Case Citation: (2026) ibclaw.in 4096 NCLT

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IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER

MS. KAVITA BHATNAGAR
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 39/07/JPR/2025

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

IN THE MATTER OF:

DINESHCHANDRA R. AGRAWAL INFRACON PVT. LTD.

...Financial Creditor/ Petitioner

VERSUS

SAND DUNE CONSTRUCTION PVT. LTD.

...Corporate Debtor/ Respondent

CP No. (IB)- 39/07/JPR/2025

MEMO OF PARTIES

Dineshchandra R. Agrawal
Infracon Pvt. Ltd.
Through Mr. Harsh Poddar
R/O 401, The Grand Mall, S. M. Road,
Ambawadi, Ahmadabad City,
Gujarat, India - 380015.

...FINANCIAL CREDITOR

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Case Citation: (2026) ibclaw.in 4096 NCLT

IBC Laws | www.ibclaw.in

VERSUS

Sand Dune Construction Pvt. Ltd.
R/o: D-29, Ashiana Apartment,
Shanti Path,Tilak Nagar,
Jaipur, Rajasthan, India - 302005. **...CORPORATE DEBTOR**

For the Petitioner : Amol Vyas, Adv.;
Abhishek Purohit, Adv.

For Respondent : Anurag Kalavatiya, Adv.;
Parul Singh, Adv.;
Shraddha Joshi, Adv.

Order Pronounced On: 28.10.2026

ORDER

Per: Ms. Reeta Kohli, Judicial Member

1. The present Petition has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by *Dineshchandra R. Agrawal Infracon Private Limited* ('Petitioner'/ 'Financial Creditor') through authorised representative *Mr. Harsh Poddar* seeking initiation of Corporate Insolvency Resolution Process ('CIRP') in respect of *Sand Dune Constructions Private Limited* ('Respondent'/ 'Corporate Debtor'),

Sd/-

Sd/-

Case Citation: (2026) ibclaw.in 4096 NCLT

IBC Laws | www.ibclaw.in

on account of default in payment of Rs. 6,29,40,774/- (Rupees Six Crore Twenty-Nine Lakh Forty Thousand Seven Hundred Seventy-Four Only).

2. The Financial Debt as produced in Part IV of the Petition is as follows:

<table>
<tr><th colspan="3">PARTICULARS OF FINANCIAL DEBT</th></tr>
<tr><td>1.</td><td>Total amount of debt granted date(s)</td><td><u>I. TOTAL AMOUNT OF DEBT GRANTED</u>
That the Financial Creditor has disbursed a total sum of Rs. 4,00,00,000/- (Rupees Four Crore only) through RTGS in four tranches.
DISBURSEMENT CHART
<table><tr><td>Amount</td><td>Date of Disbursement</td></tr><tr><td>Rs.1,50,00,000/-</td><td>24.04.2019</td></tr><tr><td>Rs. 1,00,00,000/-</td><td>13.05.2019</td></tr><tr><td>Rs. 1,00,00,000/-</td><td>19.06.2019</td></tr><tr><td>Rs. 50,00,000/-</td><td>12.04.2021</td></tr></table></td></tr>
<tr><td>2.</td><td>Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and days of default in tabular form)</td><td><u>AMOUNT CLAIMED TO BE IN DEFAULT:</u>
That the total claim amount is Rs. 6,29,40,774/- (Rupees Six Crore Twenty-Nine Lakh Forty Thousand Seven Hundred Seventy-Four only) as on 01.04.2025 along with the interest @12% p.a. to be calculated.
DATE OF DEFAULT: 01.04.2022
The date of default is 01.04.2022 is well within the period of limitation of 3 years.</td></tr>
</table>

3. The Petitioner is a Private Limited Company, incorporated under Companies Act, 1956 on 17.11.2003, CIN: U45202GJ2003PTC043160, having registered office at *401, The Grand Mall, S. M. Road, Ambawadi, Polytechnic*

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Case Citation: (2026) ibclaw.in 4096 NCLT

IBC Laws | www.ibclaw.in

(Ahmedabad), Ahmadabad City, Gujarat, India, 380015, is classified as non-government company and registered with Registrar of Companies.

4. The Respondent is a private limited company incorporated on 18.03.1997, CIN: U45201RJ1997PTC013429 under the Companies Act, 1956, having its registered office at *G-1, Karan Heights, Janpath, Lalkothi, Bapu Nagar, Jaipur, Rajasthan, India, 302015.*

5. The Petition has been filed on the basis of the following set of facts:

5.1 The Petitioner submitted that the Respondent and Sarvottam *Buildhome Private Limited* entered into a Developer Agreement dated 14.03.2016, wherein, the Respondent agreed to develop a Multi-storeyed Complex-cum-Commercial Project on the *Duggar Garden* approved for commercial/ residential complex ad-measuring 6600 sq. yds., situated at *Laxmi mandir Tiraha, Tonk Road, Jaipur* (hereinafter referred to as "Subject Land"). The Petitioner submitted that the *Sarvottam Buildhome Private Limited* is the lawful owner of Subject Land and the Respondent is a developer of the aforesaid Project and the Respondent shall have undivided 37% share in the total constructed area in the building.

5.2 Further, the Petitioner submitted that the Petitioner and Respondent entered into an Allotment Letter-cum-Agreement to Sale dated 12.04.2021, wherein, the Respondent agreed to allot unit no. *504 & 505,*

Sd/-

Sd/-

Case Citation: (2026) ibclaw.in 4096 NCLT

IBC Laws | www.ibclaw.in

total area ad-measuring 5090 sq. ft. on the 5th floor of the said project (this area is out of shares of Respondent which is 37% in the total constructed area in the building as described in the scheduled), for a total consideration of Rs. 4,00,00,000/- (Rupees Four Crore Only). Thereupon, the Petitioner released the aforesaid payment in four tranches through RTGS dated 24.04.2019, 13.05.2019, 19.06.2019 and 12.04.2021.

5.3 The Petitioner further submitted that the Respondent agreed to execute the Sale Deed in favour of the Petitioner on or before 31.03.2022. However, the Respondent failed to complete the construction within the time frame and thereby, committed default in repayment of Rs. 6,29,40,774/- along with interest @12% p.a. from the date of execution of the agreement to sale.

6. The case of the Respondent is as follows:

6.1 The Respondent filed its reply contesting the Petition, wherein it denied all material statements and allegations contained therein, praying for its summary dismissal on the ground of non-maintainability and lack of a cause of action. The Respondent's submissions in this regard are stated as under:

I. *"The Applicant is not a Financial Creditor within the meaning of Section 5(7) read with Section 5(8) of the IBC;*

Case Citation: (2026) ibclaw.in 4096 NCLT

IBC Laws | www.ibclaw.in

II. *the alleged claim does not constitute a "financial debt" under Section 5(8) of the IBC;*

III. *there is no debt due or default within the meaning of Section 3(12) of the Code;*

IV. *the mandatory threshold prescribed under the third proviso to Section 7(1) of the IBC for homebuyers/allottees has not been complied with; and*

V. *the Petition has been filed with mala fide intent, thereby attracting the bar under Section 65 of the Code."*

6.2 The Respondent contended that the Petitioner has approached this Adjudicating Authority after the expiration of limitation period.

6.3 The Respondent further contended that the Petitioner is a speculative investor attempting to utilize the statutory framework of the Code for recovery purposes, rather than a genuine allottee seeking property possession. The Respondent placed reliance on the binding precedent of the Hon'ble Supreme Court in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India [(2019) 8 SCC 416]*, which lays down that non-genuine or speculative investors are precluded from invoking proceedings under the Code.

6.4 It is the case of the Repsondent that the Petitioner has filed the instant Petition in a capacity of homebuyer and this instant Petition is hit by the second proviso to Section 7(1) of the Code, which mandates the threshold of joint filing by a minimum of 100 allottees or 10% of total allottees. Even if the Petitioner is sued to be the allottee, it neither constitutes

Case Citation: (2026) ibclaw.in 4096 NCLT

IBC Laws | www.ibclaw.in

10% of the total allottees as required under the 2nd proviso to Section 7 of the Code nor contains the total number of 100 allottees.

6.5 The Respondent further submitted that the instant Petition is wholly non-maintainable as the underlying claim, founded upon the Allotment Letter-cum-Agreement to Sell dated 12.04.2021, which fails to satisfy the statutory criteria of a 'Financial Debt' under Section 5(8) of the Code. It is submitted by the Respondent that the transaction in question is purely in the nature of an agreement for the sale of commercial property, wherein certain advance payments were remitted by the Petitioner towards the allotment of a specific constructed area. Such an arrangement constitutes a contract for the transfer of immovable property rather than a financial accommodation or borrowing.

6.6 Furthermore, the Respondent submitted that it is settled law that the *sine qua non* of a 'Financial Debt' is the disbursement of funds against the consideration for the time value of money. The advance paid under the Allotment Letter-cum-Agreement to Sell conspicuously lacks this indispensable statutory ingredient, as there exists neither a loan agreement, nor any stipulation for interest, nor any unconditional obligation on the part of the Respondent to repay the advance as a financial debt.

Sd/-

Sd/-

Case Citation: (2026) ibclaw.in 4096 NCLT

IBC Laws | www.ibclaw.in

6.7 The Respondent further contended that the reliance placed by the Petitioner upon self-prepared ledger statements and unilateral computations cannot, by themselves, constitute proof of default. Further, it is a settled principle of law that the existence of a financial debt and the occurrence of default must be established through cogent and reliable documentary evidence, such as financial records, duly acknowledged agreements, or statutory confirmations. Consequently, in the absence of such unimpeachable evidence, no default can be legally inferred against the Respondent.

6.8 Further the Respondent specifically denied the receipt of any payment amounting to Rs. 70,00,000 (Rupees Seventy Lakhs Only) on 10.08.2021, as falsely reflected in the ledger statement annexed by the Petitioner as *Annexure A/5 at Page No. 31* of the Petition. The Respondent submitted that the said ledger entry is frivolous, self-serving, and represents a unilateral document fabricated by the Petitioner, emphasizing that no such sum was ever received by the Respondent.

6.9 In support of his submissions, the learned Counsel for the Respondent placed reliance upon the judgments of the Hon'ble Supreme Court in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India [(2019) 8 SCC 416]* and *Mansi Brar Fernandes v. Shubha Sharma*, 2025 *INSC 1110*

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Case Citation: (2026) ibclaw.in 4096 NCLT

IBC Laws | www.ibclaw.in

[Civil Appeal No. 3826 of 2020],where it was held that the Code cannot be invoked by non-genuine or speculative investors; *Manish Kumar v. Union of India [(2021) 5 SCC 1]* to emphasize the mandatory nature of statutory threshold requirements under Section 7 of the Code; *Radha Exports (India) Pvt. Ltd. v. K.P. Jayaram [Civil Appeal No. 7471 of 2019]* and *Swiss Ribbons Pvt. Ltd. v. Union of India [(2019) 4 SCC 17]* on the essential ingredients of a 'financial debt' and 'time value of money'; as well as the decision of the Hon'ble NCLAT in *Nikhil Mehta & Sons v. AMR Infrastructure Ltd. [2017 SCC OnLine NCLAT 377]*.

Analysis and findings –

7. We have heard the learned counsels for the parties and have perused the averments made in the Petition and the Reply. The observations of the Adjudicating Authority are followed as under: -

I. The present Petition has been filed under Section 7 of the Code, seeking initiation of CIRP against the Corporate Debtor on account of default in payment of a sum of Rs. 6,29,40,774/-.

II. Before adjudicating upon the case at hand, it is rendered necessary to advert to the relevant statutory framework under the Code. Section 3(11) defines "debt", Section 3(12) defines "default", Section 5(7)

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Case Citation: (2026) ibclaw.in 4096 NCLT

IBC Laws | www.ibclaw.in

defines "financial creditor" and Section 5(8) defines "financial debt".

The said provisions read as under:

*"**Sec. 3(11) 'debt'** means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;*

***Sec. 3(12) 'default'** means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be;*

***Sec. 5(7) 'financial creditor'** means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;*

***Sec. 5(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—*

(a) money borrowed against the payment of interest;

xxx xxx xxx

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

Explanation. —For the purposes of this sub-clause, —

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, 'allottee' and 'real estate project' shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;"

Section 7(1) of the Code, together with the first and second provisos thereto, which are material for the present purpose, read as under:

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Case Citation: (2026) ibclaw.in 4096 NCLT

IBC Laws | www.ibclaw.in

*"**Section 7.** (1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.*

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

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten percent of the total number of such allottees under the same real estate project, whichever is less:"

III. A conjoint reading of the aforesaid statutory provisions, it is clear that a Petition under Section 7 of the Code can be maintained solely by a 'Financial Creditor' to whom a 'Financial Debt' is owed. While the Explanation to Section 5(8)(f) creates a statutory fiction whereby any amount raised from real estate allottees is deemed to have the commercial effect of a borrowing. The benefit of this legal fiction is available exclusively to genuine homebuyers and does not extend to speculative investors. Speculative investors do not qualify as Financial Creditors and cannot invoke the provisions of the Code. Furthermore,

Sd/-

Sd/-

Case Citation: (2026) ibclaw.in 4096 NCLT

IBC Laws | www.ibclaw.in

where the initiating Financial Creditors are real estate allottees, the second proviso to Section 7(1) of the Code mandates a threshold requirement, requiring the Petition to be filed jointly by either at least one hundred (100) or not less than ten per cent (10%) of the total number of allottees under the same real estate project, whichever is less.

8. Upon a careful consideration of the pleadings and the Reply filed by the Respondent, the following issues arise for our determination:

Issue 1. *Whether the Petitioner qualifies as a bona fide allottee or is a speculative investor, and consequently, whether the advance remitted constitutes a 'Financial Debt' under Section 5(8) so as to confer upon the Petitioner the status of a 'Financial Creditor' under Section 5(7) of the Code?*

Issue 2. *Whether there exists a 'default' committed by the Corporate Debtor within the meaning of Section 3(12) of the Code?*

Issue 3. *Whether, in the absence of an underlying Financial Debt, this Adjudicating Authority possesses the requisite jurisdiction to entertain the Petition under Section 7 of the Code?*

Issue 4. *Whether, assuming arguendo that the Petitioner is an allottee under a real estate project, the Petition satisfies the mandatory threshold prescribed under the second proviso to Section 7(1) of the Code?*

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Case Citation: (2026) ibclaw.in 4096 NCLT

IBC Laws | www.ibclaw.in

Issue 5. *Whether the Petition is barred by limitation, and whether the auxiliary objections raised by the Respondent, including the plea under Section 65 of the Code and the challenge to the proof of default, merit acceptance?*

9. The first and foundational question is *Whether the Petitioner qualifies as a bona fide allottee or is a speculative investor*. The Respondent has contended that the Petitioner is a speculative investor who entered into the transaction purely for financial gain, and who is seeking to use the Code as a coercive money recovery mechanism.

10. With respect to the aforementioned issue, it becomes necessary to refer to the Explanation to Section 5(8)(f) of the Code which deems any amount raised from an allottee under a real estate project to be an amount having the commercial effect of a borrowing, and therefore it constitutes a financial debt. It is, however, well settled that this protection ensures only to a genuine homebuyer, and not to a speculative investor. In *Pioneer Urban Land and Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416*, the Hon'ble Supreme Court, while upholding the inclusion of allottees as financial creditors, drew a clear distinction between genuine homebuyers and speculative investors, and held that speculative investors cannot be permitted to misuse the Code as a debt-recovery mechanism. This distinction has recently been crystallised by the

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Case Citation: (2026) ibclaw.in 4096 NCLT

IBC Laws | www.ibclaw.in

Hon'ble Supreme Court in *Mansi Brar Fernandes v. Shubha Sharma*, 2025 *INSC 1110 [Civil Appeal No. 3826 of 2020]*, decided on 12.09.2025.

11. Moreover, in *Mansi Brar Fernandes* (supra), the Hon'ble Supreme Court laid down the test for determining whether an allottee is a speculative investor, observing in paragraphs 18.1,18.3,18.3.1,18.4 as under:

> *"18.1 The determination of whether an allottee is a speculative investor depends on the facts of each case. The inquiry must be contextual and guided by the intent of the parties. Indicative factors include: (i) the nature and terms of the contract; (ii) the number of units purchased; (iii) presence of assured returns or buyback clauses; (iv) the stage of completion of the project at the time of investment; and (v) existence of alternative arrangements in lieu of possession. Possession of a dwelling unit remains the sine qua non of a genuine homebuyer's intent."*
>
> *"18.3 This Court in Pioneer Urban Land and Infrastructure Ltd v. Union of India (supra), while upholding the constitutional validity of the 2018 amendment recognising allottees as financial creditors, drew a crucial distinction between genuine homebuyers and speculative investors. It clarified that speculative investors cannot be permitted to misuse the Code as a debt recovery mechanism. The judgment struck a balance: ensuring representation of genuine homebuyers in the CoC, while shielding developers and projects from being derailed by investors who never intended to take possession."*
>
> *"18.3.1. The Court further noted that remedies under RERA and the Consumer Protection Act are additional, not exclusive. Both statutes operate alongside the IBC, but with distinct purposes: RERA protects individual investors by enforcing compliance with project obligations, while the IBC operates in rem to revive the corporate debtor and maximise value for all stakeholders."*

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Sdr

Case Citation: (2026) ibclaw.in 4096 NCLT

IBC Laws | www.ibclaw.in

> *"18.4. "Speculation" has been defined in P. Ramanatha Iyer's Law Lexicon (6th edition) as "a risky investment of money for the sake of and in expectation of unusually large profits". A "speculator" is "one who practices speculation in trade or business". Two elements emerge: (i)expectation of unusually high profits; and (ii)activity in the nature of business or trade. These elements accord with the ratio of Pioneer Urban, which described speculative investors as those seeking refund or profit without an intention to occupy."*

12. It is further laid down, in paragraph 18.4.5 of *Mansi Brar Fernandes* (supra), non-exhaustive indicators for identifying a speculative investor which are reproduced herein as follows:

> *"(1) If the agreement substitutes possession with a buyback or refund option, or any other special arrangement, the allottee is likely a speculative investor.*
> *(2) Insistence on refund with high interest, coupled with refusal to accept possession would indicate speculation.*
> *(3) Purchase of multiple units, especially in double digits, shall invite greater scrutiny, though it is not conclusive. If the terms of the agreement provide for possession or refund in the event of failure to give possession alone, this factor may not be held against the allottee.*
> *(4) Special rights, preferential treatment, or unusual privileges to the allottee would signal investment intent.*
> *(5) Deviation from the RERA Model Agreement shall be a crucial indicator as to the nature of the transaction – the greater the departure, the greater the likelihood of speculation.*
> *(6) Unrealistic interest rates and promises of 20 – 25% returns over a short duration are indicative of speculation."*

13. Upon applying the aforementioned established legal principles and factual indicators to the matter at hand, this Adjudicating Authority is of the considered opinion that the Petitioner is a speculative investor rather than a *bona fide* homebuyer or allottee, owing to the following considerations:

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Sdr

Case Citation: (2026) ibclaw.in 4096 NCLT

IBC Laws | www.ibclaw.in

(a) The Petitioner is not an individual seeking a dwelling for personal use, rather a company engaged in the business of construction and infrastructure, as is evident from the filing itself (i.e., Memo of Parties and the Synopsis of the Petition). Further, there is nothing to indicate that the Petitioner acquired the units for its own occupation or use; on the contrary, the transaction was structured and conducted as an investment for return.

(b) The units in question (bearing Nos. 504 and 505, admeasuring 5090 sq. ft. on the 5th floor) are commercial units forming part of a "Multi-storeyed Complex-cum-Commercial Project," as is evident from the Developer Agreement dated 14.03.2016 and the Allotment Letter-cum-Agreement to Sell dated 12.04.2021. The commercial character of a unit does not, by itself, divest its genuine acquirer of the status of an allottee. What is decisive, as laid down in *Mansi Brar Fernandes* (supra), is the intent with which the acquisition was made, that is, whether the Petitioner sought the units for its own use and occupation, or merely as a vehicle for a return on the money invested.

A scrutiny of the material placed on record reveals a complete absence of evidence indicating that the Petitioner reserved these units for actual end

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Case Citation: (2026) ibclaw.in 4096 NCLT

IBC Laws | www.ibclaw.in

use, given that neither the pleadings nor the subsequent conduct of the party demonstrates any intent to seek or assume physical possession.

(c) Further, the Allotment Letter-cum-Agreement to Sell dated 12.04.2021 substitutes possession with a refund option where it provides that, upon the Respondent's failure to execute the sale deed on or before 31.03.2022, the consideration would be refunded together with interest at 12% per annum.

(d) It is pertinent to note that the Petitioner has neither demanded nor pressed for the handover of possession of the subject units at any point in time. Consequently, the entire relief claimed in Part IV of the application is restricted solely to the refund of the principal amount of Rs. 6,29,40,774/- along with interest accrued thereon. Thereby underscoring the nature of the claim as a purely monetary demand rather than a genuine attempt to obtain allotment or possession.

(e) In addition, upon examination of the schedule of disbursement set out in Part IV of the Petition discloses that three out of the four payment tranches were remitted in the year 2019, specifically on 24.04.2019, 13.05.2019, and 19.06.2019. This premature disbursement took place nearly two years prior to the execution of the Allotment Letter-cum-Agreement to Sell dated 12.04.2021. Such chronological sequence strongly indicates the

Case Citation: (2026) ibclaw.in 4096 NCLT

IBC Laws | www.ibclaw.in

existence of a financing or speculative investment arrangement rather than a genuine transaction for the purchase of real estate property.

14. It is pertinent to mention that the overall structure of the transaction and the conduct of the Petitioner, viewed cumulatively, is sufficient to establish beyond doubt that the primary intent of the Petitioner was to derive financial returns on its invested capital, rather than to acquire the commercial units for genuine occupation or use. Consequently, this Adjudicating Authority holds that the Petitioner is a speculative investor and not a *bona fide* allottee. As a result, the Petitioner is disentitled from claiming the benefit of the deeming fiction under the *Explanation* to Section 5(8)(f) of the Code. The underlying amount paid neither constitutes a 'Financial Debt' within the meaning of Section 5(8) nor confers upon the Petitioner the status of a 'Financial Creditor' under Section 5(7) of the Code.

15. The second issue for consideration *is whether there exists a 'default' committed by the Corporate Debtor within the meaning of Section 3(12) of the Code*. This question stands substantially concluded by our findings under Issue No.(i). A default under Section 3(12) presupposes the non-payment of a valid debt that has become due and payable, and an application under Section 7 can be founded solely upon a default in respect of a financial debt. Having held that the Petitioner is a speculative investor rather than a genuine allottee, thereby

Case Citation: (2026) ibclaw.in 4096 NCLT

IBC Laws | www.ibclaw.in

lacking status as a 'Financial Creditor' under Section 5(7), and that the underlying advance does not constitute a 'Financial Debt' under Section 5(8), the essential prerequisite for invoking the jurisdiction of this Adjudicating Authority under Section 7 is wholly absent.

16. Furthermore, addressing the third issue framed for consideration, namely *whether this Adjudicating Authority retains statutory jurisdiction under Section 7 of the Code in the absence of an underlying financial debt*, a perusal of the record confirms that such jurisdiction is entirely lacking. The statutory framework of Section 7 comes into operation only at the instance of a financial creditor upon a default in discharging a financial debt. Having determined that the Petitioner fails to qualify as a financial creditor and that no financial debt or default exists, the foundational jurisdictional prerequisite under Section 7 collapses completely.

17. It is a settled principle that the Code is neither a mechanism for the recovery of money, nor a forum for the enforcement of speculative investments. The Hon'ble Supreme Court in *Mansi Brar Fernandes v. Sudha Sharma (supra)* and *Pioneer Urban Land and Infrastructure Ltd. v. Union of India (supra)* has categorically affirmed that the remedy of a speculative investor lies not before the Adjudicating Authority under the Code, but before the authorities

Case Citation: (2026) ibclaw.in 4096 NCLT

IBC Laws | www.ibclaw.in

constituted under the Real Estate (Regulation and Development) Act, 2016, consumer courts, or civil courts.

In this context, it is useful to refer to the observations of the Hon'ble Supreme Court in *Mansi Brar Fernandes (supra)*, wherein Paragraph 21 reads as under:

> *"This Court reiterates that while investors are integral to any industry and their interests warrant protection, speculative participants driven purely by profit motives cannot be permitted to misuse the Insolvency and Bankruptcy Code, which is a remedial framework conceived for revival and the protection of sick companies and, in the case of real estate, genuine homebuyers. Such investors have alternative remedies under consumer law or RERA and even recourse to Civil Courts in appropriate cases."*

18. In view of the foregoing discussions, this Adjudicating Authority holds that the appropriate remedy for the Petitioner lies before some other statutory authority constituted under the Real Estate (Regulation and Development) Act, 2016, or a consumer court, or a competent civil court.

19. Further, the *fourth* issue raised between the parties is *whether, assuming arguendo that the Petitioner is an allottee under a real estate project, the Petition satisfies the mandatory threshold prescribed under the second proviso to Section 7(1) of the Code*. After perusing the documents placed on record, this Adjudicating Authority holds that the application remains fundamentally non-maintainable. Even if the Petitioner were granted the status of an allottee, the Petition fails to satisfy the statutory threshold prescribed by the second proviso

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Case Citation: (2026) ibclaw.in 4096 NCLT

IBC Laws | www.ibclaw.in

to Section 7(1) of the Code. The Petitioner is admittedly a single entity claiming allotment in respect of two units, whereas the second proviso mandates a joint application by either a minimum of one hundred (100) such allottees or ten per cent (10%) of the total allottees under the same real estate project, whichever is less.

20. Further, the constitutional validity and mandatory character of this threshold have been upheld by the Hon'ble Supreme Court in *Manish Kumar v. Union of India*, (2021) 5 SCC 1. Moreover, the Hon'ble NCLAT in *Raheja Developers Ltd.*, *(2023 SCC OnLine NCLAT 1404)*, as well as a coordinate Bench of the Tribunal in *Arumugam Thimmarayan & Ors. v. Ozone Projects Pvt. Ltd.*, [*(2026) ibclaw.in 1087 NCLT*], have categorically held that a solitary allottee cannot independently institute or maintain an application under Section 7 of the Code.

21. In conclusion, having answered all the issues framed hereinabove, this Adjudicating Authority holds that the present Petition must fail on every count, as it is non-maintainable irrespective of whether the Petitioner is categorized as a genuine allottee or as an investor. If the Petitioner were to be treated as a *bona fide* allottee, it would satisfy the definition of a 'Financial Creditor' under Section 5(7) of the Code, and the sum advanced would, by operation of the deeming fiction under the *Explanation* to Section 5(8)(f), take the character of

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Case Citation: (2026) ibclaw.in 4096 NCLT

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a 'Financial Debt' under Section 5(8), thereby rendering it competent in abstract terms to move an application under Section 7 of the Code. Yet, even on that premise, the Petition cannot survive, as the Petitioner stands admittedly as a solitary allottee and falls short of the mandatory threshold prescribed under the second proviso to Section 7(1), which mandates a joint application by not less than one hundred (100) allottees or ten per cent (10%) of the total allottees under the same real estate project, whichever is less.

22. Conversely, if the Petitioner is evaluated as an investor, the record demonstrates that it is a speculative investor who stands legally excluded from invoking the jurisdiction of this Adjudicating Authority. This statutory bar was authoritatively laid down by the Hon'ble Supreme Court in *Pioneer Urban Land and Infrastructure Ltd. v. Union of India (2019) 8 SCC 416*, where it was held that the provisions of the Code cannot be invoked by non-genuine or speculative investors, a principle recently reaffirmed and refined in *Mansi Brar Fernandes v. Shubha Sharma (2025 INSC 1110)*.

23. Thus, on whichever footing the Petitioner's case is placed, the Petition is fundamentally non-maintainable and is accordingly liable to be dismissed.

24. Lastly, with respect to the issue number five which deals with the question of Limitation, this Adjudicating Authority observes that the date of default is 01.04.2022, and the period of three years would expire on 01.04.2025. The

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Case Citation: (2026) ibclaw.in 4096 NCLT

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Petition having been filed on 29.03.2025, is within the period of limitation. The objection as to limitation is, accordingly, rejected.

25. The Adjudicating Authority further observes that since, the claim is not a financial debt and that the Petition is not maintainable, it is unnecessary to enter upon a final adjudication of the quantum, and those disputed questions are left open to be agitated before the appropriate forum.

26. Further, the Respondent has alleged that the Petition has been filed with mala fide intent and as a money-recovery tool, thereby attracting Section 65 of the Code. While our finding that the Petitioner is a speculative investor seeking to use the Code as a recovery mechanism lends some force to this contention, we are, in the facts of the case, not inclined to record a positive finding of fraudulent or malicious initiation so as to impose the penalty contemplated under Section 65, the Petition being otherwise liable to be dismissed on the grounds recorded above.

27. In light of the detailed discussion hereinabove, our conclusions are summarized as follows:

(a) The Petitioner is a speculative investor and not a genuine homebuyer or allottee; by virtue of which the amount paid does not constitute a 'financial debt' under Section 5(8) of the Code, and the Petitioner does not qualify as a 'Financial Creditor' under Section 5(7) of the Code;

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Case Citation: (2026) ibclaw.in 4096 NCLT

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(b) In the absence of an underlying financial debt, there exists no 'default' within the meaning of Section 3(12) of the Code;

(c) In the absence of a financial debt, this Adjudicating Authority lacks jurisdiction to entertain the Petition under Section 7 of the Code, and the appropriate forum for the Petitioner remains the authority constituted under the Real Estate (Regulation and Development) Act, 2016, consumer court, or competent civil courts;

(d) Even if the Petitioner were to be treated as an allottee, the Petition, having been instituted by a single allottee, fails to satisfy the mandatory threshold requirement under the second proviso to Section 7(1) of the Code;

(e) The preliminary objection regarding limitation stands rejected, as the Petition was instituted within three years from the alleged date of default, while disputed questions regarding the quantum of claim are left open, and no case for penal action under Section 65 of the Code is made out.

28. For the reasons aforesaid, the *Petition CP No. (IB)-39/07/JPR/2025* is held to be not maintainable and is, accordingly, **dismissed**.

29. The Adjudicating Authority, however, make it clear that the dismissal of this Petition shall not preclude the Petitioner from pursuing such remedies as may be available to it in law, whether before the authority constituted under the RERA Act, 2016, the consumer court, or the civil court, in accordance with

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Case Citation: (2026) ibclaw.in 4096 NCLT

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law. As observed by the Hon'ble Supreme Court in *Mansi Brar Fernandes (supra)*, a speculative investor, though disentitled from invoking Section 7, is not barred from pursuing its claim for the principal amount invested before the appropriate forum. All contentions on the merits are kept open.

30. The Registry is directed to consign the file to records after completing the necessary formalities.

Sd/-

REETA KOHLI
JUDICIAL MEMBER

Sd/-

KAVITA BHATNAGAR
TECHNICAL MEMBER

KT/LRA