

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

**(IB) 895(ND)/2019**

**IN THE MATTER OF:**

**Smt. Kaushalaya Bansal  
W/o Late Shri Rajinder Bansal,  
Through Authorized Representative  
Deepak Kumar (Son)  
R/o Flat 3B, Tower 1, Central Park-2,  
Sohna Road, Sector-48, Gurgaon**

**...Applicant/Financial Creditor**

**Versus**

**M/s Dwarkadhis Projects Private Limited  
CIN No. U45201DL2005PTC142439  
Registered office at:-  
PD-4A, Pitampura,  
New Delhi-110088**

**...Respondent/Corporate Debtor**

**Order Delivered on: 23.08.2021**

**CORAM:**

**MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

**MR. L.N. GUPTA, MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant: Kunal Godhwani and Maya Gupta Advocates

For the Respondent: Adv. Adya Shree Dutta



**ORDER**

**AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

The present application is filed under Section 7 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the “**Code**”), for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as the ‘**CIRP**’) against the Corporate Debtor.

2. On 06.07.2021, we have heard both the parties on the limited issue of “whether the petitioner has filed the present application under Section 5(8)(f) or 5(8)(e) or as an allottee under Section 5(8)(f) Explanation (i) of IBC 2016”?

3. Since the matter was heard on this limited point, we would like to consider the submissions to that point only.

4. Both the parties have filed their written submissions and the same are referred to below.

5. The facts mentioned in the written submissions filed by the applicant/Financial Creditor in brief are as follows: -

- i. The Corporate Debtor in para 4 of its reply has admitted that the Financial Creditor paid an amount of Rs. 15,00,000/- in the year 2012. Further, the Corporate Debtor has also not denied the issuance of cancellation notice dated 29.01.2014, thereby admitting the liability towards Financial Creditor to the tune of Rs. 10,59,320/-

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- ii. That, as per the buyers agreement, the payment was linked to the construction plan and demand being raised by the Corporate Debtor was over and above the agreed terms which has been categorically mentioned at para 6 of petition.
- iii. That against the illegal demand raised by Corporate Debtor, the Applicant in April 2014 alongwith group of investors moved an application against the Corporate Debtor for unfair and illegal trade practice. It is pertinent to state herein that Applicant is a widow and her husband expired on 30.10.2016 i.e. during the pendency of case before NCDRC (Copy of death certificate is attached at page no. 157 of petition) and later on the case before NCDRC was withdrawn with a liberty to file a fresh. It is submitted that except the instant petition, no other case has been filed by the Applicant against the Corporate Debtor.
- iv. That due to the death of her husband, the Applicant was under stress and not aware of the details of the investments made by her husband on her behalf. It was on 19.06.2018, when the Corporate Debtor issued demand notice and illegally demanded money from the Applicant despite cancelling the allotment, the applicant became aware of the same and with the help of her son enquired further and after

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collecting the details filed the instant petition under Section 7 of the IBC.

- v. That it is a matter of record that the Corporate Debtor vide its cancellation notice dated 29.01.2014 had cancelled the allotment in favour of the applicant and agreed to refund the amount of Rs. 10,59,320/- to the Financial Creditor.
- vi. It is submitted that the Applicant was an allottee prior to 29.01.2014 and pursuant to cancellation of the allotment, the Applicant is no more an allottee in terms of Section 2(d) of RERA Act, 2016 which is reproduced below:

*“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;”*

- vii. Further, it is submitted that in terms of the above definition, an allottee is one in whose favour a plot / apartment or building has been allotted. The use of word ‘has been’ in the aforesaid definition clarifies beyond doubt that the allotment

should be continuing, whereas in the present case, pursuant to cancellation of allotment, the Applicant is no more an allottee.

- viii. That it is the case of Corporate Debtor that allotment was cancelled due to non-payment of alleged dues. However, if the contention of Corporate Debtor is accepted then there was no occasion to restore the allotment as no amount was paid pursuant to cancellation. Thus, letter of restoration of allotment dated 03.12.2015 is ex-facie illegal and baseless.
- ix. It is further contended, without prejudice to the above, that the unilateral restoration of allotment is ex-facie illegal and baseless. The Corporate Debtor cannot at its own terms and conditions first cancel and then, restore the allotment. It is submitted that pursuant to cancellation of allotment, the Financial Creditor never accepted or agreed for restoration of allotment of apartment in its favour. Thus, the case of the Corporate Debtor that the allotment was restored in favour of the Financial Creditor is false and baseless.
- x. During the course of argument, it was pointed out by the Corporate Debtor that the Applicant in its petition has mentioned that the Applicant is a financial creditor being



Real Estate Allottee as per explanation to Section 5(8)(f) of Code.

- xi. It is submitted that in the Petition, the Applicant has also mentioned that Applicant falls under Section 5(8)(f). Section 5(8)(f) is reproduced below:

*“(8) “financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes– (f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing; 1 [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 (16 of 2016);”*

- xii. It is submitted that the Applicant will fall under Section 5(8)(f) as the definition is inclusive and will include amount raised under any other transaction. It is very important to refer to the latest order dated 12.11.2020 passed by

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Principal Bench in the matter of Debashish Majumdar V. M-Tech Developers Private Limited, IA/2488(PB)/2019, wherein pursuant to cancellation of allotment, the Principal Bench admitted Section 7 petition and did not dismiss it on the ground of compliance of explanation to section 5(8)(f).

- xiii. Further, the Applicant has already clarified that Applicant will not fall under explanation as Applicant is not an allottee in terms of Section 2(d) of RERA.
- xiv. The Applicant has placed reliance upon the judgment passed by the Hon'ble Supreme Court in the matter of Sundaram Pillai, Etc vs V.R. Pattabiraman, 1985 SCR (2) 643, as quoted below :

***“We have now to consider as to what is the impact of the Explanation on the proviso which deals with the question of wilful default. Before, however, we embark on an enquiry into this difficult and delicate question, we must appreciate the intent, purpose and legal effect of an Explanation. It is now well settled that an Explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision...”***

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- xv. In view of the above judgment, it is clear that explanation does not restrict the applicability of the main section.
- xvi. Further, it is submitted that admission can be only on issues of fact and not on issues of law. The issue whether the Applicant is an allottee is not a question of fact and rather it is a mixed question of law and fact which has to be ascertained by this Tribunal and cannot operate as an estoppel. It is submitted that even when a party has made an admission of fact, still the courts are empowered to ask parties to prove the said fact. Reliance is placed on *Balraj Taneja. v. Sunil Madan & Anr.*, (1999) 8 SCC 396:

*"25. Thus, in spite of admission of a fact having been made by a party to the suit, the court may still require the plaintiff to prove the fact which has been admitted by the defendant. This is also in consonance with the provisions of Section 58 of the Evidence Act which provides as under:*

*"58. Facts admitted need not be proved.--No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings:*



*Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."*

xvii. It is submitted that even in case of admission of facts, the Courts may ask the opposite party to prove the fact even if it is admitted in the pleadings. Thus, assuming, the issue whether applicant is an allottee is a question of fact still it is for Corporate Debtor to prove that Applicant is an allottee, it is submitted that pursuant to cancellation of allotment the Applicant is not an allottee.

xviii. It is submitted that in real estate projects if an allotment is made to a party and later on such allotment is cancelled then, it is allotted to another party.

6. The facts mentioned in the written submissions filed by the respondent/Corporate Debtor in brief are as follows:

- i. That it is the admitted case of the Corporate Debtor before this Tribunal that in pursuant to an agreement to sell dated 10.10.2012 between the parties herein, flat no. A-1/122 in "Aravali Heights" situated at Sector 24, Dharuhera (Harayana) was allotted to the Financial Creditor. It is an undisputed fact that the Financial Creditor had paid a sum of Rs 15,00,000/- (Rupees Fifteen Lakhs Only) in the year

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2012 towards booking amount/ instalments in respect of such allotment. Hence, the Financial Creditor is an allottee under the real estate project and therefore, the Financial Creditor is hit by the order dated 30.01.2021 passed by the Hon'ble Supreme Court of India, in the matter of Manish Kumar v. Union of India in WP(c) No. 26/2020.

- ii. That the Financial Creditor has averred that she is an allottee under a Real Estate Project as per Explanation (i) to section 5(8)(f) IBC.
- iii. That the Financial Creditor has averred in its petition that it is a Financial Creditor by virtue of being an allottee under a real estate project.

**Paragraph 3 of its petition at page 4:**

“3... Hence the Applicant is a Financial Creditor being a “Real Estate Project” allottee as per explanation to Section 5(8)(f) of IBC, 2016”

**Paragraph 15 of its petition at page 7:**

“15. Now in terms of in Section 5(8) () of IBC, 2018, i.e. definition of financial debt', there exist a default on the part of the Corporate Debtor towards the 'Real Estate Allottee, and



therefore the Applicant herein, is a financial creditor... ”

- iv. That the Financial Creditor had filed a revival application dated 26.08.2019 bearing CA No. 1186/2019 in the present matter relying on the judgement dated 09.08.2019 in the matter of Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India & Ors. WP(C) No. 43/2019 which inter-alia, upheld the constitutionality of the explanation to Section 5(8)(f). Hence, it is evident that the Financial Creditor has construed itself to be an allottee under the real estate project since the very inception and had proceeded with the proceedings before the Hon'ble Tribunal with the same understanding. Therefore, the Financial Creditor cannot be allowed to take the averment that it is not an allottee under the real estate project in contradiction to its own averment.
- v. Further, the Hon'ble Tribunal had recorded in its order dated 13.01.2021 that the Ld. Counsel for the Financial Creditor had tried to mislead the Hon'ble Tribunal by submitting that the present petition had been filed under section 5(8)(e) instead of the 5(8)(f), which presents the mala fide on the part of the Financial Creditor.

- vi. That the Financial Creditor was offered possession of the allotted flat by the Corporate Debtor on various occasions.
- vii. That Corporate Debtor had sent various letters offering possession and notices dated 25.10.2013, 27.11.2013 and 20.12.2013 demanding the balance payment and when payment was not made, the Corporate Debtor was left with no other resort, but to cancel the allotment of the flat made in favour of the Financial Corporate Debtor and accordingly, vide letter dated 29.01.2014 allotment was cancelled.
- viii. That pursuant to various meetings and negotiations between the Financial Creditor and the Corporate Debtor, the allotment of the aforesaid Flat was restored in favour of the Financial Creditor vide letter dated 03.12.2015 issued by the Corporate Debtor to the Financial Creditor. The Financial Creditor is trying to mislead this Tribunal by conceding the existence of letter dated 03.12.2015 of which it is very well aware.

7. In the course of hearing, Ld. Counsel for petitioner as well as respondent has raised all the facts mentioned in the written submissions. Therefore, it is needless to repeat the arguments of the parties.



8. On the basis of the averments made in the application filed by the applicant, reply filed by the respondent, rejoinder filed by the applicant and written submissions filed by the respective parties, we notice that the claim of the Applicant is that, she is no more an "allottee" in view of the cancellation letter dated 29.01.2014 issued by the Corporate Debtor (page 56 of the petition).

9. Whereas, the claim of the respondent is that, admittedly, vide letter dated 29.01.2014, the Corporate Debtor had cancelled the allotment and directed the petitioner to produce the relevant documents and receive the payment of Rs. 10,59,320/- as per the calculation shown in that letter. But in pursuance of the various meetings held in between the petitioner as well as representative of the corporate debtor, the respondent had recalled the letter dated 29.01.2014 and restored the allotment vide letter dated 03.12.2015 (page 30 of the reply) and in support of its contention, the respondent has also enclosed the postal receipts to show that the said letter was sent on the address of the petitioner on 03.12.2015.

10. Whereas, the petitioner has denied the existence of this letter and claimed that no discussion in respect of the restoration of the allotment was made between the parties. The petitioner further claimed that, in view of the cancellation letter issued by the Corporate Debtor, the petitioner is no more an allottee but she is a financial creditor under Section 5(8)(e) or 5(8)(f) of IBC, 2016.



11. At this juncture, we would like to refer to the Part-IV of the application, the scanned copy of which is reproduced below:-

**PART-IV**

<b>PARTICULARS OF FINANCIAL DEBT</b>			<b>Financial Debt as</b>
<b>[DOCUMENT, RECORDS AND EVIDENCE OF DEFAULT]</b>			<b>explanation (i) to</b>
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	OF	section 5(8)(f)i.e.

*[Handwritten signature]*

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		<p>amount raised from an allottee under a real estate project is Rs. 15,00,000/-</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">Date</th> <th style="width: 70%;">Amount</th> </tr> </thead> <tbody> <tr> <td>10/09/2012</td> <td>8,88,841</td> </tr> <tr> <td>10/10/2012</td> <td>6,11,159</td> </tr> <tr> <td style="text-align: right;">Total</td> <td>15,00,000</td> </tr> </tbody> </table>	Date	Amount	10/09/2012	8,88,841	10/10/2012	6,11,159	Total	15,00,000
Date	Amount									
10/09/2012	8,88,841									
10/10/2012	6,11,159									
Total	15,00,000									
		<p>1. Financial Debt as explanation (i) to section 5(8)(f)i.e. amount raised from an allottee under a real estate project is Rs. 15,00,000/- Plus</p>								

*[Handwritten mark]*

2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKING FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	<p>2. Interest @ 36% from 10/10/2012 till date.</p> <p>Thus total claim amount is Rs. 49,79,671/-</p> <p><b><u>Dates of default</u></b></p> <p>1. March 2013 i.e. agreed date of delivery of flat.</p> <p>2. The allotment of the flat unit is cancelled by the corporate debtor on 29/01/2014 and admitted</p>
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		<p>amount payable to the financial creditor is Rs. 10,59,320/-.</p> <p>3. 19/06/2016 - Fresh Demand letter issued by CD for Rs. 43,30,511/- after considering the deduction of Rs. 15,00,000/- amount received from the financial creditor on various dates.</p> <p>The statement showing computation of amount of Debt, Interest claimed, Total amount of default, Date of Default &amp; Details of flat booked is enclosed as annexure -5..</p>
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12. On perusal of the Part-IV of the application, we notice that the applicant admits that the amount, she has claimed as 'financial debt' is under Explanation (i) of Section 5(8)(f) i.e. the amount raised from an allottee under a real estate project.

13. We further notice that the applicant in the column 2 of the part IV has mentioned various dates of default. But the first date of default is of March 2013 - agreed date of delivery of flat, second date of default is of 29.01.2014- when the allotment of flat is cancelled by the Corporate Debtor and admitted amount payable to the financial creditor is of Rs. 10,59,320/- and third date of default is of 19/06/2016- when fresh demand notice was issued after considering the deduction as per the amount mentioned in the cancellation letter. It is further seen that total defaulted amount as per Annexure 5 is of Rs. 49,79,671/-, which includes Rs. 1500000/-(Amount paid) + 34,79,671/-(interest on Rs.1500000/- from 10/10/2012 to 20/03/2019). Therefore, we observe that though in the course of hearing, the applicant claimed that her prayer is based on cancellation letter but she has claimed the defaulted amount and interest on that amount, prior to issuance of cancellation letter, which is based on allotment letter issued in favour of the applicant.

14. It is further seen that in the course of hearing, in view of the amendment in Section 7 of IBC and after pronouncement of judgement by the **Honorable Supreme Court in W.P. (C) 26/2020, in the matter of "Manish Kumar & Ors. V. Union Of India & Ors., on 19.01.2021**, the petitioner has taken a "U-

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Turn” and claimed that the amount which she has invested, was not financial debt under Section 5(8)(f) explanation (i) of IBC, 2016, rather it is debt either under Section 5(8)(d) or 5(8)(f) of IBC, 2016.

15. We also observe this fact that in the application, the petitioner has nowhere referred to the letter dated 03.12.2015, which the respondent is claimed to have sent to the petitioner through post.

16. At this juncture, we would like to refer to para 8 of the rejoinder and the scanned copy of the same is quoted below:-

8. It is submitted that the case of the Corporate Debtor that the allotment was restored in favor of the Financial Creditor by way of letter dated 03.12.2015 is false and baseless. It is submitted that the unilateral restoration of allotment is ex-facie illegal and baseless. The Corporate Debtor cannot at its own terms and conditions first cancel and then restore the allotment. It is submitted that pursuant to cancellation of allotment, the Financial Creditor never accepted or agreed for allotment of apartment in its favor. Thus, the case of the Corporate Debtor that the allotment was restored in favor of the Financial Creditor is false and baseless.

17. On the basis of para 8 of rejoinder, we notice that the petitioner has not denied this fact that the corporate debtor had sent a letter dated 03.12.2015.

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Smt. Kaushalaya Bansal Vs. M/s Dwarkadhis Projects Private Limited



Rather the contention of the petitioner is that the said letter was unilateral restoration of allotment, which is ex-facie illegal and baseless.

18. Now, in the light of the facts referred to above, we examine the position of law. When a person has filed an application, on the basis of payment made under the real estate project as an allottee, there are two circumstances, which arise:

- i. The petitioner claimed the amount which he has paid in lieu of the allotment letter, claiming that amount as an defaulted amount together with interest on the ground that the possession of flat was not delivered within time.***
- ii. Earlier, the petitioner was an allottee but if due to any reason, the Corporate Debtor/respondent has/had cancelled the allotment and agreed to pay the amount after the cancellation of the units.***

19. In the first circumstance, there is no dispute that the petitioner's prayer is based as an allottee under the real estate project and the amount invested by the petitioner will be treated as 'financial debt' under Section 5(8)(f) explanation (i) of IBC, 2016. Hence the amended provision of Section 7 IBC 2016 is applicable.



20. But so far as the second circumstance is concerned, admittedly, earlier, the petitioner had paid the amount, on the basis of the agreement entered into between the parties under the real estate project and the allotment letter was issued by the Corporate Debtor to the petitioner. During that period, the petitioner was admittedly an allottee under the real estate project and the amount which she has invested/paid will be treated as a financial debt under section 5(8)(f) explanation (i) of IBC, 2016.

21. But once the agreement is terminated and the allotment of unit has been cancelled by the corporate debtor and after the cancellation of unit, the Corporate Debtor has agreed to pay the certain amount, in that case, in our considered view, that amount would not come under the category of financial debt as an allottee under section 5(8)(f) explanation (i) of IBC, 2016. Rather, that amount would be treated as financial debt under Section 5(8)(f) i.e. “any amount raised under any other transactions, having commercial effect of a borrowing”.

22. In the light of the above, when we consider the case in hand, we notice that admittedly, the allotment of units have been cancelled vide letter dated 29.01.2014 as Annexure-R6 of reply (page 29 of reply) and the scanned copy of the same is reproduced below:-



**Dwarkadhish**

Date: 29/01/2014

To,  
KAUSHALYA BANSAL - AH002906  
W/O RAJINDER BANSAL,  
H. NO. 1/14

BHR COLONY  
REHWADI, RAJASTHAN,  
INDIA

Sub: CANCELLATION LETTER AND STATEMENT OF ACCOUNTS

Dear Customer(s)

We regret to inform you that inspite of three notices dated 25.10.2013, 02.12.2013 and 24.12.2013 sent to you regarding payment of outstanding dues, failing which apartment allotted to you would result in cancellation. Further, as per scrutiny of your records it reveals that you have failed to make good the defaults in the payments (Installments + applicable interest) towards your booking/ allotment of apartment in our Project "Aravaal Heights", Charuhara (Haryana).

Due to non- payment of installments and applicable interest, we are left with no other option but to cancel booking/allotment of your apartment. You shall be liable for all the costs, commission, interest and consequences pertaining to the said cancellation.

Further, the management has assumed charge, possession, control and supervision of the cancelled apartment and all your rights, interest and dues in the apartment has been relinquished and determined in all respects. Now, the Company shall be free to administer, develop and sell the same as it deems fit and appropriate.

Furthermore, in pursuance to the cancellation of the allotment of your apartment and as per our accounting record you are liable to pay/receive an amount 1059320 mentioned herein below:

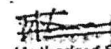
S.N	PARTICULARS	QTY (Sq. Ft.)	BSP (Per Sq. Ft.)	Amount
1	10% of BSP	1840	2395	440580
2	Add: Commission to Broker*			0
	Total			440580
3	Less: Amount Recd till date			1500000
	Net Payable/Receivable			1059320

You are requested to visit our office along with original allotment letter, agreement to sell, payment receipts and all other documents in original at Sula # 17, 2<sup>nd</sup> Floor, Ninex City Mall, Sohna Road, Gurgaon -122018 to complete all the formalities, so as to enable us to initiate process of payment and the amount which stands refundable would be refunded to you without interest after sale of the cancelled apartment.

Thanking You

Yours faithfully,

For Dwarkadhish Projects Pvt. Ltd.

  
(Authorized Signatory)  
NOTE: Subject to the terms and conditions of the agreement to sell.

DWARKADHISH PROJECTS PRIVATE LIMITED  
Corp. Off.: Sula # 17, 2<sup>nd</sup> Floor, Ninex City  
Sohna Road, Gurgaon, Haryana - 122018  
Ph: +91 124 4324022; Fax: +91 124 4014442  
E-mail: info@dwarkadhish.com; www.dwarkadhish.com

**ANNEXURE-R6**

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23. But subsequently, vide letter dated 03.12.2015, the allotment was restored (which is at page 30 of the reply) and the scanned copy of the same is reproduced overleaf :

Dated. 03.12.2015

To,  
Mrs. Kaushalya Bansal- (AH002906)  
W/o Ravinder Bansal  
H.No. 1/44, RHB Colony,  
Bhiwadi, Rajasthan- India  
Mob:- 9636684518

Dear Customer,

This is with reference to the discussion which took place in various meetings held in our office, during discussions you agreed to make payment of all pending installments with applicable interest and requested our company to hold cancellation of your Apartment No. A-1/122 "Aravalli Heights" at Sector-24, Dharuhera (Haryana) which was cancelled vide our letter dated 29.01.2014 due to non-payment of installments.

Please be informed that we have restored your above mentioned apartment. You are therefore requested to make the payment of entire outstanding dues along with interest and thereafter execute the conveyance deed at Sub Tehsil Dharuhera and take the possession of your apartment.

In view of the above, our cancellation letters stands withdrawn and you are no longer required to submit the original booking documents retained by you and hence the balance net amount as mentioned in our letter dated 29.01.2014 will not be refunded. you are requested to honor your commitment and make payment of entire pending dues along with interest at the earliest.

For Dwarkadhis Projects Pvt. Ltd.

(Authorized Signatory)



24. That the letter was sent on the address of the petitioner on the same day through post.
25. Therefore, we are unable to accept the contention of the petitioner that the allotment which was earlier cancelled vide letter dated 29.01.2014 was not restored vide letter dated 03.12.2015.
26. Since, it is mentioned in the letter dated 03.12.2015, it was issued after the discussion with the petitioner, we are unable to accept the contention of the petitioner that it was unilaterally issued by the respondent.

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27. For the reasons discussed above, in our considered view, the petitioner after issuance of the letter dated 03.12.2015 has again become an allottee and the amount invested by her will be treated as financial debt under Section 5(8)(f) explanation (i) of IBC, 2016. And that is the reason the petitioner has claimed the defaulted amount of Rs. 49,79,671/- which includes Rs. 1500000/(Amount paid)+ 34, 79,671/(interest on Rs. 1500000 from 10/10/2012 to 20/03/2019), as it is apparent from the Part-IV of her application.

28. So, under such circumstances, we have no option but to hold that the petitioner is an “allottee” under the real estate project and the amount invested by her will be treated as the financial debt under Section 5(8)(f) Explanation (i) under the real estate project.

29. Accordingly, we hold that the Petitioner is an “allottee” under the real estate project and the amount invested by her will be treated as the financial debt under Section 5(8)(f) Explanation (i) under the real estate project.

30. List the matter on 31.08.2021



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



A handwritten signature in black ink, appearing to be 'Abni Ranjan Kumar Sinha', is written over a pink rectangular redaction box.

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