramesh Chandra Pathak and
Residents of Flat B-801, Sunshine Helios, Sector-78,
Noida Gautam Buddha Nagar, Uttar Pradesh-201301.

2. **Mr. Debashis Roy Chowdhury**
S/o Nibaran Chandra Roy Chowdhury,
Residents of 611 Harrison Ave Campbell, CA 95008, USA.

3. **Mr. Ketan Modi**
S/o Mr. Harshad Modi
Residents of Flat No. 1401, Avanti Apartments Laxmi N Pappan Marg, Manjrekar Lane, Near Four Season Hotel, Worli Mumbai-400018

4. **Mr. Sanjeev Modi,**
S/o Mr. Ghisa Ram Khandelwal
Residents of Flat No. 1404, Gurugamridhi Heights Plot No.2 Sector-14,
Navi Mumbai NR Moraj Sandapa. S.O Thane, Maharashtra-400705

5. **Mrs. Ruchika Batwara**
w/o Mr. Sameer Malhotra & Mr. Sameer Malhotra
S/o Mr. Satish Malhotra Residents of 100,
Morton St, Apt 11CE New York, NY USA 10014.

6. **Mrs. Sonia Hayer**
W/o Mr. Sukhvindar Deep Singh Hayer
Residents of Flat No F-1202, Sunshine Helios Sector-78,
Noida, Gautam Buddha Nagar Maharishi Nagar, Uttar Pradesh-201304

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7. **Ms. Nasib kaur Vasir**
W/o Mr. Harbhajan Singh Vasir & Mr. Arjinder Singh Vasir
Residents of T 10/901, Parsvnath Panorama, Sector-TAU, Greater Noida, Gautam Budh Nagar, Uttar Pradesh-2013101

8. **Mrs. Anjali Marwah**
D/o Mr. Ashok Marwah
Residents of C-100/B Sector-19 Noida Gautam Buddha Nagar, UP-201301

9. **Mrs. Peau Chakraborty**
D/o Pradip Kumar Chatterjee
Residents of Flat No T-5 Second Floor, Eldeco Residency Greens,
Near Jaypee Golf Course, Sector-PI, Greater Noida,
Kasna, Gautam Buddha Nagar, Kasna, UP-201310

10. **Ms. Harshita Sinha and Mr. Binod Prasad Sinha**
Residents of Flat B-1601, Mantri Serenity,
Doddakalasandra, Kanakpura Main Road,
Bengaluru, Karnataka-560062

11. **Mr. Shobhit Jain,**
S/o Lt. Mr. Inder Chand Jain & Mrs. Varnika Gupta
W/o Mr. Shobhit Jain Residents of Flat No A F06,
Banyan Tree Apartment No. 154 Kariyammana,
Agrahara Road Sakra Hospital Bellandur Bengaluru, Karnataka-560103

12. **Mr. Sunil Dua**
S/o Mr. Ram Kishan and Mrs. Madhvi Bhatia
W/o Mr. Sunil Kumar Dua
Residents of: 13, Ashoka Park Extn, East Punjabi Bagh,
Punjabi Bagh, West Delhi-110026

13. **Mr. Dev Raj Sharma**
S/o Mr. Gajraj Singh Tyagi & Mrs. Sheel Sharma
W/o Mr. Dev Raj Sharma, Residents of Flat No. D-1501,
Sunshine Helios, Plot No- GH-05B, Sector-78, Noida,
Gautam Buddha Nagar, Uttar Pradesh-201301

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14. Mrs. Nisha Dargar
W/o Mr. Vineet Dargar
Residents of Flat No SD-01, Silver Estate, Sector-50,
Noida Gautam Buddha Nagar, Uttar Pradesh-201301

15. Mr. Ranjan Bhattacharya
S/o Sh Lt S.K Bhattacharya Mrs. Shubhra Bhattacharya,
W/of Mr. Ranjan Bhattacharya Resident of C-703,
Sunshine Helios, Sector-78, Noida -201301

...Applicants/Financial Creditors

VERSUS

Sunshine Tradetower Private Limited

...Respondent/ Corporate Debtor

AND IN THE MATTER OF:

Sunshine Tradetower Private Limited

...Applicant/ Corporate Debtor

VERSUS

Mr. Pradeep Sharma & Others

...Respondents/Financial Creditors

Order Pronouncement on: 02.06.2026

Coram:

Sh. Praveen Gupta	:	Member (Judicial)
Sh. Ashish Verma	:	Member (Technical)

Appearances:

Sh. Mansij Arya with Ms. Surabhi Gupta, Advs.	:	*For the Financial Creditor & Res. in IA No.233/2023*
Sh. R.P. Agarwal, Sr. Adv. assisted by Sh. Siddharth Singhal, Adv.	:	*For the Corporate Debtor & Applicant in IA No.233/2023*

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ORDER

1. This Petition has been filed on 01.11.2022 by Pradeep Sharma and others as the Petitioners/Applicants/Financial Creditors being allottees under a real estate project namely "Sunshine Business Park" under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC/the Code") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules, 2016) against M/s Sunshine Trade Tower Private Limited (hereinafter referred to as "Respondent/Corporate Debtor") developing the said real estate project. This Petition is filed in Form 1 consisting of all the information as required in Part I, II, III, IV and V of the Form showing a total financial debt of Rs. 11,65,92,757/- (principal amount Rs. 5,64,66,345/- and interest @ 12% per annum amounting to Rs. 6,01,26,412/-), declaring date of default as 31.12.2017 onwards.

2. In Part-I of the Petition, it has been averred that the present petition has been instituted by 15 allottees, being the Petitioners/Financial Creditors, holding twenty-two (22) units in the real estate project "Sunshine Business Park." It is further stated that, as per the information gathered by the allottees, the said project of the Corporate Debtor comprises a total of 180 units, out of which the Petitioners/Applicants herein, collectively holding 22 units, have filed the present application seeking initiation of the Corporate Insolvency Resolution

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Process (hereinafter referred to as 'CIRP') against the Corporate Debtor. On the basis of allottees provided in the petition, it has been submitted that the Petitioners/Applicants Creditors fulfil the requisite threshold prescribed under second proviso to Section 7 of the Code.

3. Part-II of the petition contains details of the Corporate Debtor, and it is averred that the Corporate Debtor was incorporated on 19.12.2011 under the Companies Act. The Registered office of the Corporate Debtor is in Noida, Gautam Buddha Nagar, Uttar Pradesh which is under the jurisdiction of this Tribunal.

4. In Part – III of the Petition, the Petitioner has proposed the Insolvency Professional namely, Mr. Devnidhi Arya, having Registration No. IBBI/PA-001/IPP00148/2017-18/10312 to act as the Interim Resolution Professional (hereinafter referred to as "IRP").

5. In Part – IV of the Petition, the Petitioners/Applicants stated that the amount in default is Rs. 5,64,66,345/- along with accumulated unpaid interest amounting to Rs. 6,01,26,412/-. The Date of Default is mentioned as 31.12.2017.

6. In Part V of the Petition, the following documents have been referred to substantiate the debt disbursed to the corporate debtor.

a. Copies of Allotment Agreement executed by the Corporate Debtor and each of the Financial Creditors ANNEXURE A-12(COLLY).

b. Copies of the payment receipts issued by the Corporate Debtor ANNEXURE A-13 (COLLY).

7. It is submitted that the Corporate Debtor launched the Sunshine Business Park Project at Sector-94, Noida during 2012-13 as a commercial project comprising retail residential units, office spaces, furnished studios, hotel components, and associated amenities. Pursuant thereto, the Petitioners/Applicants booked various types of units in the project during 2012-2016 and entered into Allotment Agreements with the Corporate Debtor. It is stated that the Petitioners/Applicants paid an aggregate sum of Rs. 5,64,66,345/- towards purchase consideration under various payment plans including down payment, flexi, and construction-linked plans.

8. As regards the default, it is further submitted that under Clause 6 of the Allotment Agreements, the Corporate Debtor was obligated to complete construction and deliver possession within 24-36 months, with a grace period extending the outer timeline to approximately 31.12.2017 in most cases. Despite receipt of substantial consideration, the Corporate Debtor allegedly failed to complete construction and deliver possession within the agreed period, resulting in the first default occurring on 31.12.2017.

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9. It is the case of the Petitioners/Applicants that construction activities substantially halted around 2017, and the project presently remains incomplete and in a bare shell condition. It is submitted that none of the towers are near completion, common facilities remain undeveloped and delivery of possession in the foreseeable future appears highly unlikely.

10. It is further submitted that the Corporate Debtor has continued to default from 2017 onwards by failing to complete construction, deliver possession, or refund the invested amounts along with agreed compensation. The Petitioners/Applicants contend that such default is continuing in nature and constitutes recurring cause of action.

11. It is stated that in terms of Clause 6.4 of the Allotment Agreements, delay compensation was payable by the Corporate Debtor in the event of delay attributable to it beyond the grace period, whereas Article 5 imposed reciprocal obligations on the allottees to make payments in accordance with stage-wise construction-linked demands. It is submitted that no further payments became due from the Petitioners/Applicants as the Corporate Debtor failed to achieve the relevant construction milestones or raise demand notices.

12. It is the case of the Petitioners/Applicants that the Corporate Debtor is indebted to them on account of breach of the Allotment Agreements and that, being allottees/homebuyers, they qualify as Financial Creditors under Sections 5(7) and 5(8)(f) of the Code read with the provisions of Real Estate Regulation and Development Act (RERA), 2016. Reliance has been placed on the judgment of the Hon'ble Supreme Court in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India reported in (2019) 8 SCC 416*.

13. It has further been contended that the Corporate Debtor intentionally failed to disclose relevant project details, including the total number of units, either before Uttar Pradesh Real Estate Regulatory Authority (UP RERA) or through any official website or public information dissemination system. It is submitted that the information available on the UPRERA portal did not disclose complete project details, particularly the total number of units.

14. It is also submitted that the Petitioners/Applicants filed two RTI applications dated 27.09.2022 before UPRERA seeking details of the project; however, no information had been received till the date of filing of the present petition.

15. It is further stated that the project was registered with UPRERA on 13.08.2017, with a revised declared date of completion as 31.12.2022; however, according to the Petitioners/Applicants, even the revised completion timeline was not achievable considering the existing status of construction.

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16. It is the case of the Petitioners/Applicants that the Corporate Debtor has misappropriated funds collected from allottees, lacks the financial capacity to complete the project, and is neither in a position to hand over possession nor refund the invested amounts. In view of the aforesaid, it is submitted that the Corporate Debtor has committed default in respect of financial debt owed to the Petitioners/Applicants, who have accordingly filed the present petition.

17. During the pendency of the main CP (IB) No.112/ALD/2022, an Interlocutory Application bearing I.A. No. 246 of 2023 was filed on behalf of the Applicant No.13 for withdrawal from the present proceedings filed under Section 7 of the Code, which was allowed by this Tribunal vide order dated 13.10.2023 and the main petition was dismissed as withdrawn qua applicant no.13.

18. Apart from filing of reply against the petition filed by the allottees/Financial Creditors and in counter to that the rejoinder filed by the allottees/Financial Creditors, the Respondent Corporate Debtor also filed a Supplementary Affidavit dated 19.03.2024 placing on record a list of 684 allotments made up to September 2022 annexed as SR-2 with the Supplementary Affidavit challenging the alleged information provided by the Financial Creditors in Part IV of the Petition about the allotment of total 180 units.

19. The matter regarding the discrepancy in the total number of allotments as shown in Part IV of the Petition and as claimed by the Corporate Debtor in its above-mentioned affidavit has been taken up in the hearing held on 20.03.2024 and the Financial Creditor has been asked to file response/objection to the above supplementary affidavit of the Corporate Debtor within a period of 2 weeks.

20. In compliance with the order dated 20.03.2024 and in response to the affidavit dated 19.03.2024 filed by the Respondent, the Petitioners/Applicants filed Supplementary Affidavit dated 02.05.2024 and submitted as follows:

a. It is submitted that the Corporate Debtor has referred and relied upon a said supplementary affidavit dated 19.03.2024, wherein a purported list of allottees has been given and the Petitioners vehemently object to the said purported list as it has not been supported by various documents including but not limited to (i) the respective Builder Buyers Agreement (BBA), (ii) Allotment Letters, (iii) communications made with the said allottees and most importantly, (iv) the details of these allottees with their complete addresses, contact number and amount of money deposited with the corporate debtor at the time of booking or otherwise which has to be reflected in the bank account of the Corporate Debtor and also in the audited financial statements. Further, it has been filed at such a belated stage wherein the pleadings were already complete, and the matter was to be argued by the Corporate Debtor, to simply delay the proceedings further.

b. It has also been averred that the Corporate Debtor has not updated the requisite information with the RERA and no details are available on the RERA Portal, which in itself is a violation of the RERA Act and the amounts due and payable to the Petitioners is much more than 10% of the amount stated under the head “Advance from customers” in the Balance Sheet of the Corporate Debtor available in the public domain.

c. As submitted, in the reply to the petition, the Corporate Debtor baldly rebutted the averments made by the Petitioners, but regarding the total number of units allotted in the project “Sunshine Business Park”, it chose to remain silent and rather deliberately opted not to disclose any information/detail which only the Corporate Debtor was privy to, and which still hasn’t been disclosed. It is submitted that the Corporate Debtor by stating at Para 10 of their reply that the total number of units in the project was 960 is a bald claim made by the corporate debtor, not supported by any official document/evidence, knowing fully well that what is material is not the total number of units in the project but the total number of units allotted in the project. Further, it is submitted that this claim cannot be considered because it is a settled proposition of law that what is relevant is the total number of allottees at the time of filing of the petition and not at the time of making the arguments/averments.

d. It is contended that the Corporate Debtor, in the reply to Section 7 petition, is claiming that certain number of Petitioners are not the allottees/financial creditors and therefore cannot be counted for the purpose of calculating the minimum threshold required for filing the Section 7 Petition and on the other hand, majority of the said Petitioners who have been challenged by the Corporate Debtor are admittedly appearing in the said List.

21. Further, the matter relating to maintainability of the instant Petition has been taken up in the hearing held on 29.04.2024 in light of the provisions of 2nd proviso to Section 7. The relevant excerpts from the order dated 29.04.2024 passed in this respect are as follows:

> *"……*
>
> *1. Ld. Counsel representing the Financial Creditor states that according to him, there are 180 allotted units, and therefore the present petition filed U/s 7 is maintainable, in view of the fact that the petitioners U/s 7 comprise of the 10% of 180 units and according to the petitioners, they meet the requirement of 10% of the total number of the units.*
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> *2. Per contra, the Ld. Sr. Counsel representing the Corporate Debtor states that as per the supplementary affidavit filed by them till September, 2022, the total number of the allotted units comprise of 684, and therefore the present petition is not maintainable U/s 7, in view of not meeting the eligibility criteria of comprising of 10% of the total number of the allottees.*
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> *3. In view of the conflicting situation, let the allotment letters/ communication, if any for the allotted units, be filed by the Ld. Counsels for both the parties within a period of three weeks.*
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> *……."*

22. In compliance with the aforesaid order, the Corporate Debtor filed supplementary affidavit dated 20.07.2024 and in furtherance of the list filed

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with the supplementary affidavit dated 19.03.2024, the Corporate Debtor also filed the allotment letters in respect of the said 684 allottees collectively marked as ANNEXURE SA-2 with the aforesaid supplementary affidavit. However, the Petitioners/Allottees could not file any supporting document or allotment letters to substantiate their claim that there are only 180 allottees as claimed in their petition filed jointly as per second proviso of Section7.

23. In response to the supplementary affidavit dated 20.07.2024 filed by the Respondent, the Petitioners/Applicants later filed an affidavit dated 04.09.2024 and submitted as under:

a. It is submitted that like the purported list of allottees filed by the corporate debtor, the allotment letters in isolation cannot be taken into consideration unless and until the same are supported by the transaction document which amongst other includes the executed agreement for allotment of units as per Performa filed with RERA and/or builder buyer agreement and the bank statement of the corporate debtor which will reflect the genuineness of the said purported allotment letters.

b. The Petitioners state that on going through the purported allotment letters as filed by the Corporate Debtor, it has been observed that in the year 2012, total 234 units have been allotted against which an advance of INR 11,15,27,018 has been shown as advances from customer in the financial statement for the year ending 31.03.2012 and likewise in every subsequent year, units have been claimed to be allotted.

c. It is submitted that in the year 2012, the Corporate Debtor claimed to have allotted 234 units and collected an advance of Rs. 11,15,27,018/- hence with an average cost of INR 4,76,612/- per unit, while in 2013, 162 units were allotted against which they have collected an amount of INR 46,88,16,199 hence with an average of INR 28,93,927/- per unit and then in the financial year 2014, a total of 171 units were claimed to be allotted and only an amount of INR 25,22,988/- has been collected towards advance from customers amounting to merely an average of 14,754/- per unit.

d. It is submitted that similarly in the year 2015 while 92 units were claimed to be allotted by the corporate debtor, the total cumulative amount under the Head Advances from the customers surprisingly, instead of increasing for the advances received against these 92 allotments, reduced from 58,28,66,205 in the year 2014 to INR 54,75,91,408 in the year 2015. Further in 2016, only 3 units were claimed to be allotted however, the advances from the customers for the same duration was INR 4,46,86,935/- thereby totalling the cumulative amount under the head advances from the customers to INR 59,22,78,343/-.

e. As per the Petitioners, in the subsequent years, the pattern remains irregular and from the total advances from customers amounting to INR 68,28,03,012/- for the year ending 2017, it got substantially reduced to INR 47,79,23,520/- implying a reduction of almost 30% and that the aforesaid submission with respect to the Number of allotments claimed by the corporate debtor in each year vis a vis the amount under the head "advances from the customers" indicates high irregularity and anomaly and therefore it is most respectfully submitted that such letter of allotment on standalone basis should not be considered as the basis to derive at the total number of units allotted by the corporate debtor since while the amount under advances has been reduced to 30% of the original amount, there are no records and means available to the Petitioners to find out whether these allotment letters are valid and legally tenable and if there were cancellations of the allotment being done on different grounds.

f. According to the Petitioners, the purported allotment letters neither contains the cost of unit nor contain any information as regarding to the booking amount and/or allotment money given by the allottee and its refers to the execution of builder buyer agreement for detailed terms and conditions which are not on record and therefore in the absence of statutory filing which is mandatorily required to be filed by the corporate debtor under the provisions of RERA, the purported allotment letters filed at such a belated stage should not be relied upon in isolation unless the same are supported with the agreement for allotment of units / Builder Buyer Agreements and bank statement of the corporate debtor evidencing the receipt of consideration thereof.

24. In compliance with the order dated 29.04.2024, the Petitioners/Applicants filed affidavit dated 01.07.2024 and reiterated their objections as already raised in the affidavit dated 02.05.2024 (as already discussed in para 20 of this order) and submitted as follows:

a. The Petitioners submit that filing of the purported document in disguise of supplementary affidavit at such a belated stage, where the said document/information was not a third party information but an internal information which was readily available to the Corporate Debtor and which the Petitioners cannot be privy to, clearly shows the mala fide intentions of the Corporate Debtor to deceive the allottees.

b. It is submitted that the only verified source from where the allottees could find out the total number of units allotted in the project is from the filings made by the Corporate debtor itself as mandatory required to be filed under the provisions of Section 11 of the Real Estate (Regulation and Development) Act, 2016 (RERA) which mandates the filing of various details of the proposed project for public viewing including quarterly up-to-date the list of number and types of Apartment or Plots.

c. As submitted, this information is in the nature of public information which is readily available on the website of RERA, however in the present case, the malice of the Corporate Debtor is that it has not submitted such information, which it has not denied till date in any of its pleadings. It is also submitted that the proviso to section 7 cannot be interpreted or used in a manner to penalise bona fide homebuyers at the instance of a Corporate Debtor fabricating information without any supporting evidence.

25. During the course of hearing on 09.09.2024, this Tribunal directed the Petitioners/Applicants to place on record the documents available on RERA portal. The relevant excerpts from the order dated 09.09.2024 passed by this Tribunal are reproduced below:

> "…..
>
> *2. Considering the fact that the matter has already been argued by both the parties at length, and this Bench has already devoted considerable time on hearing both the parties, however still in the*

interest of justice, let one week time be granted to the Financial Creditor to place on record the said document positively, with advance copy to be supplied to the other side. Response, if any by the Corporate Debtor be also filed within a period of one week thereafter.

3. We also see that as per the previous order dated 29.04.2024 vide para no.3, it was directed to place on record the source of information as well as the allotments made and relied upon by the petitioner, which according to the Ld. Counsel representing the Financial Creditor is the total allotments, and therefore the present petition according to the Financial Creditor is maintainable. The advance copy of the said supplementary affidavit though has been given to the opposite side, however as pointed out by the Registry that the same is under defect. Whereas the supplementary affidavit on behalf of the Corporate Debtor has been filed, running into 4 volumes attaching therewith the allotment letters with advance copy already supplied to the other side.

…"

26. In compliance with the aforesaid order, the Petitioners/Applicants filed supplementary affidavit dated 20.09.2024, wherein the Applicant filed copy of the document under the head "authentic copy of approval of projects" as available on website of UPRERA as Annexure 2 and copy of Floor Plans of Block-1 and Block-2 as available on website of UPRERA as Annexure 4 with the said affidavit and submitted as follows:

a. The Applicant submits that based on the above documents and submissions, the following positions emerges as regards to the units in the block wherein the total number of units other than the Hotel shall only be limited to 581 and if the complete Block-B is considered, even for the sake of arguments, the total number of units will be 793:

Block	Total Units as per plan	Category/usage	No. of units from 12th floor till 19th floor as per sanction letter/map	Balance units left
Block A	793	Till 11th floor offices/shops/stores From 12th floor onwards- Hotel	212	581
Block B	167	Hotel	It comprises only of Hotel with no shops/offices/stores	

b. It is further submitted that as against the above number of units, excluding hotels, the claim of the corporate debtor that the total number of units allotted by them are 684 seems to be concocted and the allotment letters as were produced by way of an affidavit dated 19.07.2024 does not corelates, align and match either with the amount reflected under the head "Advance from customers" in the financial statements of the corporate debtor nor with the total number of units excluding hotel as stated aforesaid.

c. As per the Petitioners, the allotment letters produced by the Corporate Debtor does not disclose the Block/Tower in which the unit is allotted to the purported allottee nor the purported allotment letter discloses/confirm the allotment for the reason that the allotment is always subject to the payment of the allotment amount and other payments as per the terms and conditions and further execution of the builder buyer agreement. It is very often in the real estate cases that the allotment(s) being made are subsequently cancelled due to non-payment of the allotment money or other payments as per the terms and conditions thereof, which is evident from the analysis of the financial statement of the corporate debtor wherein the amount under the head "Advances from the customer" got reduced from as high as Rs. 21.49 Crores in the financial year 2016-17 to Rs 47.79 Crores in the financial year 2021-22 thereby a massive reduction/settlement to the tune of Rs. 47.79 crores indicates that there exists a vast cancellation of allotments.

d. It is further submitted that during the arguments on 09.09.2024, the Corporate Debtor argued that the financial creditors have sent communications to the purported allottees and there has been no anomaly/discrepancies in the said exercise and had there been any discrepancy, the financial creditors should have highlighted it in the last affidavit filed on 04.09.2024. That in this respect, it is therefore become imperative to mention that out of several communications sent to the purported allottees on their respective addresses intimating them about the present litigation and/or share further information in this regard, to the utter shock and surprise of the Petitioners, around 118 letters sent through speed post were returned back with observation like "insufficient address/address cannot be located/addressee left without instructions" amongst other.

e. Further, the Applicant submits that several other individuals have called the Applicant intimating that they are not connected and/or the allottees of the project as claimed by the corporate debtor. An e-mail received from one of such purported allottee dated 25.08.2024 denying any such allotment in the project, along with the affidavit under Section 63 of Bhartiya Sakshya Adhiniyam, 2023 is enclosed as Annexure-6. In lieu of the afore stated submission, it is submitted that the allotment letters alone should not be considered as the basis for determining the total number of units allotted, as, according to the Petitioners the said number as given by the Corporate Debtor lacks authenticity.

f. Apart from pointing out certain discrepancies in the allotment letters produced the Corporate Debtor , the Petitioners/Allottees themselves, despite providing several opportunities , could not produce any supporting evidence to substantiated their claim of total number of allottees being only 180 and it is only stated by their Ld. Counsel that the figure of 180 allotments was mentioned in the Petition as per the information gathered by them but no source of such information could be disclosed which could substantiate the 180 allotments for meeting the threshold requirement of second proviso of Section 7.

27. In response to the aforesaid affidavit dated 20.09.2024, the Corporate Debtor also filed supplementary affidavit dated 17.12.2024 and submitted as follows:

a. It is submitted that the project Sunshine Business Park is a commercial project which also comprises of Showrooms, Departmental Stores, Shops, Office Spaces, Banquet Halls, Restaurants and certain rooms to be used for commercial purposes. Such rooms are allotted and sold to respective allottees and constitute independent units in the project which are to be necessarily counted while determining the total number of units and the allotted units in the project. Hence, as per the Corporate Debtor, the assertions to the effect that such rooms cannot be counted towards total number of units in the project, are misplaced and not tenable.

b. It is submitted that the reliance placed upon the temporary fire safety NOC dated 10.02.2012 and the assertions on the basis of the same are based on misreading of the contents of the said document. In this regard, the Respondent submits that the mention of hotel in the said fire NOC cannot be read so as to exclude the units comprised in such hotel and the units on the floors defined as hotel in the said fire NOC are subject to sale and have in fact been allotted as well to the various allottees including some of the Petitioners herein. The Corporate Debtor also filed the nature of units allotted to the Petitioners marked as ANNEXURE SR-1 and a copy of the number of allotments made in Tower-2 marked as ANNEXURE SR-2 to the aforesaid affidavit.

c. It is submitted that in the building plan as approved by the concerned authority, certain sections of the project may be comprised of a hotel, the units of which can be independently sold, as is the practice. There is no limitation or bar in selling the units which may be comprised in a hotel. Even otherwise, for the sake of argument, if the said 212 units are excluded from the project, the total number of remaining unit would come to 581 units and the Petitioners herein do not meet the threshold in that situation as well.

d. It is submitted that the Petitioners have proceeded on the premise that the units comprised in the hotel cannot be independently allotted and sold. Such assumption on the part of the applicant is without any basis in as much as there is no restriction on the sale of such units and nor the same is disputed by the Petitioners themselves. It is also submitted that some of the rooms/studios have been allotted to some of the Petitioners herein as well which is apparent from the list annexed as Annexure SR-1 above. The agreements executed in favour of such Petitioners itself discloses in Annexure-A of the agreement the nature of allotment.

e. It is submitted that the Petitioners have failed to meet the threshold requirement under section 7 of the Code and have indulged in forgery to portray a hypothetical figure of 180 units without there being any basis for the same. It is further submitted that the fact that the Petitioners have received one email denying the allotment is of no consequence in as much as there shall always be a situation where a miniscule number of allottees may exit the project for various reasons. Further, as per the Respondents the Petitioners have failed to answer any query raised vide order dated 20.03.2024.

28. Further, during the course of hearing on 15.07.2025, this Tribunal directed the Corporate Debtor to file an affidavit with respect to the exact number of allottees. The relevant excerpts from the order dated 15.07.2025 are as under:

"1. After arguing for some time, Ld. Senior Counsel representing the Corporate Debtor seeks time to file an affidavit with respect to the exact number of allottees with the Corporate Debtor taking into account any cancellations of allotment or refunds having been made in the meantime. These details are required to be filed by the Corporate Debtor as the objection had been raised on behalf of the Corporate Debtor that according to them, there are 684 allottees instead of 180 allottees as stated by the Financial Creditor in the Application. However, the Ld. Counsel representing the Financial

Creditor has stated that this list allottees submitted by the Corporate Debtor has been varying in view of the cancellations and refunds having admittedly been made by the Corporate Debtor.

2. Ld. Counsel representing the Creditor in class also seeks time to place on record the documents with respect to the number of 180 allottees on the basis of which the present petition has been filed.

…"

29. In compliance with the order dated 15.07.2025, the Corporate Debtor filed affidavit dated 12.10.2025 and submitted as follows:

"2. That the present supplementary affidavit is being filed in pursuance of the order dated 15.07.2025 passed by the Hon'ble Tribunal. By means of the said order the corporate debtor has been directed to state the exact number of allottees in the project Sunshine Business Park taking into account any cancellation of allotments.

3. That in response to the said direction it is once again reiterated that the total number of allottees in the project Sunshine Business Park stood at 684 as on the date of filing of the application by the present financial creditors in the month of October, 2022.

4. That presently, the units allotted stand at 680. It may be noted that during the intervening period since the filing of the present application, four allottees namely Sunil Anand, Sidhant Gupta, Deb Prakash Das and Dev Raj Sharma had sought to exit from the project. Such four allottees have also been refunded the deposits made by them.

5. That the corporate debtor has in fact already submitted on record the number of allotment made in the two blocks of the project Sunshine Business Park. The gist of such allotments made on each floor is being annexed herewith and marked as ANNEXURE-1.

The Annexure-1 attached with the aforesaid affidavit is as follows:

SUNSHINE BUSINESS PARK

Particulars	Block-1			Block-2			Grand Total (A+B)
	Total Units (A)	Unit Allotted	Unit allotted to Applicants	Total Units (B)	Unit Allotted	Unit Allotted to Applicants	
Ground Floor	11	11	1	2	2	NIL	13
First Floor	11	04		2		NIL	13
Second Floor	10	01		3		NIL	13
Third Floor	71	70	2	20	14	NIL	91
Fourth Floor	71	71	4	20	6	NIL	91
Fifth Floor	71	71		20	3	NIL	91
Sixth Floor	56	39	2	20	1	NIL	76
Seventh Floor	56	50	5	20		NIL	76
Eight Floor	56	48	1	20		NIL	76
Nineth Floor	56	47	1	20		NIL	76
Tenth Floor	56	34		20		NIL	76
Eleventh Floor	56	24	3	NIL	NIL	NIL	56
Twelth Floor	12	10					12
Thirteen Floor	30	14					30
Fourteenth Floor	30	30	1				30
Fifteenth Floor	28	28	1				28
Sixteenth Floor	28	28					28
Seventeen Floor	28	28					28
Eighteenth Floor	28	26					28
Nineteen Floor	28	24					28
Total	793	658	21	167	26	NIL	960

30. Against the above Supplementary Affidavit filed on behalf of the Corporate Debtor showing the reconciliation of allotment after cancellation/refund, it is submitted by the Ld. Counsel representing the Petitioners/Applicants that there is no necessity to file any Supplementary Affidavit on behalf of the Financial Creditors as recorded in order dated 15.10.2025. The relevant excerpts from the order dated 15.10.2025 are reproduced below:

> *"…2. Ld. Counsel representing the Financial Creditor states that there is no necessity to file any supplementary affidavit on behalf of the Financial Creditor and he would be arguing the matter on the basis of the record already available…."*

<u>I.A. No. 233 of 2023</u>

31. During the pendency of the main petition (C.P. (IB) No. 112/ALD/2022), an Interlocutory Application being I.A. No. 233 of 2023 was filed on 27.04.2023 on behalf of the Corporate Debtor under Section 65 of the Code seeking to

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initiate fraudulent and malicious proceedings against the Petitioners/Allottees herein with the following prayer:

> "*It is therefore most humbly prayed that this Hon'ble Tribunal may be pleased to take cognizance of the fraudulent and malicious proceeding sought to be instituted against the corporate debtor and appropriate orders may be passed in the present application and the application being CP (IB) No. 122/ALD/2022 (Pradeep Sharma and others Vs Sunshine Tradetower Private Limited) may be dismissed.*"

32. The Applicant/Corporate Debtor has contended that the present application under Section 65 of the Code has been filed seeking action against the Petitioners/Allottees as they have filed the Section 7 petition against the Corporate Debtor which are fraudulent and malicious, and that the threshold under the second proviso to Section 7(1) is not satisfied as the petition has been filed by only 15 allottees holding 22 units out of a claimed 180 units, which itself is disputed.

33. It is further contended that several Petitioners/Allottees, namely Petitioner Nos. 3, 4, 5, 6, 8 and 14 are not homebuyers/Financial Creditors as no consideration has been received, receipts relied upon are forged and fabricated, agreements are either not executed or unsupported, or transactions are in the nature of unsecured loans, and therefore such Petitioners/Allottees cannot be counted towards the threshold. It is thus submitted that after excluding such Petitioners/Allottees, the application remains filed by only nine Petitioners/Allottees holding 11 units and is not maintainable, apart from there being no default as the agreements provide for delay compensation and continue to subsist, and the proceedings have been initiated with malicious intent and abuse of process.

34. It is further submitted that in view of the averments and records produced hereinabove along with the instant application, it does not remain in doubt that the application is prima facie malicious and fraudulent in as much as the Petitioners/Allottees are well aware of the fact that they are not the homebuyers/financial creditors who could derive any locus to present the said application.

Reply on behalf of the Petitioners/Allottees/Financial Creditors *(in I.A. No. 233 of 2023)*

35. The Petitioners/Allottees/Financial Creditors as Respondents in the aforesaid Interlocutory Application in their reply dated 22.07.2023 to the application, have opposed the present application as being misconceived, vexatious and an abuse of process of law, contending that the same is liable to be dismissed on account of defective authorization, improper signing and verification, and inconsistencies in the supporting affidavit and board resolution.

36. It is further contended that the application under Section 65 of the Code is not maintainable as no fraudulent or malicious intent has been demonstrated against the Petitioners/Allottees, and rather, the Corporate Debtor has suppressed material facts and is attempting to evade its admitted default in completing the project and handing over possession. The Petitioners/Allottees have denied the allegations regarding certain Petitioners not being allottees or financial creditors, submitting that allotment is duly established through executed Builder Buyer Agreements and that consideration, including through inter-company adjustments with group entities, has in fact been paid, which as per the Petitioners/Allottees is also evidenced through receipts, bank records, and communications issued by the Corporate Debtor itself.

37. It is further contended that the disputes regarding mode or proof of payment do not negate the status of allottees in light of the statutory definition under the Code read with RERA. The Petitioners/Allottees have also submitted that compensation under the RERA Act is not a parallel proceeding and does not bar initiation of CIRP, that no demand notice is required under Section 7, and that reliance on force majeure or delay compensation clauses does not extinguish the default. Accordingly, it is prayed that the instant interlocutory application be dismissed and the Section 7 application be admitted.

Rejoinder on behalf of Corporate Debtor *(in I.A. 233 of 2023)*

38. The Corporate Debtor filed a rejoinder dated 12.10.2023 and submitted as follows:

a. In the rejoinder, the Corporate Debtor has submitted that the reply filed by the respondents is misconceived, misleading and denied, and has asserted that the application under Section 65 deserves to be allowed. It is further reiterated that the affidavit and authorization are valid, that the Petitioners/Allottees have no locus as they do not constitute allottees/financial creditors, that receipts and alleged transactions relied upon are unsupported by bank records, and that the threshold requirement under Section 7(1) is not satisfied in as much as the project comprises 960 units with 684 allottees, whereas the Petitioners/Allottees have falsely claimed only 180 units to create an impression of compliance.

FINDINGS AND ORDER

39. We have heard the Ld. Counsel for the Petitioners/Applicants and the Respondent and perused the records, exhibits/annexures, and after considering arguments advanced by respective Learned Counsels, the main issues which are before us to be decided in respect of the present Petition/Application u/s 7 are:

i. Whether the Petitioners/Applicants fulfil the threshold requirement under the second proviso to Section 7(1) of the Code.

ii. Whether the Interlocutory Application under Section 65 of the Code has merit.

i. <u>Whether the Petitioners fulfil the threshold requirement under the second proviso to Section 7(1) of the Code.</u>

40. In order to examine whether the Petitioners/Applicants, being the Financial Creditors/allottees fulfil the threshold limit as prescribed under section 7 of the Code, we consider it appropriate to refer to the 2nd proviso of Section 7(1) of the Code, which lays down as under:

> "*Section 7: Initiation of corporate insolvency resolution process by financial creditor.*
>
> *"(1) A financial creditor either by itself or jointly with [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred."*
>
> The 2nd proviso to Section 7(1) reads as follows:-
>
> *"Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the*

same real estate project or not less than ten per cent of the total number of such allottees under the same real estate project, whichever is less"

41. At this stage, for the purpose of determining the correct method of computation of the number of allottees, it is apposite to refer to the judgment of the Hon'ble Supreme Court in ***Manish Kumar v. Union of India and Another*** reported in **(2021) 5 SCC 1**. In the present case, the petition was originally filed by 15 allottees holding 22 units, and though one of the allottees subsequently withdrew from the present proceedings, thereby reducing the number to 14 allottees, such subsequent withdrawal is of no material consequence for determining the maintainability of the present petition in view of the law laid down by the Hon'ble Supreme Court in the ***Manish Kumar v. Union of India (supra)*** judgment, wherein it has been categorically held that the threshold requirement under the second proviso to Section 7(1) of the Code is to be examined as on the date of filing of the application, and that independent allotments are to be treated as separate allottees. The relevant excerpts in this regard from the aforesaid judgment are reproduced below:

"*123.. What is required is allotment and not promised flats as per a brochure. It is also not the total constructed units. This is as what is relevant under the impugned provisos read with Section 5(8)(f) explanation and section 2 (d) of RERA read with Section 11(1)(b)* *and the rules made thereunder is the 'booking' of apartments or plots. What is allotted or booked may be more than what is constructed if there is a mismatch at any given point of time. It is the number of units allotted…*

…

141. …..There can be no doubt that the requirement of a threshold under the impugned proviso, in Section 7(1), must be fulfilled as on the <u>date of the filing of the application.</u>

….

143…If an allottee is able to, in other words, satisfy the requirements, as on the date of the presentation, the requirement of the impugned law is fulfilled.

…

146. ………We would have to take the definition of the 'allottee' from Section 2(d), as it is. Therefore, it does not matter whether a person has one or more allotments in his name or in the name of his family members. As long as there are independent allotments made to him or his family members, all of them would qualify as separate allottees and they would count both in the calculation of the total allotments, as also in reckoning the figure of hundred allottees or one-tenth of the allottees, whichever is less.

147.. in the case of a joint allotment of an apartment, plot or a building to more than one person, the allotment can only be treated as a single allotment."

42. Further, as regards the calculation of joint allotment, it is evident from the aforesaid paras of the ***Manish Kumar v. Union of India (supra)*** judgment that the Hon'ble Supreme Court has clarified that joint allotment of a single unit cannot be artificially split so as to inflate the number of allottees. Accordingly, the units allotted to joint allottees in the present petition are to be reckoned as a single allotment, and therefore counted as one allottee.

43. In line with the above judgment of the Hon'ble Supreme Court in ***Manish Kumar v. Union of India (supra)*** we consider in the present case that the 15 Petitioners herein holding 22 units as the total number of allottees forming part of the present petition for the purposes of threshold determination under the 2nd proviso to Section 7(1) of the Code, as on the date of filing stands at 22, the details of which are as follows:

Sr. No.	Name of Applicant	Unit No.	No. of Units
1.	Mr. Ketan Modi	720, 1105	2
2.	Mr. Sanjeev Modi	1107, 723, 7235	3
3.	Mrs. Ruchika with Mr. Sameer Malhotra	719, 721, 1103	3
4.	Mrs. Sonia Hayer	948	1
5.	Mrs. Anjali Marwah	319B	1
6.	Mrs. Nisha Dargar	1517	1

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7.	Mr. Debashis Roy Chowdhury	452, 1407	2
8.	Mr. Arjinder Singh Vasir and Mrs. Nasib Kaur Vasir	626	1
9.	Mrs. Peau Chakraborty	801	1
10.	Mr. Binod Prasad and Ms. Harshita Sinha	312	1
11.	Mr. Shobit Jain and Mrs. Varnika Gupta	327	1
12.	Mr. Sunil Kumar and Mrs. Madhvi Bhatia	620	1
13.	Mr. Dev Raj Sharma and Mrs. Sheel Sharma	419B	1
14.	Mr. Ranjan Bhattacharya and Mrs. Shubhra Bhattacharya	408	1
15.	Mrs. Archana Sharma with Mr. Pradeep Sharma	30, 436	2
	Total no. of Allottees on the basis of independent and joint allotments held by the Petitioners in terms of *Manish Kumar* (supra)		**22**

44. Against the above 22 allottees who have filed the present petition claiming to maintain the present petition by fulfilling the threshold on the basis of 180 total number of allottees as per the details of allotments collected by the Petitioners, the Corporate Debtor filed a supplementary affidavit dated 20.07.2024 showing total number of units in the project as 960 out of which 684 units stood

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allotted as on the date of filing of the petition. In support of these details submitted by the Corporate Debtor, the corresponding allotment letters have also been annexed as Annexure SA-2 and the list of allottees has also been annexed as Annexure SR-2 along with the said affidavit dated 19.03.2024.

45. In view of above contrary stands taken by the Petitioners/Financial Creditors and the Corporate Debtor with regards to total number of allottees in the impugned project, we proceed to examine the total number of allottees in the project. Throughout the present proceedings, it has been noticed that the Corporate Debtor has consistently maintained the figure of 684 allottees duly supported by allotment letters placed on record pursuant to directions of this Tribunal. Though the Petitioners/Applicants have raised certain objections regarding the authenticity of such allotment letters and absence of corroborating Builder Buyer Agreements or financial records, they have not been able to place any cogent or reliable material to substantiate their own assertion of 180 total allotments or rebut the figure of 684 allottees.

46. Thus, in absence of any supporting data duly substantiated by any record from the relevant authority showing total numbers of allotment in the project under consideration being at 180 and considering the allotment data and supporting material placed on record by the Corporate Debtor, which indicates that the total number of allottees in the project stood at 684 as on the date of filing

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deserves to be accepted for the purpose of threshold determination. It is also relevant to note that subsequent exit of 4 allottees, as stated in the affidavit dated 12.10.2025 subsequently filed by the Corporate Debtor giving the reconciliation of the allottees due to cancellation and refund of booking amount, do not affect the computation, as the relevant date for determining threshold is the 'date of filing of the application', as already discussed in the preceding paras of this order.

47. Repeated opportunities have been provided to the Ld. Counsel of the Petitioners/Financial Creditors to substantiate the total number of allottees of the project under consideration shown at 180 in the petition but no such data or documents could be produced to establish that total number of allotments being at 180 and not 680 (as per the subsequent reconciliation filed by the Corporate Debtor). Finally in the hearing held on 15.10.2025 , the Ld. Counsel representing the Financial Creditor has submitted that there is no necessity to file any supplementary affidavit on behalf of the Petitioners/Financial Creditor (*for placing on record the documents with respect to the number of 180 allottees on the basis of which the present petition has been filed as agreed in the hearing held on 15.07.2025*) and he would be arguing the matter on the basis of the record already available.

48. As regards the contention of the Petitioners/Applicants that there are two separate blocks i.e. Block-A and Block-B and that certain portions, particularly hotel units, ought to be excluded from computation, the same has been given a careful consideration by us. The Petitioners/Applicants have contended that units categorized as hotel rooms cannot be sold independently and therefore, ought to be excluded, thereby reducing the total number of units to 581 as submitted by them in their supplementary affidavit dated 20.09.2024 and discussed in para 26 of this order.

49. Per contra, the Respondent Corporate Debtor has submitted that the project is a commercial project comprising of showrooms, shops, offices, banquet halls, restaurants and rooms, all of which are capable of independent allotment and have in fact been allotted. For proper appreciation, reference may be made to the definitions of "Allottee" defined under Section 2(d), "Apartment" defined under Section 2(e), "Building" defined under section 2(j) and "Real Estate Project" defined under Section 2(zn) of the Real Estate (Regulation and Development) Act, 2016, which are as follows:

> *"2(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or*

otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

"2(e) "apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified;"

"2(j) "building" includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes;"

(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;"

50. As can be seen, the definition of "allottee" is of wide amplitude and includes any person to whom a plot, apartment or building is allotted. Further, the definition of "apartment" under Section 2(e) is inclusive and covers offices, shops, showrooms and any enclosed space intended for commercial use. Thus, the statute does not carve out any exclusion for hotel rooms or commercial units, so long as such units are capable of independent allotment.

51. In this regard, it is also relevant to consider the observations of the Hon'ble Supreme Court ***Manish Kumar v. Union of India (supra)*** as reproduced below, which clarify that the determination of allottees and the real estate project depend upon the 'nature of the project' and what is offered for sale.

> "*117. The task of ascertaining who will be an allottee as also the question as to what will be the total number of allottees and therefore what would constitute one-tenth of total number of allottees must depend upon the nature of the real estate project in question. It will depend on what is offered by the promoter under the project. It may be real estate project which seeks to develop a building and sale of the building. It may be a project for the construction of apartments with the agreements to convey the undivided interest of land also. It may be a project which envisages converting an existing building or a part into an apartment. It may be a project for merely development of land into plots and sale of the plotted land as such. It may be also that the same person may also develop either apartments or building to be sold.*

120.....Be that as it may, as we have noticed the question must be decided with reference to real nature of the real estate project in which the applicant is an allottee. If it is in the case of an apartment, then necessarily all persons to whom allotment had been made would be treated as allottees for calculating the figure mentioned in the impugned proviso.

124.....As to what would constitute the real estate project, it must depend on the terms & conditions and scope of a particular real estate project in which allottees are a part of. These are factual matters to be considered in the facts of each case."

52. Upon considering the aforesaid definitions and the ratio laid down, we are of the considered view that the entire project "Sunshine Business Park", comprising both Block-A and Block-B, constitutes a single real estate project. All units therein, including those described as hotel rooms, are part of the same project and are capable of allotment hence, the contention of the Petitioners/Applicants allottees seeking exclusion of such units on the basis of nomenclature or usage cannot be accepted. The relevant excerpts of the *Manish Kumar* (supra) judgment in this regard are reproduced hereunder:

"ALLOTTEES TO BE FROM SAME REAL ESTATE PROJECT: IS IT UNCONSTITUTIONAL?

139. We have referred to the definition of the word 'allotee' in Section 2(d) of the RERA. In regard to a real estate project, all persons, who are treated as allottees, as per the definition of

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allottee would be entitled to be treated as allottees, for the purpose of Section 5(8)(f) (Explanation) and also, for the purpose of the impugned provisos. All that is required is that the allottees must relate to same real estate project. In other words, if a Promoter has a different real estate project, be it in relation to apartments, in the case an application under Section7, those would not be reckoned in computing one-tenth as well as the total allotments.

140. The rationale behind, confining allottees to the same real estate project, is to promote the object of the Code. Once the threshold requirement can pass muster when tested in the anvil of a challenge based on Articles 14, 19 and 21, then, there is both logic and reason behind the legislative value judgment that the allottees, who must join the application under the impugned provisos, must be related to the same real estate project. The connection with the same real estate project is crucial to the determination of the critical mass, which Legislature has in mind, as a part of its scheme, to streamline the working of the Code. If it is to embrace the total number of allottees of all projects, which a Promoter of a real estate project, may be having, in one sense, it will make the task of the applicant himself, more cumbersome. It becomes a sword, which will cut both ways. This is for the reason that the complaints, relating to different projects, may be different. With regard to one project of a Promoter of real estate project, maybe, in the advanced stage, the allottees in a particular project, may not have much of a complaint. The complaint, in relation to yet another project, may be more serious. If the complaint in respect of the latter, attracts the *attention of a critical mass of allottees, and the proposed applicant is part of that project in the said project, then, it may be easier for the allottees to fulfil the statutory mantra in the impugned provisos, with the junction of likeminded souls. If, on the other hand, the requirement was to make a search for allottees of different projects, as would be the case, if the entirety of the allottees, under different projects, were to be reckoned, the task would have been much more cumbersome. The requirement of the allottees, being drawn from the same project, stands to reason and also does not suffer from any constitutional blemish, as pointed out."*

53. Hence, as evident, the computation has to be made for the same real estate project and all allottees forming part thereof. However, even if, for the sake of argument, the contention of the Petitioners/Applicants is accepted and the number of units is reduced to 581 as discussed in para 26 of this order, the threshold requirement under the second proviso to Section 7 is still not met as 10% thereof would approximately come to 58 allottees. As against this, the Petitioners/Applicants, even after treating all 22 units as independent allotments, constitute only 22 allottees, which is significantly below the statutory requirement.

54. Further, it is the contention of the Petitioners/Applicants herein that based on the information gathered by them, there were only 180 units are allotted in the project, however, they have not been able to substantiate the said figure with cogent material on record despite giving of sufficient opportunities as it has already been discussed in para 47 of this order. On the other hand, the Respondent Corporate Debtor has submitted that the total number of units in the project are 960 out of which 684 units were allotted earlier, which remained at 680 after cancellation of 4 units. In support of its this contention, the Respondent Corporate Debtor has also placed on record the allotment letters and the list of allottees indicating allotment of 684 units in the project as on the date of filing of the petition, though it was later reduced to 680 units due to cancellation of 4 units. Accordingly, for the purposes of the second proviso to Section 7(1) of the Code, the threshold is required to be computed on the basis of 10% of 684 allottees, i.e., 68 allottees in the present case or 100 allottees whichever is less, which comes to 68 units as threshold for filing of a petition under section 7(1) read with its second proviso, hence, it is evident that the Petitioners/Applicants constituting only 22 units have not been able to satisfy the said mandatory statutory threshold requirement.

55. Therefore, in light of the foregoing facts and circumstances of the case, we are of the considered view that the present petition is liable to be dismissed on account of non-fulfilment of the threshold requirement under the second proviso to Section 7(1) of the Code as even after adopting the most liberal interpretation in favour of the Petitioners/Applicants, by treating all 22 units as

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independent allotments and even by considering the reduced figures of total allottees as contended by the Petitioners/Applicants at 581 after reducing the hotel units, the number of allottees forming part of the present application does not satisfy the statutory requirement of either 10% of the total number of allottees or the minimum threshold of 100 allottees. Consequently, the mandatory condition prescribed under the second proviso to Section 7(1) of the Code not having been fulfilled, the present petition is held to be not maintainable.

ii. **Whether the Interlocutory Application under Section 65 of the Code has merit.**

56. We now proceed to examine the Interlocutory Application filed as numbered I.A. No. 233 of 2023 by the Corporate Debtor under Section 65 of the Code seeking to initiate action against the Petitioners/Allotees on the ground that the present proceedings under Section 7 are fraudulent and malicious.

57. Upon consideration of the rival submissions, it is observed that the primary grounds raised by the Corporate Debtor in the present application pertain to (i) non-fulfilment of threshold requirement, and (ii) alleged lack of status of certain Petitioners as allottees/financial creditors. These issues have already been examined in detail while adjudicating the maintainability of the Section 7

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petition in the preceding paras of this order. The mere fact that the application under Section 7 has been found to be not maintainable on account of non-fulfilment of the threshold requirement, it cannot by itself lead to the conclusion that the same has been filed fraudulently or with malicious intent within the meaning of Section 65 of the Code.

58. Section 65 of the Code requires a clear finding that the proceedings have been initiated fraudulently or with malicious intent for the purposes other than the resolution of insolvency or liquidation. Such a finding must be based on cogent material and cannot be inferred merely on the basis of disputed questions relating to threshold or existence of debt.

59. In the present case, the allegations regarding fabrication of documents, non-payment of consideration, or lack of locus of certain Petitioners/Allottees involve disputed questions of fact which required detailed examination of evidence and arguments placed by both parties and cannot be conclusively determined within the summary jurisdiction exercised under the Code. Hence, the mere existence of disputes raised by the Corporate Debtor and in absence of any cogent material demonstrating that the present proceedings have been initiated with fraudulent or malicious intent cannot ipso facto lead to an inference of mala fide or fraudulent intent. Therefore, this I.A. is liable to be dismissed.

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60. Thus, based upon the evidence brought before us by the Corporate Debtor, it is apparent that the threshold as contemplated under the Code, ex-facie is not met. We therefore, dismiss the petition, however, with the liberty to revive the same if the Petitioners bring an evidence of meeting the threshold requirements in accordance with law.

61. Accordingly, CP (IB) No. 112 of 2022 filed under Section 7 of the Code, along with I.A. No. 223 of 2023 filed under Section 65 of the Code, stand dismissed.

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(Ashish Verma)	**(Praveen Gupta)**
Member (Technical)	**Member (Judicial)**

Date: 02.06.2026