

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT – II)**

**Item No. 5**  
(IB)-266(ND)2019

**IN THE MATTER OF:**

**Mr. R. Tarkeshwar Narayan**

...

**Applicant/Petitioner**

**Versus**

**M/s. Horizon Buildcon Pvt. Ltd.**

...

**Respondent**

**Under Section: 7 of IBC Code,2016**

**Order delivered on 08.03.2021**

**CORAM:**

**SHRI. ABNI RANJAN KUMAR SINHA,  
HON'BLE MEMBER (J)**

**SHRI. L. N. GUPTA,  
HON'BLE MEMBER (T)**

**PRESENT:**

**ORDER**

**The Order is pronounced in the open Court.**



**(L.N. GUPTA)  
MEMBER (T)**



**(ABNI RANJAN KUMAR SINHA)  
MEMBER (J)**

**NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH-II**

(IB) 266 (ND)/2019  
IA/1273/2020

**IN THE MATTER OF:**

**R. TARKESHWAR NARAYAN**

...FINANCIAL CREDITOR

**VERSUS**

**M/S HORIZON BUILDCON PVT. LTD**

...CORPORATE DEBTOR

**AND**

**IN THE MATTER OF:**

**1. SUKHDEV SINGH & ORS.**

**T2 / 1101, LOTUS BOULEVARD,  
SECTOR-100, NOIDA (U.P.) – 201301**

...APPLICANT NO. 1

**2. SATYENDRA KUMAR**

**80 / 1:9A, SECOND FLOOR,  
MALVIYA NAGAI, NEW DELHI-110017**

...APPLICANT NO. 2

**3. MANISH ARORA**

**D-1104, BPTP PARK SERENE,  
SEC 37D, NEAR RAMA GARDEN,  
GURGAON-122001**

...APPLICANT NO. 3

**4. A. K.RAGHUVANSHI**

**S-603 (GROUND FLOOR),  
JAL VAYU VIHAR, SECTOR P-4,  
GREATER NOIDA-201308**

...APPLICANT NO. 4

**5. RAJANI SINGH**

**S-603(GROUND FLOOR),  
JALVAYU VIHAR SECTOR P-4,  
GREATER NOIDA-201308**

...APPLICANT NO. 5

**6. ANJEEL KUMAR BABBAR**

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A-11(FIRST FLOOR)  
SHIIVALIK, PO MALVIYA NAGAR,  
NEW DELHI-1101017

...APPLICANT NO. 6

7. RAGHAVENDRA NADUVINAMANI  
C-504, GAYATRI APPTS.,  
PLOT NO. 9, SECTOR 9  
DWARKA, NEW DELHI-110077

...APPLICANT NO. 7

8. SANJEEV SOOD  
FLAT NO. 37, PRAYAG APARTMENT,  
VASUNDHARA ENCLAVE, DELHI 110096

...APPLICANT NO. 8

9. PANKAJ KOHLI  
A-155, SECTOR 26,  
NOIDA-201301

...APPLICANT NO. 9

10. PUNEET KOHLI  
A-155, SECTOR 26,  
NOIDA-201301

...APPLICANT NO. 10

VERSUS

SANJAY GUPTA  
(RESOLUTION PROFESSIONAL-  
HORIZON BUILDCON PRIVATE LIMITED)  
E-IOA, KAILASH COLONY, NEW DELHI-110048

...RESPONDENT

SECTION: U/S 60(5)(C) of IBC, 2016

Order delivered on: 08.03.2021

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. L. N. GUPTA (TECHNICAL)

**PRESENT: -**

Adv. Aishwarya and Adv. Akash Srivastava, Mr. Abhishek Anand, Mr. Kunal Godhwani & Mr. Mohak Sharma for Resolution Professional, Mr. Aditya Nayyar, Advocate for CoC, Mr. Prateek Kushwaha Adv. for Applicants, Adv. Mayuri Raghuvanshi for Indian Overseas Bank, Mr. Nipun Gautam, Adv. Ms. Mrinali Prasad, Ms. Nattasha Garg. Mr. Harsimran Duggal, Advocates for R-1, 2 and 7.

**ORDER**

**Per Mr. Abni Ranjan Kumar Sinha (Member Judicial)**

1. The present application is preferred under section 60(5) of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code") by a group of allottees of the real estate project namely "IRIDIA", through their authorised representative, Sukhdev Singh, (hereinafter collectively referred to as "Applicants"), against the (Respondent/Resolution Professional) of Horizon Buildcon Private Limited (Corporate Debtor) for issuing directions upon the Respondent to admit the claims submitted by the Applicants as Financial Creditors.
2. The brief facts leading to filing of the instant application are as under:
  - i. That a Collaboration Agreement dated August 28, 2012, was executed between Corporate Debtor and Kaveri Sahkari Awas Samiti Limited ("KSASL") whereby the Corporate Debtor referred to as the 'Developer' in the said Agreement, undertook the entire planning and development of multi-storied group housing residential apartments on the said Land admeasuring 23114 square metres in village Illahabans, Sector-86, Phase-II, Tehsil Dadri, District Gautam Budh Nagar, Uttar Pradesh, owned by KSASL and it was further agreed that Corporate Debtor will market 64% of the units i.e. share of Corporate Debtor and 36% of the units which are the share of KSASL, will also be



- marketed by Corporate Debtor with prior consent of KSASL (same is mentioned in clause 32 of the said agreement).
- ii. That on August 28, 2012, a Special Power of Attorney was also executed between the above parties, whereby KSASL appointed the Corporate Debtor to deal with and correspond with the concerned authorities in respect of the development of real estate project 'IRIDIA'.
  - iii. That earlier Morpheus Pro Developers Private Limited offered well-furnished flats, in their Housing Project namely "Morpheus Voiler", at Khasra Nos. 123 and 155, village Illahabans, Sector-86, Phase-II, Tehsil Dadri, District Gautam Budh Nagar, Uttar Pradesh, which was subsequently taken-over by M/s ION Buildcon Private limited, for further development and name of the said project was changed to "IRIDIA".
  - iv. That on the basis of the aforesaid arrangement, on August 29, 2001, KSASL further entered into a Joint Venture Agreement with M/S ION Buildcon Private limited, for the development of finished apartment in the project "IRIDIA" towards its share on the payment basis. That it was further agreed, the said agreement that M/s ION Buildcon Private limited will take over the physical possession of unfinished flats from Corporate Debtor, for further development as per the terms of Collaboration Agreement.
  - v. That on respective dates via letters, the Allottees/Applicants, requested the KSASL and M/s ION Buildcon Private limited, to allot a unit in the group housing complex 'IRIDIA' in lieu of the money deposited against which money receipt was given by the respective entities. It is pertinent to mention that there are few instances wherein allotment letters were issued by the



entity were not the same with whom the money was deposited or the money receipts were issued.

- vi. That KSASL and M/s ION Buildcon Private limited issued allotment letters: to the allottees/Applicants, confirming the allotments of their respective unit in the said project 'IRIDIA'. That in the said allotment it was specifically mentioned that project "IRIDIA" is being developed in association with the Corporate Debtor.
- vii. That in lieu of the application submitted by the Allottees/ Applicants in the group housing complex 'IRIDIA', the KSASL and ION Buildcon Private Limited issued demand letters to their respective allottees, for further payment wherein it was clearly mentioned in the demand letter that said project is being developed in association with Corporate Debtor and Ion Buildcon Private Limited.
- viii. That it came to the knowledge of the Applicant(s) that the name of the company, ION Buildcon Private Limited was been struck off from the Register of the Companies.
- ix. That as per the Apartment Buyer Agreement, Corporate Debtor had committed to complete the project and handover the possession by February 14, 2017. However, the project was neither completed nor the possession of the units was handed over to the Allottees.
- x. The Allottee(s) did not receive the possession of the allotted unit(s) nor the project was completed by the developer (Corporate Debtor) despite payment made as consideration for allotment of their respective units in the Residential Group Housing Project 'IRIDIA'.
- xi. That the Corporate Insolvency Resolution Process ("CIRP") was initiated against the Corporate Debtor vide order dated November 8th, 2019, of this Tribunal by the homebuyers/



allottee is in favour of whom the allotment letters were issued by the Corporate Debtor.

- xii. That pursuant of the same, the public announcement dated November 14 and 15, 2019, the Applicants duly submitted their claims to the Respondent, which were rejected via email on the following grounds:
- a. That they do not have any agreement with the Corporate Debtor.
  - b. That they have not paid any money to the Corporate Debtor.
  - c. That the Corporate Debtor does not owe any money to the Allottees/ Applicants.
- xiii. That it is further submitted that as the Corporate Debtor, collaborated for developing the project 'IRIDIA' on the land owned by KSASL, wherein Corporate Debtor was solely responsible to develop the real estate project and liable for the default in completion of the project and failure to handover the possession to the Allottee(s) in the committed period.
- xiv. That it is further submitted that as per section 5(8)(f)(ii) of the Code 'allottee' and 'real estate project' shall be defined as per clause (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (RERA)
- xv. Therefore, as per the aforementioned definitions, the Applicants in this application are under the purview of an 'allottee' as defined under RERA and the Project 'IRIDIA' being developed and marketed by Horizon Buildcon Private Limited in the 'real estate project in which the Allottees/ Applicants have been allotted units.
- xvi. That in the present set of facts, the meaning of 'promoter' as defined under RERA is crucial to understand the liability of Corporate Debtor towards the Allottee(s) regarding



completion of the project and handover possession of the completed units. **The relevant clause of section 2 of the RERA.**

- xvii. That as per sub-clause (i) & (v) of clause (zk) of section 2 of RERA, Corporate Debtor is the 'Promoter' of the project, namely 'IRIDIA'.
- xviii. That the documents executed amongst the parties clearly mention that Corporate Debtor is liable for construction, development, completion and handover of completed units to the allottee(s). Further, the amount raised from Allottees was being used for developing the said complex by Corporate Debtor (since the KSASL/Ion Buildcon Private limited, had no development rights for construction of the property 'IRIDIA'). Hence, the Applicants in this application are under the purview of an 'allottee' as defined in RERA.
- xix. That despite the aforementioned facts the respective claims of the Applicants/ allottees were rejected by the Respondent, Hence, aggrieved by the same, the Applicants are constrained to file the present application.
- xx. That the flats allotted under said project "IRIDIA" are scattered and no bifurcation as such has been done as per the respective ratios owned by KSASL and the Corporate Debtor. It is pertinent to mention that there are instances, where the First Floor of the said unit belongs to the KSASL/Ion Buildcon Private limited and the Second Floor belongs to the Corporate Debtor, therefore Resolution Applicant would be unable to come up with separate resolutions of the said project, pertaining to respective shares/ ratios in the said project as the entire project has to be taken into consideration for effective and complete resolution of the said project.





3. In the course of hearing, Ld. Counsel for the RP submitted that the claim of KSASL, on the basis of which, the present applicants have filed their claim, has already been accepted by the RP. Therefore, the RP was directed to bring on the records mentioning the facts regarding the total claims raised by the KSASL and its break up. The Respondent/Corporate Debtor has filed an affidavit in compliance of the order dt. 27.01.2021 and has made the following submissions: -

- i. That KSASL has filed its claim in Form-C dated 23.11.2019 before the erstwhile Resolution Professional by claiming an amount of Rs. 1,36,73,20,000/- basing on Collaboration Agreement dated 28.08.2012 entered into between the Corporate Debtor and KSASL.
- ii. That the claim of KSASL received by the erstwhile Resolution Professional consists of total 280 Flats, which has already been admitted by the erstwhile Resolution Professional on the basis of the supporting documents provided by KSASL along with the claim form. It is also submitted that KSASL could only allot 280 Flats out of their share. Therefore, the claim of abovementioned Applicants are covered in the claims of KSASL and therefore, the same cannot be admitted again.
- iii. That the erstwhile Resolution Professional had received claims from 12 allottees in Form CA, who are the Applicant in the present application. The details of the claims are as below:

SI No.	NAME OF CREDITOR	DATE	UNIT NO.	AMOUNT (RS.)
1.	Jagmohan Rawat	21.11.2019	R/904	39,90,348/-
2.	Sunila Rawat	21.11.2019	R/603	40,27,334/-
3.	Manish Arora	29.11.2019	R/806	32,86,917/-
4.	A.K. Raghuvanshi	28.11.2019	R/103	31,12,610/-
5.	Rajani Singh	28.11.2019	R/203	27,30,391/-

6.	Anjeel Kumar Babbar & Anju Babbar	30.11.2019	R/1103	31,31,164/-
7.	Raghavendra Naduvnamani	29.11.2019	G/802	59,86,763
8.	Sanjeev Sood	30.11.2019	R/202	30,670,18/-
9.	Pankaj Kohli	30.11.2019	R/1104	36,56,376/-
10.	Sukhdev Singh	29.11.2019	Y/605	26,58,076/-
11.	Puneet Kohli	30.11.2019	R/1103	36,56,939/-
12.	Yogesh Kumar Verma	05.03.2020	R/705	14,35,000/-

- iv. It is hereby submitted that the abovementioned unit nos. of the claimants are covered in the claim of KSASL, which has already been admitted.
- v. That pursuant to the said direction given by the Adjudicating Authority vide order dated 27.01.2021, the deponent vide emails dated 02.02.2021 has requested KSASL to provide detailed particulars of the Allottees of the units which have been allotted by KSASL and further, given a reminder vide email dated 03.02.2021. However, no reply has been received by the deponent from KSASL till now.
- vi. That on perusal of the supporting documents submitted by the allottees in respect of the claims filed, it can be seen that the allotment letters were issued by ION Buildcon Private Limited. That the allotment letters states that ION Buildcon Private Limited and KSASL, had entered into a Joint Venture Agreement for development of the residential complex. Further, it is stated in the allotment letters that M/s KSASL has entered into collaboration agreement for civil work in the ratio of 36:64 with M/s Horizon Buildcon Pvt. Ltd. and for further finishing and furnishing of the Apartments with M/s ION Buildcon Pvt.



Ltd. towards its share of Apartments on payment basis. Further, it is stated in the allotment letters that M/s ION Buildcon Pvt. Ltd. has stepped into the shoes of M/s KSASL and shall take over the physical possession of the said share of unfinished flats from M/s Horizon Buildcon Pvt. Ltd. (Corporate Debtor) as per the terms of collaboration agreement mentioned above.

vii. That the payment if any, made by the Applicants herein were made to ION Buildcon who may have some inter-se agreement with KSASL, which is not in the knowledge of the Resolution Professional. Admittedly, the liability for these payments appears to have been accepted by KSASL. That is why this dispute between the applicants and KSASL. Further, to add that Applicant herein have also stated that they are Members/Shareholders of M/s KSASL. One such letter indicating their membership is at Page No. 216 of the Application itself. It may be further noted that it indicates that there is some dispute between the Applicants herein with the KSASL of which the Applicants herein are members/shareholders which is governed by LTP Co-operative Society Act, 1965 as per the byelaws of KSASL.

4. We have heard the Ld. Counsel for the applicant as well as RP and perused the averments made in the application filed on behalf of the applicants and the additional affidavit as well as short written synopsis filed by the RP.

5. Ld. Counsel for the applicants submitted that on 28.08.2012, a Collaboration Agreement was executed between the Corporate Debtor and Kaveri Sahkari Awas Samiti Limited ( hereinafter referred as "KSASL") for development of finished apartment in the proposed Group Housing Residential Complex project (IRIDIA) towards its share on the payment basis.



6. He further submitted that as per the Apartment Buyer Agreement, Corporate Debtor had committed to complete the project and handover the possession.
7. He further submitted that the Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor vide order dated 08.11.2019 and public announcement was made in pursuant of that the applicant had submitted their claim with the respondent/RP and the same was rejected by the RP and so, the present application is filed seeking a direction to the respondent/RP to accept the claim of the applicant as Financial Creditors.
8. In course in hearing, Ld. Counsel for the applicant also referred to the agreement dated 28.08.2012 executed between Corporate Debtor and KSASL.
9. On the other hand, Ld. Counsel for the RP submitted that the KSASL has filed its claim in Form-C dated 23.11.2019 before the erstwhile Resolution Professional by claiming an amount of Rs. 1,36,73,20,000/- on the basis of Collaboration Agreement dated 28.08.2012 entered into between the Corporate Debtor and KSASL.
10. He further submitted that KSASL has submitted its claim in terms of collaboration agreement, which are quoted below: -

**Total Salable Area: 981110 Sq. Ft.**

**Total Salable Area: (Covered Area+ Calculation Area+ Super Area)**

**Total Covered Area: Land Area x 10.754 Sq. Ft. x permissible FAR/FAR Consu + med**

**Land Area: 23114 Sq. Mtrs.**

**Permissible FAR: 2.74**

**Consumed FAR: 2.749**

**Total Covered Area: (23114 x 10.764 x 2.749)= 684010 Sq. Fts.**



**Circulation + Super Area = Salable Area – Covered Area**  
**981110- 684010 = 297100 Sq. Ft.**

**Society Share as per Collaboration Agreement =353200 Sq. Ft.**

**Details of Units given to Society as per MoU dated 09.11.2013**  
**i.e. 280 units on behest of 36% units allocation against land**  
**value consideration**

<b>No. of Flats</b>	<b>Sq. Ft.</b>
66	900
34	1050
54	1150
112	1500
14	2000
<b>280 Flats</b>	

**Basic Selling Price as per Market Value= 3600/- per Sq. Ft.**  
**Charges for per Covered Car Parking= 2,00,000/-**  
**Charges for per open Car Parking= 1,15,000/-**  
**Electrical Charges per Unit= 1,15,000/-**  
**Club Membership per Unit= 50,000/-**

**As per Collaboration Agreement 36% of the total salable area**  
**given to society in lieu of land i.e. 353200 Sq. Ft. (98110 x 26%)**  
**36% of Salable Area= 353200 Sq. Ft.**  
**Area to be taken against land value of 64% to be given to M/s**  
**Horizon Buildcon Pvt. Ltd.**

11. He further submitted that the claim of KSASL in respect of 280 flats has already been admitted and that includes the name of the present applicants.

12. He further submitted that as per agreement 64% of units -share of Corporate Debtor whereas 36% of units -share of KSASL, will also be marketed by the corporate debtor at the request of KSASL.
13. He further submitted that the respondent has requested KSASL to provide the detailed particulars of allottees of units, which have been allotted to KSASL but no reply was received from them.
14. He also placed reliance upon the decision of Nikhil Mehta and Sons (HUF) Vs. AMR Infrastructure Ltd reported as CP(IB) No. 03/PB/2017 as well as Chitra Sharma and Ors. Vs. Union and India and Pioneer Urban Land and Infrastructure Limited and Anr. Vs. Union of India and Ors. reported as Writ Petition (Civil) No. 43 of 2019 and by placing reliance upon these decisions, he submitted that a financial creditor is a person to whom financial debt is owned as per Section 5(7) of the Code and the financial debt is a debt which is paid against consideration for time value of money.
15. So far as the decisions upon which the petitioners have placed reliance, it is stated that there is no dispute that the terms namely, 'Financial Creditor' and the 'Financial Debt' are clearly discussed by the Hon'ble Supreme Court as well as Hon'ble NCLAT in a series of decisions. These definitions are well settled; therefore, it is needless to refer.
16. In the light of the submissions made on behalf of the parties, when we consider the prayer of the applicant, we notice that it is an admitted fact that these applicants have made payments to KSASL and allotment letters have been issued against the FLATS, to be constructed in the area falling under the share of KSASL, after demarcation as per the terms of the agreement. Resolution Professional by filing additional affidavit also admits that KSASL has submitted a claim before him and that claim includes the claims amount of the applicants, which stands admitted.
17. Therefore, at this juncture, at first, we would like to examine the collaboration agreement on the basis of which KSASL has acquired



36% share and this agreement is at page 42 of the paper book known as Collaboration Agreement. On perusal of this agreement, we notice that as per Clause 2 of the agreement:

***“That the Developer shall undertake the design, planning, construction and development of the said land as its own cost and expenses and with its own resources but all the requisite licenses/CLU/NOCs, permissions, sanctions and approvals of all Competent Authorities like PUDA, MCA, Avas Vikas Parishad, NOIDA Authority, Revenue Authorities etc. shall be provided by the owners and thereafter, the developer will construct the said Complex on the said land as sanctioned by the competent authorities and market the 64% share of the Developer as well as of the 36% share of the owner share with his consent”.***

18. On the basis of this clause of the agreement, we find that as per the agreement the shares of Developer and owner are in the ratio of 64%:34%.
19. We further notice that as per Clause 8 of the agreement:

***“that the owner’s share and the developer’s share shall be demarcated on the approved building plan of the said complex by the parties as per mutual discussion, in such a manner that both the parties shall be allocated proportionate share and after demarcation of the area of the owner and developers parties will sale their demarcated flats”***

Which means that the respective area will be sold by the respective parties in the ratio shown in the aforementioned paras.



20. Therefore, on the basis of this agreement, we can say that the developer/Corporate Debtor and the owner as per the agreement was required to sale/allot /issue the allotment letter in respect of the area allotted to them by this agreement in the ratio of 64:36%. Of course, with the **consent of owner, the Developer** was authorized to market the share of the Owner.
21. At this juncture, we would also like to refer to the payment receipts enclosed by the applicants from page 61 to 65 of the paper book, the applicants have enclosed the membership fee as well as payment receipts, which show that the said receipts were issued by the KSASL. The RP in para 6 of his affidavit has referred the names of the creditors/applicants and the units which were allotted to them as well as amount received and further claimed that these amounts have been admitted by the RP, on the basis of claim filed by the KSASL. In other words, the amount which the applicants have claimed before the RP have already been claimed by the KSASL by filing the claim before the RP which stands admitted. Therefore, in our considered view, the same claim cannot be raised twice or by two different persons on the same ground, especially when that claim is already admitted.
22. Here in the case in hand, for the same amounts, the KSASL has already raised the claim before the RP and the same was admitted. Again the individual applicants have filed the claim before the RP. In our considered opinion, it is not permissible under the Law. Therefore, the RP has rightly rejected the claims of the applicants.
23. Hence, we find no merit in the prayer of the applicants. Accordingly, we hereby reject the prayer of the applicants.
24. However, it is made clear that at the time of making the payment to the KSASL, on the basis of their admitted claim, the RP shall deduct the amount of KSASL to the extent of admitted claim amount of these applicants and pay the said amount to these applicants directly. In other words, the RP shall ensure that the payment of that amount shall be made to the individual applicants, out of total



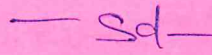


admitted claim of KSASL. Further, the Resolution Professional shall ensure that a specific provision shall be made by the Resolution Applicant in the Resolution Plan in this regard.

25. **With this order, the present application stands disposed off.**



**L.N. GUPTA**  
Member (T)



**ABNI RANJAN KUMAR SINHA**  
Member (J)