



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI PRINCIPAL BENCH

CP(IB)/288(PB)/2019

IA/4163(PB)/2021

IA/3422(PB)/2022

IA/3534(PB)/2022

IA/499(PB)/2023

IN THE MATTER OF:

Mr. Ajit Shrivastava & Ors.

....Financial Creditors/Applicants

VERSUS

M/s Gayatri Hospitality and
Realcon Limited

....Corporate Debtor/Respondent

Having office at:

9/5298, Old Seelampur, Gandhi Nagar,
Delhi-110031

Also at:

Plot No. GH-11, Sector 1, Greater Noida (West),
Gautam Budh Nagar (U.P.)

u/s 7 of the Insolvency & Bankruptcy Code, 2016

Order delivered on **04.03.2024**

CORAM:

CHIEF JUSTICE (Retd.) RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SH. AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)



(HEARING THROUGH PHYSICAL MODE & VC)

PRESENT:

For the Petitioner : Adv. Aishvary Vikram, Adv. Vikash C. Shukla
For the Respondent : Sr. Adv. P. Nagesh, Adv. Ashish Chaudhary,
Adv. Abhishek Arora
For the Applicant : Adv. Gaurav Malik
(3534/2022)
Advocate Commissioner : Adv. Abhishek Anand

ORDER

1. This is an Application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 by Applicants (FCs) who are allottees under the real estate project i.e. 'Gayatri Aura' being developed by **M/s Gayatri Hospitality & Realcon Limited** (hereinafter referred to as 'Corporate Debtor' to initiate Corporate Insolvency Resolution Process against Corporate Debtor (CD). The total amount of debt due is **Rs. 1,03,55,225** (Rupees one crore three lakh Fifty Five Thousand two Hundred and Twenty Five only/-)
2. The Corporate Debtor ('CD') was incorporated on **07.07.2010** under the Companies Act, 1956 having CIN: **U70101DL2010PLC05416**. The Authorized Share capital of CD is Rs 1,00,00,000/- and its paid-up share capital is **Rs. 67,88,400/-**. The CD has been allotted a plot measuring 71530.40 sq. meter for developing the plot no. GH-11, Sector 01 in the name of project 'Gayatri Aura' wherein CD was empowered by a lease agreement with Greater Noida Industrial Development Authority to develop the allotted plot and build a group housing society for the prospective buyers.

BRIEF SUBMISSIONS OF LEARNED COUNSEL APPEARING FOR THE APPLICANTS ARE AS FOLLOWS:

3. In the present Application, Applicant Nos. 1 to 8 have paid an aggregate amount of **Rs. 1,03,55,225/-** as consideration for allotment of units to the respective allottees in the project 'Gayatri Aura' in terms of the agreement between CD with each Applicant. Working for computation of amount and days of default in tabular form has been annexed as



Annexure III. It is submitted by the Applicants that the CD has been charging interest at 24% per annum from the Applicants as per clause 11 of BBA (Builder Buyer Agreement) in case of delay in disbursement.

4. It is contended by the Applicants that they are entitled for refund with interest at the same rate in terms of section 2 (za) (i) of RERA (Real Estate Regulation and Development Act, 2016). The dates on which the Applicants disbursed such amount has been given in the main application from page number 36 to 42. Applicants submitted that despite such disbursement, the CD failed to deliver possession of the said units to the Applicants till date which is in contravention of the respective agreements.
5. It is further submitted that the complaint has also been filed by association of homebuyers M/s Gayatri Aura Social Welfare Association against the CD M/s Gayatri Hospitality and Realcon Limited and Greater NOIDA authority in RERA for cancellation of registration of promoter of CD in view of continued violation of UP Apartment Act 2010 and for appointment of another developer in consultation with the State Government and association of homebuyers.
6. Applicant in its written submissions dated **03.01.2024** have further stated that before **(sic) (against)** the date of entry that is 8/7/ 2022, CD had updated on RERA website that only five 2 BHK and only seven 3 BHK flats have been booked. Therefore, the petition fulfills the statutory threshold. The Applicants submitted that even otherwise at present before the admission of the petition there are total of 107 homebuyers as Petitioners. The homebuyers have filed 3 impleadment applications based on the disclosure of total number of allotment made by the CD from time to time. The details of the impleadment applications and number of homebuyers are given below:

The details of the impleadment applications and number of homebuyers are as under:-

Sno.	Particulars	Number Of Allottees
1.	Petition being IB-288(PB) of 2019	8
2.	I.A. No. 4163 of 2021	52
3.	I.A. No. 3422 of 2022	22
4.	I.A. No. 499 of 2023	25
The total number of allottees are		107

7. Applicants submitted that the default committed by the CD is due to non-completion of project in time as per **clause 16** of BBA. The CD was required to complete the project within 40 months from the date of



allotment letter with the grace period of 6 months. Applicants further submitted that CD has also failed to justify why it assured the construction of project in 40 + 6 months to all the homebuyers when as per its own admission it was aware since 2011 that it does not have physical possession of vacant land.

8. Applicants submitted that the project is substantially incomplete. It is also borne out as per the Architect Certificate submitted by the CD with RERA Authorities that the project is incomplete and substantial work is still pending. Architect Report dated **31.12.2021** is annexed as **Annexure A-2 at page 23, volume I- Affidavit dated 13.04.2022**. On 14.03.2023, the CD submitted that the flat could be delivered by January 2024 which was doubted by the Applicants. Only two towers are complete out of 10 + 1 towers which shows the fraud the CD played on this honorable court.
9. Applicants submitted that on 12/7/23, Hon'ble NCLT after hearing the arguments, on a proposal made by CD directed that discussion be done between the Applicants and the CD to explore an amicable settlement. On 24/7/23, the Applicant homebuyers held an internal meeting and unanimously rejected the proposal of the CD. On 26/7/23, on a proposal made by CD to conduct a meeting between the CD and all the homebuyers, NCLT directed to hold the meeting and appointed an Advocate Commissioner to evolve a viable solution. Against the order dated 26.07.2023, Applicants filed an appeal before Hon'ble NCLAT and Hon'ble NCLAT on **14.08.2023** while disposing of the appeal stated that:
"4. In the facts of the present case, we are of the view that in view of the fact that the meeting is going to take place before the next date fixed before the Adjudicating Authority, we see no reason to interfere with the order. We, however, make it clear that the outcome of the meeting as submitted before the Adjudicating Authority shall be for the consideration of the Adjudicating Authority to take an appropriate decision in accordance with law. We further make it clear that the outcome of the meeting shall be without prejudice to rights of the Appellant."
10. Applicants contended that the debt owed to Applicants is of Rs. 14,78,67,918 and debt is also owed by CD to many other homebuyers. Only two out of 11 towers are complete and the promoter of the CD has 17 FIRs pending against them and criminal proceedings are on-going and that the CD had made several false statements regarding the completion



of project before several authorities. CD has unilaterally modified the list of Allottees despite submitting the list of allottees earlier before this hon'ble NCLT. The CD has even attempted to hijack the whole voting process on the CD's proposal by dummy voting. The CD has on several occasion resisted in assisting the learned local commissioner in doing a complete verification of the allottees on one excuse or the other. Therefore, it is clear that debt is admitted, the default is real and the Applicant homebuyers fulfill the requirement. The conduct of CD is to play fraud on court and hence Applicant pray that insolvency process be initiated against the CD

BRIEF REPLY AND WRITTEN SUBMISSIONS FILED ON BEHALF OF THE CORPORATE DEBTOR ARE AS FOLLOWS:

- 11.** CD vide its reply dated **15.02.2022** and written submissions dated **04.12.2023** submitted that section 7 petition is non maintainable and deserves to be dismissed as no date of default has been mentioned in the application.
- 12.** CD further submits that this application is not maintainable as it fails to meet the criteria provided under proviso Section 7(1). CD states that on date of filing of present company petition i.e. 11.1.2019, the total number of residential units that were allotted by CD in the project were 888 units, but Section 7 application was initially filed by 8 applicants. All the applicants are themselves defaulters. Despite multiple reminders by CD, no payment what so ever was made by applicants towards the remaining amount for the flat and consequently their allotment of residential apartment had already been cancelled. CD further submitted that as on **18.11.2022**, total number of allottees in the project is **1124**. The screenshots from the UPRERA website also show that the total number of allotments made by the CD till date is 1124. From page 6 to 13 of the written submissions dated **04.12.2023**, CD has provided a list of applicants who ceased to be allottee even before filing of section 7 application.
- 13.** CD further submitted that on 26/7 2013, Hon'ble NCLT was pleased to direct the CD to have a meeting with all the 1124 homebuyers in the presence of counsel for petitioners/Applicants and CD and a Court Commissioner was appointed to chair the meeting. Accordingly, meetings were held between the CD and the homeuyers. Notice where in CD made the proposal (extracted later in this order) is annexed as Annexure 40



volume 3 of additional affidavit filed on **01.12.2023**.

14. Construction schedule as proposed by CD is as follows (page number 16 of written submission):

024.02.07/18/02
PPoE
Promoter has extended personal guarantee and corporate guarantee to secure financial closure and has secured financial assistance from SWAMIH Investment Fund I

Construction Schedule:

Tower	Planned Completion Timeline from Zero
A	6 Month
B	6 Month
C	36 Month
D	36 Month
E	9-12 Month
F	9-12 Month
G	36 Month
H	36 Month
I	36 Month
J	36 Month
Studio	36 Month
Amenities	36 Month

15. CD further submitted that substantial construction has taken place in the project specially after induction of co-promoter i.e. **M/s Floral Homes private limited**. Further 58 allottees have taken possession in tower A and B. Further, tower E and F are on the verge of completion and will take another 9 to 12 months for the same. CD contended that CD has in fact applied for Occupancy Certificate for both Towers A and B and is still pending approval.

ANALYSIS AND FINDINGS

16. On perusal of the documents it is found that the Corporate Debtor has entered into a joint venture with **M/s Floral Homes** and it has been added as a co-promoter/co-developer of the project in question. For this, CD has submitted an additional affidavit filed on **1st December, 2023**. It is pertinent to mention that Floral Homes has a real estate experience of more than 25 years. Further CD in its Written Submissions dated **04.12.2023** stated that on 20.06.2023 **SWAMIH** Investment Fund has accorded final approval to invest amount of Rs.300 Crores along-with additional capital of 67 crores. Relevant portion of the Sanction letter of



SWAMIH Fund and final approval is annexed as **Annexure R-33 and R-32 in Affidavit dated 01.12.2023**. Same are extracted below:

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SWAMIH INVESTMENT FUND I

(Sponsor: Government of India | Investment Manager: SBICAP Ventures Ltd.)

Date: 20th June 2023

ANNEXURE R-33

To,
Mr. Sandeep Batra
Floral Homes Private Limited
647, Ground Floor,
West Guru Angad Nagar, Delhi East,
Delhi DL 110092.

Sub: Sanction of Investment by way of subscription to Non-Convertible Debentures ("NCDs")

This is with reference to your request for seeking investment for funding of all towers part of Apex Aura (Erstwhile Gayatri Aura), Sector 1, Greater Noida ("Project").

We are pleased to advise that Investment Committee of SWAMIH Investment Fund – I ("Fund") has accorded a final approval to invest up to **Rs 300.0 Cr** and an additional amount of up to **Rs 67.0 Cr** ("**Additional Investment Amount**") by way of subscription to NCDs proposed to be issued by Floral Homes Private Limited ("**Company**") executing the project. The Additional Investment Amount shall be made available, only later, on the basis of incremental internal approvals of the Fund after a review of progress in the Project and solely at the discretion of the Fund.

The investment proceeds shall be used solely for completion of the Project. The subscription to NCDs shall be subject to compliance of stipulated condition precedents and execution of the transaction documents as contemplated by the Fund. A non-exhaustive list of the key terms of the proposed investment are as provided in **Annexure 1**.

Nothing in this letter or its enclosure constitutes a commitment by the Fund to provide any financing. Provision of any financing shall be subject to receipt of all approvals / NOCs of other relevant financing parties / subscribers (including any necessary credit, legal, tax or regulatory approvals), legal documentation, stamping, registrations, and satisfaction of conditions precedent and will be at the sole discretion of the Fund.

The terms provided herein are strictly confidential, for the sole use of the recipient and the information contained herein should not be disclosed, disseminated, or reproduced in whole or in part to any other party outside of the intended purpose.

Regards,

Suresh Kozhikote
MD& CEO – SBICAP Ventures Limited



Email of final approval dated **20.06.2023** is extracted below:

ANNEXURE R-32



Ravi Shankar <ravi.tiwari32@gmail.com>

Apex Aura - Floral Homes Private Limited - Final HOT

1 message

Adwait Kasbekar <Adwait.Kasbekar@sbicapventures.com>

Tue, Jun 20, 2023 at 6:19 PM

To: Sandeep Batra <sanbatra19@gmail.com>, Sagar Batra <batra.sagar@yahoo.in>

Cc: Ravi Shankar <ravi.tiwari32@gmail.com>, Nikhil Kejriwal <Nikhil.Kejriwal@sbicapventures.com>, Yashni Parikh <Yashni.Parikh@sbicapventures.com>

Dear Mr. Batra,

As per the final approval accorded by our Investment committee for making investment in Floral Homes Private Limited for development and completion of Apex Aura project, attached is the final sanction letter for your perusal.

Kindly provide your confirmation with signed copy scanned and sent across to us.

17. Looking at the interest of various homebuyers, various orders have been passed by this Adjudicating Authority. One such order was order dated **14.03.2023**, relevant part of which is extracted below:



ORDER

IA-4163/2021, IA-3422/2022 and IA-499/2023.

Heard, Ld. Counsel Mr. Gaurav Malik for the Homebuyers, who have filed three impleading application Nos. IA-4163/2021, IA-3422/2022 and IA-499/2023.

It is stated that these Homebuyers are spread over 10 towers and it is the plea of Ld. Sr. Counsel Mr. P. Nagesh on behalf of respondent that the projects implementation is going at a good pace post-COVID and the target is to deliver their flats by January 2024.

On the contrary, the homebuyer states that the pace at which the units are being built would result in delay in handing

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over the possession and there is a clear case of inability to perform and therefore, CIRP should be initiated.

In this case, we consider the grievance of not only the 107 homebuyers but also the total number of 1124 homebuyers, to whom the Corporate Debtor has to deliver the housing project.

The initiation of the CIRP process may cause a repelling effect on various stakeholders. In order to assess the present status of the project, we are inclined to appoint Mr. Abhishek Anand, Advocate as an Advocate Commissioner to inspect the 10+1 tower project promoted by the Corporate Debtor. The Advocate Commissioner will be entitled to look into all the records of the Corporate Debtor without any restraint and give a report as to whether the manner in which the project is being implemented is conducive for allotment to the Home buyers or it is a sham.

After considering the detailed report of the Advocate Commissioner, we will take up the issue on the present batch of Homebuyers.



The time given to the Advocate Commissioner to file the report is on or before 11.04.2023. The Advocate Commissioner is entitled to take the assistance of junior associates and the remuneration will be paid by the Corporate Debtor, after the report is filed.

List the matter again **on 11.04.2023.**

- 18.** Pursuant to the appointment of Advocate commissioner vide Order dated **14.03.2023**, the Advocate Commissioner took up the responsibility and has filed 03 reports. First report is dated 10.04.2023; 2nd report is dated 7.10.2023 and the 3rd report is dated 29.10.2023. All the reports are taken on file and have been shared with all the respective parties.
- 19.** On **26.07.2023**, Hon'ble NCLT was pleased to direct CD to have meeting with 1124 home buyers and a Court Commissioner was appointed to chair the meeting. Order dated **26.7.2023** is extracted below:

ORDER

IA-4163/2021, IA-3422/2022, IA-3534/2022, IA-499/2023

Mr. P. Nagesh, Ld. Sr. Counsel appeared on behalf of the Corporate Debtor and stated that he had a meeting with the applicant home buyers and Ld. Counsel for the Applicant and he placed a proposal before them of either handing over to them the possession of the units in tower A, B & E which are likely to be completed within 6 months' time or repay the principal amount plus interest at the Bank's FD interest rate. However, there was no meeting of minds with the applicant home buyers. Mr. Vikram, Ld. Counsel for the Applicant pleaded that the main issue before the home buyers as of now is that several proceedings are going on before RERA as well as Consumer Court and if the company is put under insolvency, then on account of moratorium, such proceedings will be held in abeyance. Mr. Nagesh gave a subsequent proposal that he can reach out to all the 1124 home buyers and have another round of

meeting with them in which the Court may consider deputing earlier Advocate Commissioner so that the meeting can be conducted to evolve a viable solution. In view of the above, we allow the Corporate Debtor to have a meeting with all the 1124 home buyers in the project alongwith Mr. Vikram, Adv. and Mr. P. Nagesh, Sr. Adv. who will be present in the said meeting. We also direct the Advocate Commissioner, Mr. Abhishek Anand to chair the meeting and evolve a viable solution. The said meeting to be held on or before 10.08.2023.

List the matter on 22.08.2023.



The aforesaid order was challenged by applicants before NCLAT and NCLAT upheld the order passed by this Adjudicating Authority.

- 20.** During the course of proceedings, Ld. Sr. Counsel Mr. P. Nagesh for the Respondent/CD sought time to submit a proper proposal for resolution of the matter. Pursuant to various meetings held between CD and Homebuyers, a detailed proposal by CD was put forward for e-voting in September 2023 wherein **746 out of total 1124** allottees participated and an overwhelming majority of 604 allottees (81%) purportedly voted in favour of Resolution offered by the Corporate Debtor and approved the same. Advocate Commissioner also filed a report dated **07.10.2023** before this Adjudicating Authority bringing on record the e-voting result which is annexed as **Annexure R-25 (Report of Advocate Commissioner dated 7.10.2023)**. This report of the Advocate Commissioner has been disputed by petitioners stating that the e-voting results are not reliable as a lot of dummy voting was resorted to by the CD.
- 21.** Pursuant to the report of Advocate Commissioner, this Adjudicating Authority has passed an order on **09.10.2023** which is extracted below:

ORDER

Detailed Report in 2 Volumes has been filed by Mr. Abhishek Anand, Advocate Commissioner. It also includes the voting of the meeting of the participating allottees.

However, there is one issue that needs to be clarified by the Advocate Commissioner as to the genuineness of the participating allottees. He seeks a short time to give his verification report for which the CD will give full co-operation in all respects.

The Remuneration for conducting the meeting and giving the Report shall be Rs. 5,00,000/-, and the same will be paid by the Corporate Debtor forthwith.

List the matter again **on 30.10.2023** for a physical hearing, no further adjournment should be granted.

sd/

In compliance of the abovementioned order, Advocate Commissioner filed its verification report dated **29.10.2023 in which following points are raised:**



19. In view of the above, the representatives brought files/ documents pertaining to only 397 allottees/ homebuyers on 25.10.2023 which were thoroughly verified by the Undersigned along with his team from 10:30 AM to 8:30 PM.

20. In view of the above, the Undersigned received a total number of 546 files from the office of the Corporate Debtor out of total 746 allottees who casted their votes in the e-voting process (as per the Undersigned 1124 files should have been brought). The summary of the same is tabulated below for the convenience of this Hon'ble Adjudicating Authority:-

TOTAL ALLOTTEES WHO PARTICIPATED IN E-VOTING PROCESS	FILES VERIFIED BY UNDERSIGNED	FILES NOT BROUGHT BY THE CORPORATE DEBTR
746	501	245

21. The observations of the Advocate Commissioner/ Undersigned with respect to the verification of documents of all the 746 allottees is tabulated below for the convenience of this Hon'ble Adjudicating Authority:

22. It is further submitted that the Undersigned after completing the entire verification process, proceeded to obtain photocopies of the following documents which were proposed to be attached as samples along with the present report, however, the Authorised Representative of the Corporate Debtor categorically **refused** to allow the Undersigned to obtain photocopies of the said documents:

- *Application Form;*
- *Allotment Letter;*
- *Payment Receipts;*
- *Ledger Account;*
- *Cancellation letter, if any.*



On the issue of casting of votes, Advocate Commissioner in its report stated as follows:

36. Hence, the casting of the votes by the allottees as elaborated above from common IP addresses also raises question of whether such Allottees have casted his own vote and or some proxy has casted such vote. It has also been noticed by the Undersigned that Email Id'S of various allottees/ homebuyers have been changed by the Corporate Debtor in the list supplied to the Undersigned on 28.08.2023 whereas the email ids of various allottees/ homebuyers as per the documents maintained in the respective files of the said allottees is different.

37. It is further submitted that a total number of 95 units have been shown to be allotted to a single allottee by the name of Avadesh Agarwal in whose favour only allotment letters have been issued by the Corporate Debtor and against which no payment receipts or bank account statements were provided to the Undersigned and hence, the genuineness of such a transaction cannot be ascertained by the Undersigned.

38. Similarly, a total number of 12 units have been shown to be allotted to a single allottee by the name of Avi Singh in whose favour only allotment letters have been issued by the Corporate Debtor and against which no payment receipts or bank account statements were provided to the Undersigned and hence, the genuineness of such a transaction cannot be ascertained by the Undersigned.

39. In view of the entire exercise undertaken by the Undersigned in pursuance of the order dated 09.10.2023 passed by this Hon'ble Adjudicating Authority, the Undersigned has conducted the verification process of the following Allottees:



40. Further, out of the **501** filed verified by the Undersigned, only a handful of Allottees/ homebuyers who can be considered as genuine allottees as their files were complete and verification could take place. and majority of the allottees cannot be considered as genuine allottees/ homebuyers due to lack of documents as provided by the Corporate Debtor which is tabulated for the convenience of this Hon'ble Adjudicating Authority:

GENUINE ALLOTTEES	VERIFICATION DONE BUT DUE TO LACK OF DOCUMENTS CONCLUSIVE FINDING AS TO GENUINENESS CANNOT BE ARRIVED
75	426

41. It is humbly submitted by the Undersigned being the Advocate Commissioner appointed by this Hon'ble Adjudicating Authority that out of the total **1124** Allottees/ homebuyers, 746 Allottees/ homebuyers casted their votes in the e-voting process conducted earlier by the Undersigned. This Hon'ble Adjudicating Authority vide order dated 09.10.2023 directed the Undersigned to conduct the verification process of all the allottees who participated in the process which as per the undersigned it should have be **1124**, however, due to the stand taken by the Corporate Debtor, the undersigned only undertook the verification process of 746 allottees who participated in the e-voting process.



42. Shorn of details as narrated above, the undersigned proceeded to undertake the verification process of 746 files of the allottees/ homebuyers. The undersigned vide email dated 16.10.2023 had requested the counsels for the Corporate Debtor to bring files of Allottees

1-200 on 20.10.2023 at 5 PM, followed by files of Allottees 201-600 on 21.10.2023 at 11:30 AM & Allottees 601-1124 on 23.10.2023. However, as elaborated above, the Corporate Debtor only brought 199 files of allottees on 21.10.2023 followed by 302 files on 25.10.2023 and the undersigned was informed by the representatives of the Corporate Debtor that the remaining files i.e., 245 are not available with the Corporate Debtor.

43. In view of the detailed verification process undertaken by the Undersigned, in the opinion of the Undersigned that out of 746 allottees, only 75 Allottees after verification can be termed to be genuine allottees as the said allottees have supporting documents such as *application forms, allotment letters, payment receipts, kyc documents and tally ledger*, whereas the Corporate Debtor could not produce or place all documents qua 426 such as *application forms, allotment letters, payment receipts, kyc documents and tally ledger* in their favour and whereas 245 files were not produced by the representatives of the Corporate Debtor before the Undersigned.

It is submitted by the Advocate commissioner in its report that out of 107 petitioners in the present section 7 application, only 6 petitioners have voted in favour of the viable solution shared by the Corporate Debtor. The objections, concerns, issues raised by the dissenting homebuyers forms the part of the report submitted by Advocate Commissioner.



- 22.** CD in its reply to the report dated 01.12.2023 stated that there are glaring contradictions in the report of the court commissioner itself with regard to the files handed over and verified by him. Further, CD stated that there are discrepancies in the Advocate Commissioners' report dated **29.10.2023** with regard to genuine allottees.
- 23.** Further, CD stated that there is no set parameter by the Advocate Commissioner for declaring an allottee as genuine. It is averred by the CD that Advocate Commissioner on one hand declared an allottee to be genuine on the basis of certain documents whereas on the basis of the same set of documents has stated that the genuineness of those allottees cannot be ascertained.
- 24.** Thereafter, an additional affidavit dated 01.12.2023 has been filed on behalf of the CD/promoter i.e. (Hariom Dixit, s/o/ Omkar Dixit (director/promoter and Authorized signatory of CD). The hard copy of the affidavit dated 01.12.2023 was submitted before us during hearing and they have also filed the soft copy on the DMS.
- 25.** As per the Affidavit dated **01.12.2023**, the Corporate Debtor has consented to implement the proposal. Relevant portion of the proposal is extracted below:

*"PROPOSAL BY CORPORATE DEBTOR AND CONCERNS OF HOME BUYERS:
As per the order of Hon'ble NCLT Corporate Debtor has to provide a Viable solution:*

Viability Of Project: The project is viable and hence SWAMIH Investment Fund I (a special fund created by the Ministry of Finance Government of India and managed by SBICAP Venture a 100% subsidiary of State Bank of India) is ready to extend financial assistance for this project. As per the mandate, the fund can only invest in net-worth-positive projects hence the project is viable.

The viability of the Project is further authenticated/endorsed by Due diligence agencies appointed by SBICAP Venture.

PROPOSAL OF Corporate Debtor:

Completion of Project: The corporate debtor is Committed to completing the project and as a result has got on board a co-promoter namely M/s Floral Homes Private Limited. Promoters (ultimate shareholders) of Floral Homes Private Limited has got a experience of more than 25 years and have successfully delivered more than 20 residential projects in Delhi NCR. The group has a total net worth of approx. 40 crores and as of now it's a net zero debt company.



Promoter has extended personal guarantee and corporate guarantee to secure financial closure and has secured financial assistance from SWAMIH Investment Fund I

Construction Schedule:

<i>Tower</i>	<i>Planned Completion Timeline from Zero</i>
<i>A</i>	<i>6 Month</i>
<i>B</i>	<i>6 Month</i>
<i>C</i>	<i>36 Month</i>
<i>D</i>	<i>36 Month</i>
<i>E</i>	<i>9-12 Month</i>
<i>F</i>	<i>9-12 Month</i>
<i>G</i>	<i>36 Month</i>
<i>H</i>	<i>36 Month</i>
<i>I</i>	<i>36 Month</i>
<i>J</i>	<i>36 Month</i>
<i>Studio</i>	<i>36 Month</i>
<i>Amenities</i>	<i>36 Month</i>

Zero Date: The zero date would commence 15 days post-NCLT / NCLAT closure
Promoters Track Record:

TABLE I



Claim Settlement of Home Buyers: The corporate debtor through the co-promoter is willing to settle claim of home buyers. Co-promoter and its group being a high net worth group willing to settle home buyers within 60 days. Over and above co-promoter has secured financial assistance of 367 crores which gives additional space to the co-promoter. Since refunds of already canceled units were considered as liability and part of SWAMIH underwriting hence refunds can also be made through investment proceed. (The Home Buyers Association are not aware of the terms and condition of the final sanction hence they are casting unnecessary aspersion)

107 homebuyers have filed petitions in Hon'ble NCLT

3 Homebuyers have settled. Two have taken possession and one has already taken a refund.

The allotment of 50 allottees has been cancelled. For allottees who have not secured a refund order from any other judicial/quasi-judicial body, the corporate debtor is willing to restore their allotment if they wish to continue in the project provided the project comes out of NCLT proceedings. Those who wish to get an exit from the project corporate debtor is ready to refund their entire money along with interest at the rate of SBI Bank FD Rate within 60 days of the order.

Balance 55 home buyers: We are offering alternate possession in completed towers or towers that are nearing possession i.e. Tower A, B, E & F. In case, they wish to take the refund, then we are ready to refund their money as well along with interest at SBI Bank FD Rate, 100% of the amount with interest within 60 days.

For Home Buyers Who are not the Part OF NCLT Proceedings:

Corporate Debtor is proposing a 3 months moratorium from the zero date on all demand.

Next Demand shall be raised only after three months based on the payment plan under which units have been booked.

There shall be no cost escalation and shall not be charged any extra money other than the charges mentioned in the builder-buyer agreement.

If they wish to exit from the project corporate debtor is willing to refund their money along with interest rate at SBI Bank FD Rate.

Future Course of Action:

The corporate debtor/co-promoter agreed to infuse 25 crores and committed to infuse more if required. Infusion of 25 crores is also one of the key terms and conditions of the SWAMIH Investment Fund.

Corporate debtor and co-promoter are willing to pay GNIDA demand within 60 days of issuance of demand or the terms of issuance of demand whichever is earlier. Corporate debtor and co-promoter willing to deploy project monitoring committee and financial monitoring committee under the supervision of SWAMIH Investment Fund which will bring transparency and good governance.

Progress reports of monitoring committees shall be shared with home buyers on a monthly basis."



- 26.** However, we are not convinced by the Reply (reply to the report dated **01.12.2023**) of the CD. The report of the Advocate Commissioner is categorical that CD did not provide the relevant files/information to the Advocate Commissioner to verify the genuineness of the allottees. Further, the Advocate Commissioner has cast serious doubt on the integrity of the e-voting process and has raised the issue of substantial dummy voting.
- 27.** On perusal of the report we find that CD has not substantially cooperated with the Advocate Commissioner in the verification process and did not provide the proper/complete documents for the successful completion of the verification process. Dummy voting and issue of genuineness of homebuyers has been raised in the instant case which has the tendency to cause prejudice to the parties which ultimately frustrate the purpose and objectives of the code.
- 28.** We could not locate the Architect Report dated **13.12.2021** nor Affidavit dated **13.04.2022** as mentioned in Applicant's written submissions dated **03.01.2024 (para 8 ibid)**. However, on perusal of the additional Affidavit dated **01.12.2023** submitted by the CD, Architect Certificate dated **30.09.2023** annexed at the end of the affidavit as **Annexure R-44**, tabular chart of the current status of the project, it seems that out of 11 towers (A, B, C, D, E, F, G,H, I, J and studio), in 7 towers, not even 25 % (average) work has been completed. Substantial work in the towers is still pending. Relevant extract from the Affidavit with respect to the current status of the project is extracted below:



Block / Tower / any other category	No. of Floors (if any)	No. of Floors Completed	Before Floral Entered
A	S+17	S+17	80%
B	S+17	S+17	90%
C	S+20	stilt	10%
D	S+20	Basement	10%
E	S+17	S+17	75%
F	S+17	S+16	80%
G	S+25	Basement	0%
H	S+25	Basement	0%
I	S+23	Basement	0%
J	S+22	Stilt	0%
Studio	S+22	Excavation	0%

After Floral entered % Completed
100%
100%
25%
25%
80%
90%
10%
10%
10%
15%
0%

On perusal of the documents on record, it is evident that allotment letter/receipts were received by many of applicant/homebuyers in the year 2012. Further, disbursal of money was since 2012. CD contended that project could not be completed on time because initially it did not receive the vacant possession due to encroachment of farmers , then it got the zero period from GNIDA till 2017 and then due to COVID 19 pandemic force majeure clause came into operation. But the fact remains that, till date substantial work of the project is still pending. We as an Adjudicating Authority are not convinced with the proposal put forward by the CD. The timeline as proposed by the CD (extracted on page 19, table I) is also not convincing. We cannot overlook the dummy e-voting resorted to by the CD, as is borne out by the Advocate Commissioner's report dated **29.10.2023**. This has raised serious doubt in our mind about the bona-fides of the CD.



29. IA- 4163/2021 was filed for impleadment of 52 applicants in Section 7 application, **IA- 3422/2021** was filed for impleadment of 22 applicants, **IA- 499/2023** was filed for impleadment of 25 applicants. Together with Applicant homebuyers (8 in no.) in the Main CP **288/2019**, the total no. of homebuyers comes out to be 107 homebuyers. Another **IA 3534/2022** is for seeking impleadment of one homebuyer namely Ramit Saluja. Though, CD has stated that around **59-60** of these applicants do not qualify as allottees as their allotment has been cancelled but we find that many of these allotments have been cancelled by the CD after the filing of the application/impleadment applications, ostensibly on ground of non-payment of dues. In view of the poor progress of the project, we do not find merit in the Cd's contentions. Accordingly, we **ALLOW** all the applications of impleadment namely **IA- 4163/2021, IA- 3422/2021, IA- 499/2023, IA 3534/2022** of the applicants and hence, all the applicants taken together form a class of creditors which collectively meet the threshold criteria of 10% or 100 in no. in accordance to the provisions of the code.

30. Further, to admit a CD into CIRP, the two prerequisites i.e. 'Debt' and 'Default' needs to established. Applicants/Petitioners in Part IV from **page no 36 to 44** of the Form 4 of their Application in **CP 288/2019** have given the particulars of the financial debt, dates of disbursement. Copies of receipts of the said amounts are annexed along with the application, workings for computation of amount and days of default in tabular form has been annexed as Annexure III of the paper book. Further, copy of Builder Buyer Agreement between CD and the petitioner homebuyers are annexed as **Annexure I(colly)** and copy of allotment letters given by CD to the Applicants/petitioners are annexed with this Application.

31. As far as default is concerned, the fact of non-completion of project is reflected in the Architect certificate itself. Therefore, both the requirement of debt and default has been established. The application for initiating CIRP against the CD is within the period of limitation. Further, the name of IRP has been proposed by the Financial Creditor whose consent (Form 2; written communication by proposed Interim Resolution Professional)has been placed on record (**Annexure AD @ page 305 of the paper book**) stating that no disciplinary proceedings are pending against him. The application filed under section 7 of the Code, is otherwise complete and meets all other procedural requirements of the Code and regulations made thereunder.



ORDER

1. In light of the above facts and circumstances, it is hereby ordered as follows: -

- i.** The Application bearing **(IB)-288(PB)/2019** filed by the applicant under Section 7 of the Insolvency & Bankruptcy Code, 2016 for initiating CIRP against the Corporate debtor i.e. **M/s Gayatri Hospitality and Realcon Limited** is hereby **ADMITTED**.
- ii.** As a consequence of the Application being admitted in terms of Section 7 of the Code, the moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- iii.** The Financial Creditor has proposed the name of **Mr. Anand Sonbhadra**, registration number IBBI/IPA-001/IP-P00739/2017-18/11771, as the Interim Resolution Professional of the Corporate Debtor. The proposed Interim Resolution Professional has given his written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration annexed as **Annexure-AD (page num 305, vol 3** of the paper book.)
- iv.** **Mr. Anand Sonbhadra**, Registration number IBBI/IPA-001/IP-P00739/2017-18/11771; Address: Flat no. 2183 Sector B, Pocket 2, Vasant Kunj, New Delhi-110070; Email id sonbhadra65@gmail.com is appointed as the Interim



Resolution Professional (“IRP”).

- v.** In pursuance of Section 13(2) of the Code, we direct the IRP to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- vi.** During the CIRP period, the management of the CD shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no further opportunity given in this regard.
- vii.** The IRP is expected to take full charge of the CD’s assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- viii.** The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the CD.
- ix.** The FC shall deposit a sum of Rs 5,00,000/- (Rupees Five Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (“CoC”).
- x.** The Registry is hereby directed to communicate a copy of the order to the FC, the CD, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today, and



upload the same on website immediately after pronouncement of the order. The Registrar of Companies shall update his website by updating the status of the CD and specific mention regarding admission of this petition must be notified.

2. The registry is further directed to send the copy of the order to the IBBI also for their record.
3. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

-Sd/-

(RAMALINGAM SUDHAKAR)
PRESIDENT

-Sd/-

(AVINASH K. SRIVASTAVA)
MEMBER (TECHNICAL)