THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

CP (IB) No.107/Chd/CHD/2021

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

In the matter of:

1. **Nitin Kalra, S/o Sh. Harbhagwan Kalra,**
   having its residence at
   Flat No.2337, Goodwill Enclave,
   Sector-47, Chandigarh – 160011

2. **Suresh Kumar, S/o Sh. Hardeva Ram,**
   having its residence at
   2600, Phase-11, SAS Nagar,
   Mohali – 160062 …Petitioners-Financial Creditors

Versus

M/s Sanskriti Golden Oak Real Estate Private Limited
having its registered office at
House No.639, Sector 11-B,
Chandigarh - 160011 …Respondent-Corporate Debtor

Judgment delivered on: 21.12.2021

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present through video-conferencing:

For the Petitioners/Financial Creditors : 1. Mr. Harsh Garg, Advocate
2. Mr. Pulkit Goyal, Advocate

For the Respondent/Corporate Debtor : Mr. Varinder Chhibbar, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **'IBC'/'Code'**) read with

Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 **('Rules')** by Nitin Kalra and Suresh Kumar **(**hereinafter referred to as **'Petitioners/Financial Creditors'**) to initiate the Corporate Insolvency Resolution Process (**'CIRP'**) against M/s Sanskriti Golden Oak Real Estate Private Limited (hereinafter referred to as **'Respondent/Corporate Debtor'**). The petition is signed by Mr. Nitin Kalra and Suresh Kumar and the affidavits verifying the contents of the application is from pages 25 to 28 of the petition.

2. The master data of the Corporate Debtor is stated to be filed as Annexure-I/2 of the application. The Corporate Debtor is stated to be incorporated on 15.03.2012 and is a real estate company having its registered address at House No.639, Sector 11-B, Chandigarh. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. The facts of the case as briefly stated in the petition are that the Petitioner No.1 has been allotted two plots, the first one bearing No.HPE-R3-A106 amounting to ₹67,50,000/- (Sixty Seven Lakhs Fifty Thousand Only) and second one bearing No.HPE-RE-A105 for amounting to ₹62,50,000/- (Sixty Two Lakhs Fifty Thousand Only) and the Petitioner No.2 has been allotted a flat measuring 2100 square feet on the third floor in the plot bearing No.HPE-PE-A103 for a consideration of ₹52,00,000/- (Fifty Two Lakhs) in the project of Corporate Debtor situated at DLF Hyde Park, Mullanpur, New Chandigarh. The petitioners have executed two separate agreements both dated 17.01.2018 and dated 10.12.2014 for the aforesaid property and the same are attached as Annexure A-I/4 and I/7, respectively of the petition. It is also stated that petitioner No.1 has cleared all his dues towards his investment/plot in the project of Corporate Debtor and the Petitioner No.2 has paid ₹26,00,000/- (Twenty Six Lakhs Only) for his allotted flat. As per the

agreement dated 17.01.2018, the Corporate Debtor had to deliver the possession of plots on 16.04.2018 but the same was not handed over to the petitioners. The petitioner No.1 has also got his presence marked by way of affidavit before Executive Magistrate pertaining to the execution of sale deeds. The aforesaid affidavit is attached at Annexure-I/5 of the petition. The date for delivering the possession of flat to Petitioner No. 2 as per agreement dated 10.12.2014 is stated to be 31.12.2019, but the same has not been delivered to him.

4. It is further submitted that petitioner No.1 has issued a letter dated 27.07.2018 requesting the directors of the Corporate Debtor to hand over the aforesaid plots or to refund the amount along with interest. The Corporate Debtor has duly replied vide letter dated 30.07.2018 wherein it was assured to the petitioner No.1 that the plots will be registered in their name and the possession will be delivered on or before 31.12.2018. Petitioner No.2 has also communicated to directors of corporate debtor vide letters dated 09.12.2016, 16.05.2018 and 06.01.2020 requesting to construct the flat or to refund the amount. The aforesaid letters dated 09.12.2016, 16.05.2018 and 06.01.2020 are attached as Annexure-I/8, I/9 and I/10. The copy of the brochure with regard to the advertisement of the plots in the aforesaid project circulated by the Corporate Debtor is attached as Annexure-I/11.

5. In Part-III of Form No.1, Mr. Navneet Kakkar, Registration No. IBBI/IPA-001/IP-P01731/2019-2020/12765 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 28.02.2021 along with the Certificate of Registration issued by the Indian Institute of Insolvency Professionals of ICAI and the certificate of IBBI issued in favour of Mr. Navneet Kakkar are attached at Annexure-II of the petition.

6. It is stated in Part-IV of Form No.1 that the petitioner No.1 has made payment of ₹1,30,00,000/- (One Crore Thirty Lakhs Only) and petitioner No.2 has paid ₹26,00,000/- (Twenty Six Lakhs Only). The total amount claimed to be in default is ₹3,57,97,229.60/- as on 31.01.2021 (including interest @24% per annum) being residential plot buyers in the project of Corporate Debtor. A copy of the interest calculation sheet has also been attached as Annexure-I/3 of the petition.

7. When the matter was listed on 07.07.2021, the Petitioners-Financial Creditors have been asked to submit documents showing the eligibility criteria to file the petition under the category of home-buyers. The petitioners have filed an compliance affidavit vide Diary No.00462/2 dated 16.11.2021 wherein it has been stated that the petitioners are the allottees of seven(7) flats spread over three(3) plots in the project of the Corporate Debtor. There are twelve(12) plots of land which includes 36 total number of flats. In view of the judgement of the Hon'ble Supreme Court of India in ***Manish Kumar Vs. Union of India (UOI) and Ors. Writ Petition (C) No.26 of 2020 dated 19.01.2021***, the petitioners being more than 10% of Home Buyers are eligible to file the present petition under Section 7 of the IBC, 2016. The table showing the eligibility criteria of the petitioners along with brochure of the project of the Corporate Debtor are attached as Annexure A-1 and A-2 of the aforesaid affidavit.

8. On 24.11.2021, Mr. Varinder Chhibbar, Advocate appeared on behalf of the Corporate Debtor and filed reply vide Diary No.00462/3 dated 23.11.2021.

9. The respondent-Corporate Debtor has submitted that the Company has been experiencing severe financial crisis owing to losses. The Corporate Debtor has no objection, if the present petition is admitted.

10. We have heard the learned counsels for the petitioner and the respondent-corporate debtor and have also perused the record carefully.

11. Section 7(5)(a) of the Code is as follows:-

> *"5) Where the Adjudicating Authority is satisfied that—*
>
> *(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application."*

12. In the present case, the occurrence of default is evidenced by the copy of Agreement to Sell dated 17.01.2018 executed between the corporate debtor and the petitioner no.1 along with copy of receipts and Agreement to Sell dated 10.12.2014, executed with the petitioner No.2 and the same are attached as Annexure-I/4 and Annexure-I/7 respectively of the petition. The petitioners have made various communications vide a letter dated 27.07.2018, 09.12.2016, 16.05.2018, 06.01.2020 wherein Corporate Debtor was requested time and again to handover the possession of the plots/flat to the petitioners. The brochure of the project floated by the corporate debtor is attached as Annexure-I/11 of the application. The respondent-corporate debtor has also filed a reply wherein it has been stated that the default mentioned in the petition is due towards the petitioner for not providing of the possession of the plots/flat.

13. The other issue for consideration is whether present application is filed within limitation. It can be seen from the records that corporate debtor had to deliver possession of the plots to petitioner no.1 on or before

16.04.2018. The petitioner no.1 has also got his presence marked before Sub-Registrar for the execution of sale deed. The petitioner no.1 has issued a letter dated 27.07.2018 requesting the corporate debtor to handover the possession of the plot nos. HPE-PEA106 & HPE-PEA105 and the directors of the corporate debtor assured that same will be handed over on or before 31.12.2018. The petitioner no.2 has also issued various letters dated 09.12.2016, 16.05.2018 and 06.01.2020 for the construction of flat and assurance has been given to the petitioner no.2 that the possession of the completed flat will be given but Corporate Debtor failed to fulfil its commitment. Therefore, the present petition is filed within limitation.

14. The another issue for consideration is whether the present petition is maintainable. As per Section 7 of IBC which is reproduced below :-

> *"Section 7 Initiation of corporate insolvency resolution process by financial creditor.*
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> *(1) A financial creditor either by itself or jointly with [1][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.*
>
> *[2][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 per cent. of the total number of such allottees under the same real estate project, whichever is less:*
>
> *Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the*

Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.]

Explanation.--For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor. "

The petitioner has filed a compliance affidavit vide a diary no. 00462/2 dated 16.11.2021 wherein it has been stated that total number of plots in the project of corporate debtor is 12 plots which is further divided into 36 flats. The petitioner no.1 is having two whole plots bearing no. HPE-PEA106 & HPE-PEA105 and the petitioner no.2 is having a flat in the plot no. HPE-PEA103. Therefore, the requirement of having 10% of the allotment in the project is satisfied. The application filed in the prescribed Form No.1 is found to be complete.

15. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

"(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.

(e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period.

(f) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

(g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be."

16. The Law Research Associate of this Tribunal has checked the credentials of Mr. Navneet Kakkar and there is nothing adverse against him. In view of the above, we appoint Mr. Navneet Kakkar, Registration No. IBBI/IPA-001/IP-P01731/2019-2020/12765, R/o SCO-145, 2nd Floor, Sector 28-D, Chandigarh, Email: kakkarchd@rediffmail.com, Mobile No. 9855018710 as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

17. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filling the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

18. The Financial Creditor is directed to deposit an amount of ₹2,00,000/- (Rupees Two Lakhs) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the Operational Creditor to be recovered as the CIRP cost.

19. A copy of order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy

of this order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

December 21st, 2021
AV/SA