



NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COURT VI

Item No. 4

IA(I.B.C)/3892(MB) 2024 IN C.P. (IB)/2054(MB)2019

CORAM:

SHRI SANJIV DUTT
HON'BLE MEMBER (TECHNICAL)

SHRI K.R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **08.05.2025**

NAME OF THE PARTIES: **Sujata Shekhar Shah and Ors**

Vs

Mirador Construction Private Limited

For Petitioner: Not given

For Respondent: None present

Sections 7 & 60(5) of IBC

ORDER

The order pronounced in the Open Court *vide* separate orders. In view of the above **IA/3892/2024 is dismissed**. Detailed order will be uploaded.

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)
//AJ//

Sd/-
K.R. SAJI KUMAR
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

IA (I.B.C) No. 3892/MB/2024

in

CP (IB) No. 2054/MB/2019

[Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016]

IN THE MATTER OF:

SUJATA SHEKAR SHAH & ORS.

10-2, Urvashi Building, Napean Sea Road

Near Petit Hall

Mumbai-400006, Maharashtra.

...Applicants

V/s

1. MIRADOR CONSTRUCTION PRIVATE LIMITED

[CIN: U45200MH2014PTC259690]

Office No. B-301 & 302, Damji Shamji Corporate

Square, Kanara Business Center,

Near Laxmi Nagar, Ghatkopar (East)

Mumbai – 400075, Maharashtra.

...Respondent No.1 /Corporate Debtor

2. ANAND DATTAKUMAR DHARADHAR

B/204, 335, Aashirwad, 12th Road,

NR CITI) Bank, Kharwest

Mumbai - 400052, Maharashtra.

...Respondent No.2

3. ANANTHAKRISHNAN SRINIVASAN

RH - 2, Plot No. 99, Shiv Puja CHS

Sector 29, Vashi,

Navi Mumbai - 400705

...Respondent No.3



4. ANIL KINI

Flat No. 404, Yucon S. No. 19/5

Nyatiah - 411060

...Respondent No.4

**5. ANITABEN JITENDRA SHAH
JITENDRA PALPATLAL SHAH**

A-181, Nav Shanti Nagar

98-Nepean Sea Road

Opposite Chandralok Building

Walkeshwar, Mumbai- 400006

....Respondent No.5

6. APARNA NITIN TAWTE

BA/12, Shiv Parvati Coop. HSG Society

Sector 21, Nerul

Navi Mumbai - 400615

....Respondent No.6

**7. BHAIRAVI PRASHANT KANE &
PRASHANT KANE**

601, Ganesh Tower, Dada Patil Marg

Near Railway STN Navpada

Thane West, Navi Mumbai- 400602

.....Respondent No.7

8. BS VISHWANATHA

145, 13th Cross, 3d Phase,

Girinagar Bangalore - 85

....Respondent No.8

9. DHANASHRI CHONKAR

B-406, Ambarlok Rachand Bhandup Complex

Mumbai - 400082

.....Respondent No.9



10. DUVVURI VENKATA RAMANA PRAKASH RAO

JVLTower, 11e Floor, B 117
Neloson Manikchand Road Aminjikarai
Chennai -600029

....Respondent No.10

**11. FRANAK DINSHA BHARUCHA &
KHIRMIN DINSHA BHARUCHA**

Flat No. 4, Jahangir Mansion,
1st Marine Street Next to Metro Cinema
Mumbai - 400020.

....Respondent No.11

12. HARSHIT KAMLESH SHAH

B/1502, Plot No - 421 47,
Balaji Garden Tower, Opposite Indian Gymkhana
Matunga East, Mumbai - 400051

....Respondent No.13

13. HEMAMALINI BALAJHI

Old No. 40, New No. 14
Chakrapani St. West Mambalam
Chennai - 600033

....Respondent No.14

14. JAI YOGENDRA DIVECHA HUF

807, Cumballa Crest, 42-Pedder Road
Mumbai -400A26

....Respondent No.15

15. JITENDRA KUMAR D SHAH

A-181, Nav Shanti Nagar, 98-Nepean Sea Road
Opposite Chandralok Building
Walkeshwar, Mumbai - 400006

...Respondent No.16



16. KAJAL BANERJEE & SHASHIKANT BANERJEE

37, Ramesh Mitra Road
Flat No. 4A, 4th Floor
Kolkata -700025

....Respondent No.16

17. KEVIN MENDONCA

74, Sahney Suyan Park
South Road Off Kondan Road
Pune - 411040.

....Respondent No.17

18. MILONI SIDDHARTH PAREKH

& MAHESH GANDHI

Morar Baug, 4th Floor,
Flat No. 7/8, R.B. Mehta Marg,
Ghatkopar East, Mumbai -400077

....Respondent No.18

19. PALLAVI ANAVATTI

232, IshanAnkita Housing Society Pratham
Near Telephone Exchange Wakad (Hinjewadi)
Pune Infotech Park, Hinjewadi, Maharashtra- 57.

....Respondent No.19

20. QUASAR THAKORE PADAMSEE

1805, Anukool Seven Bungalows
Yari Road Varsova, Mumbai - 400061.

....Respondent No.20

21. RAJIV HANUMAN MATHUR

401/402, Kshitij, Veera Desai Road
Opp. Andheri Sports Complex
Andheri West, Mumbai - 400058.

....Respondent No.21



22. RAMESH SITARAM GHODGE

Flat No. 203,8 Wing, Second Floor
Annapurna Heights, Ram Chandra Lane
Malad, Mumbai-400064.

....Respondent No.22

23. RANJANA BARTHWAL

E-1/1:1, Sector 8 -B, CBD Belapur
Navi Mumbai-400614.

....Respondent No.23

24. RASHMI SUYOG BHOKARE

S- 401, Jasminium Magarpatta City
Hadapsar, Pune - 411028

....Respondent No.24

25. SANJEEV CHAKRAVARTY

403 - B Wing, Om Siddhi CHS
Plot 115 - 117, Sector 27
Nerul East, Navi Mumbai-400706.

....Respondent No.25

26. SHRI MAHESH VADILAL GANDHI FAMILY TRUST

Morar Baug, 4th Floor,
Flat No. 7/8 R B Meheta Marg
Ghatkopar East Mumbai - 400077.

....Respondent No.26

27. SUBRATA SEN

Flat No. B2/203, Parijat, Vasant Vihar
Off 2nd Pokhran Road, Near Vasant Vihar Bus Stop
Thane West - 400610.

....Respondent No.27



28. VIRESH K VORA

1508, Shankeshwar Tower
Sudha Park Ghatkopar East
Mumbai- 400077

....Respondent No.28

29. JUGNU VIRESH VORA

Shankeshwar Tower, Sudha Park
GhatkoparEast, Mumbai-400077.

....Respondent No.29

30. ZARINE DINSHA BHARUCHA

Janangir Mansion, 1st Marine Street
Next to Metro Cinema
Mumbai - 400020.

....Respondent No.30

31. CHAGANLAL NANJI PATEL HUF

501, Shree Shankar Sagar, Old Meneklal
Estate, Off. L.B.S. Marg
Ghatkopar West Mumbai - 400086.

....Respondent No.31

32. FATIMA HAROON QURAISHI

B-1-21/6, First Floor, Flat No. 101
Surya Nagar Colony, Toli Chowk
Hyderabad - 500008

....Respondent No.32

33. VIPUL CHOKSI HUF

A-1, Kumkum APT, 161 S.V. Road
Near Nanavati Hospital
Vile Parle West, Mumbai - 400056.

....Respondent No.33

34. VIPUL CHOKSI

A-1, KumkumAPT, 161 S.V. Road



Near Nanavati Hospital
Vile Parle West Mumbai - 400056

....Respondent No.34

35. PRAVIN MOGRE

169/B, Kamla Niwas, Dr. Ambedkar Road
Dadar, Mumbai - 400014

....Respondent No.35

36. PRAJAKTTA PRAVIN MOGRE

169/B, Kamla Niwas, Dr. Ambedkar Road
Dadar, Mumbai - 400014

....Respondent No.36

37. PRAMOD DIVAN & NILIMA DIVAN

301, Ganesh Apartment CHS,
168 E Vikas Wadi, A. Road
Dadar East Mumbai -400014

....Respondent No.37

**38. MAKARAND SHANKAR ATHALYE &
MANJARI MAKARAND ATHALYE**

Sulakshana BLD 2nd Floor, Ganesh
168 F Vikas Wadi, A. Road
Dadar East Mumbai-400014

....Respondent No.38

39. OMPRAKASH MALPANI

501, Rajanigandha Society,
Sarswat Colony, Talmiki Lane,
Linking Road, Santacruz West
Mumbai - 400054.

.....Respondent No.39



IN THE MATTER OF:

SUJATA SHEKAR SHAH & ORS.

...Financial Creditors

V/s

MIRADOR CONSTRUCTION PRIVATE LIMITED

...Corporate Debtor

Pronounced: 08.05.2025

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

Applicant/FC: Adv. Rohan Agarwal a/w Adv. Umang Thakar i/b Desai &
Diwanji

Respondent/CD: Adv. Mahlaqa M. Ladiwala

ORDER

[PER: SANJIV DUTT, MEMBER (TECHNICAL)]

1. BACKGROUND

- 1.1 This IA (I.B.C) No.3492/MB/2024 was filed on 14.05.2024 by Mrs. Sujata Shekar Shah and Others (Applicants/Financial Creditors) under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 11 of the National Company Law Tribunal Rules, 2016 (NCLT Rules) seeking liberty/leave to amend the Company Petition [C.P.(IB) No. 2054 of 2019] (Main Application) filed on 03.06.2019



in terms of the Schedule annexed to the IA and to make all consequential amendments as may be necessary.

1.2 The present IA has been filed by the Applicants *inter alia* to bring on record Respondent Nos. 2 to 39 ("Proposed Financial Creditors") and their respective claims against the Corporate Debtor.

1.3 The Proposed Financial Creditors have individually invested sums aggregating Rs.4,71,67,7361/- (Four Crore Seventy-One Lakh Sixty-Seven Thousand Seven Hundred and Thirty-Six Rupees) in the Housing Project being developed by the Corporate Debtor.

2. AVERMENTS OF APPLICANTS

2.1 The Applicants in the present IA are allottees in a real estate project, namely, "Oasis Avani", launched by the Corporate Debtor in respect of all that piece and parcel of land bearing Survey Nos. 2/2, 2/4, 2/5 and 2/6 admeasuring 42,708 square meters situated at revenue village Bendekon, Sub-District of Shahapur, District Thane, Maharashtra. The Applicants have individually invested sums in the Project amounting to Rs.4,57,00,000/- (Four Crore Fifty-Seven Lakh Rupees).

2.2 The Corporate Debtor was obligated to repay the aforementioned invested amount along with the accrued interest within a period of 24 months in accordance with the Investment Agreements executed between the Applicants/Financial Creditors and the Corporate Debtor. However, the Corporate Debtor failed to fulfil its obligations under the Investment



Agreements. Therefore, the Main Application was filed on 03.06.2019 by the Applicants/Financial Creditors. Subsequently, Section 7 of the Code was amended w.e.f. 28.12.2019 prescribing a minimum of 100 allottees or not less than 10% of the total number of such allottees under the same real estate project whichever is less for jointly filing an application under Section 7 of the Code.

- 2.3 Thereafter, the Main Application was dismissed by the Tribunal *vide* order dated 23.02.2021 *inter alia* for want of required minimum number of allottees.
- 2.4 Among other allottees of the Project, the Financial Creditors in the Main Application filed a Company Appeal No. 395 of 2021 before the Hon'ble National Company Law Appellate Tribunal (NCLAT) challenging the order of NCLT, Mumbai dated 23.02.2021 dismissing the Main Application.
- 2.5 The Hon'ble NCLAT *vide* its judgment dated 24.02.2023 in Company Appeal No. 395 of 2021 set aside the order dated 23.02.2021 passed by this Tribunal dismissing the Main Application. The matter was remitted back to the Adjudicating Authority to hear the parties afresh and pass appropriate order in accordance with law, particularly considering the time extended by the Hon'ble Supreme Court in **Manish Kumar** case for filing application for impleading more allottees in view of amendment under Section 7 of the Code and unequivocal Investment Agreements entered into between the Appellants and the Corporate Debtor. In view of the aforesaid judgement,



the Applicants filed the present IA, *inter alia*, for amendment of the Main Application and for bringing on record the Proposed Financial Creditors in the Main Application. Thereafter, time was sought before the Tribunal to file the Application for amendment and on 24.04.2024, the Tribunal granted two weeks' time to file the IA.

3. CONTENTIONS OF RESPONDENT No.1/ CORPORATE DEBTOR

- 3.1 The IA is frivolous, infructuous and devoid of any merit as it has been filed to create false records and to compel the customers of the Respondent to join hands with the existing alleged Applicants/Financial Creditors in the Main Application. This IA is not maintainable as it is filed by the 1st Applicant/Financial Creditor at the behest of the Proposed Respondents/Proposed Financial Creditors, as claimed. In the event of the proposed Respondents willing to join hands with the existing Financial Creditors, they had to prefer an application to implead them in the Main Application under Section 7 of the Code.
- 3.2 Further, the Applicants/Financial Creditors of the Main Application herein through Mrs. Sujata Shekhar Shah, their authorised representative, have failed to place on record necessary and important facts in respect of the parties that have already settled with the Corporate Debtor, thereby entering into various agreements during the pendency of the Main Application. The Applicants/Financial Creditors who have entered into fresh agreements by way of settlement with the Corporate Debtor cannot



and ought not to be permitted to continue to be a part of the Main Application as Financial Creditors/Applicants or otherwise.

- 3.3 Pursuant to the settlements with the Corporate Debtor, this Tribunal ought to consider whether Mrs. Sujata Shekhar Shah continues to be the authorised representative of the existing Applicants/Financial Creditors or whether the Applicants/Financial Creditors continue to pursue the Main Application with the same authorisation given to Mrs. Sujata Shekhar Shah relying upon the agreements that have become redundant and invalid as Applicants/Financial Creditors have settled with the Corporate Debtor. Mrs. Sujata Shekhar Shah ought to have placed on record the said development before proceeding to further add parties to the Main Application so as to ascertain the maintainability of the IA.
- 3.4 Further, aggrieved by the order dated 23.02.2021, passed by the Tribunal, the Applicants/Financial Creditors had filed two appeals before the Hon'ble NCLAT in Company Appeal (AT) (Ins) No. 314/2021, consisting of 63 Appellants and Company Appeal (AT) (Ins) No. 395/2021, consisting of 9 Appellants. The Hon'ble NCLAT *vide* order dated 24.02.2023 allowed both the appeals by setting aside the Tribunal's order dated 23.02.2021 and remanded the matter back to Adjudicating Authority to hear the parties afresh based on the findings recorded in para Nos. 9 to 12 of the said order and pass appropriate orders in accordance with law. The Hon'ble NCLAT had relied on the judgment of the Hon'ble Apex Court in ***Manish Kumar Vs. Union of India & Anr. [2021 (5) SCC 1]*** wherein 2 months



were given to cure the defects in Section 7 application and if there was delay, an application was to be filed seeking condonation of delay.

- 3.5 It is to be noted that 47 out of the total 72 Appellants who had preferred appeal before the Hon'ble NCLAT had settled with the Corporate Debtor, of which 32 had entered into Registered Agreements for sale towards purchase of their respective flats in the proposed project of the Corporate Debtor and the balance 15 Appellants out of the above 47 Appellants had signed an Agreement of Association of Persons (AoP) securing their investments against plots of land reserved as security against the repayment terms agreed under the said AoP. The remaining 25 Appellants, some of them are Applicants/Financial Creditors formed a group who are adamant to proceed with the Main Application.
- 3.6 While remanding the matter back to the Tribunal, Hon'ble NCLAT had recorded observations on merits in paras 9, 10 and 11 of the judgment dated 24.02.2023. The observations recorded in the order dated 24.02.2023, would have grave impact on the instant proceedings as having been already decided by the Hon'ble NCLAT and which would further foreclose the defence taken by the Corporate Debtor. Despite the order of remand, the Corporate Debtor had assailed the order before the Hon'ble Supreme Court by filing Civil Appeal (Diary) No. 13862 of 2023. The Hon'ble Supreme Court based on the submissions made by the Corporate Debtor, *vide* order dated 27.09.2023, issued notice in the matter. Therefore, the Hon'ble Apex Court is seized of the issue as to whether the Hon'ble NCLAT has in the abovementioned paras in its order



dated 24.02.2023 by recording observations on merits decided the Main Application under Section 7 of Code pending before the Tribunal, thereby virtually foreclosing the defence of the Corporate Debtor.

3.7 The Main Application was remanded back to the Tribunal in the light of an extended time of two months granted by the Hon'ble Apex Court for curing the defects, if any. The Applicants/Financial Creditors had lost sight of the observations recorded in the said order of remand, whereby the remand was conditional and with specific directions. However, the Applicants only preferred IA No. 2763/2023 for restoration of the Main Application without any further reliefs. The Applicants conveniently stated that they have sought liberty to file Application for impleading Financial Creditors in the Main Application, which they claimed had been granted by the Tribunal. The liberty granted was only with respect to filing Application seeking change by bringing on record the Financial Creditors and can by no stretch of imagination or any other interpretation shall mean that Applicants/Financial Creditors have been granted liberty having implication of circumventing the directions of the Hon'ble Apex Court in the case of ***Manish Kumar (Supra)***, which was read down by the Hon'ble NCLAT in its order of remand as one of its conditions for deciding afresh the instant Company Petition. In any event, the Financial Creditor had miserably failed to cure the defects. Therefore, it is submitted that the Financial Creditors/Applicants herein have delayed in carrying out the changes and curing the defects as permitted by the Hon'ble Apex Court.



- 3.8 The Corporate Debtor had also made genuine and bona fide attempts to settle with all its investors including the Applicants/Financial Creditors herein by offering them options to either enter into registered agreements for sale against flat in the proposed project of the Corporate Debtor or to secure themselves by entering into agreements under which the Corporate Debtor had reserved plots of land.
- 3.9 The IA had been preferred by the Applicants/Financial Creditors herein seeking amendment to comply with the conditions of Section 7 after almost 15 months from the date of the order of the Hon'ble NCLAT remanding the matter back to the Tribunal. The Applicants/Financial Creditors fall short of the total number as required under the law before entertaining the Main Application.

4. ANALYSIS AND FINDINGS

- 4.1 We have heard both the Ld. Counsel for the Applicants/Financial Creditors and the Respondent and perused all the pleadings and documents available on record.
- 4.2 It is observed from the record that the Main Application was filed on 03.06.2019 by Mrs. Sujata Shekhar Shah on behalf of fourteen (14) Applicants/Financial Creditors purportedly as allottees of real estate project of the Corporate Debtor. The present IA has been filed by the Applicants in order to bring on record Respondent Nos.2 to 39/Proposed Financial Creditors in the Main Application so as to adhere to the threshold of allottees under Section 7 of the Code, as amended. The Applicants as well



as the Proposed Financial Creditors are claiming to be allottees of the real estate project developed by the Corporate Debtor. In the Schedule annexed to the IA, the Applicants have furnished particulars of the Investment Agreements to support the claim that the 38 Proposed Financial Creditors are allottees of the Project. In this connection, it is pertinent to mention that the Applicants had furnished copies of Investment Agreements with the Corporate Debtor in the Main Application.

4.3 On perusal of the Investment Agreements executed on various dates between the Applicants/Financial Creditors and the Corporate Debtor, it is gathered that one Mr. Ganesh Pandurang Raut is the owner of the land being developed by the Corporate Debtor. The Owner and the Corporate Debtor had entered into a Joint Venture Agreement dated 03.06.2015, for floating 'Non-Agriculture (N.A.) Plot Scheme' on the said property under the name and style of 'Oasis Avani' in a phased manner. The Owner had entrusted the work relating to planning, making arrangements for development, marketing and sale of the N.A. Plots in the said property to the Corporate Debtor. In regard to the above-mentioned work, the Corporate Debtor was in need of funds and had requested the Applicants/Financial Creditors to advance the requisite funds against provision for returns as agreed between the parties.

4.4 Thereafter, the Applicants/Financial Creditors had invested the amounts in the Corporate Debtor's Project by executing various Investment Agreements. The terms of the Investment Agreement were that the secured amount advanced by the Applicants/Financial Creditors to the Corporate



Debtor was for a period of two years. Upon completion of the said period, the Corporate Debtor was liable to return the secured amount as:

- a. Quarterly return on the principal amount at 21% p.a. in form of post-dated cheques;
- b. Upon expiry of the period, the Applicants/Financial Creditors would be given a choice either to take the entire secured amount of Rs.50,00,000/- or to purchase any plot under the N.A. Plot Scheme at the rate of Rs.600/- per sq. ft.

The Corporate Debtor having failed to fulfil the above payment obligations, offered to the Applicants/Financial Creditors to purchase a plot in another project of the Corporate Debtor, was not accepted by the Applicants/Financial Creditors. Thus, it emerges that the Applicants/Financial Creditors were investors rather than “allottees” in the project “Oasis Avani” being developed by the Corporate Debtor.

- 4.5 During the pendency of the matter, an amendment to Section 7 of the Code was made by inserting the following provisos below Section 7(1) by the IBC (Amendment) Act, 2020 w.e.f. 28.12.2019: -

"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."

- 4.6 Pursuant to the aforesaid amendment made in Section 7 of the Code by the Insolvency and Bankruptcy Code (Amendment) Act, 2020 w.e.f. 28.12.2019, this Tribunal *vide* order dated 23.02.2021, dismissed the Main Application as withdrawn mainly for want of minimum number of allottees as per the amendment. Thereafter, the Applicants/Financial Creditors had filed two appeals before the Hon'ble NCLAT in Company Appeal (AT) (Ins) No.314/2021, consisting of 63 Appellants and Company Appeal (AT) (Ins) No.395/2021, consisting of 9 Appellants. The Hon'ble NCLAT *vide* order dated 24.02.2023 observed that the Tribunal had erroneously treated the appellants as allottees and that the Investment Agreement was unambiguous in so far as the Appellants had invested money in the project for a specified period and at a specified rate of interest. The matter was remanded back by Hon'ble NCLAT to the Tribunal to hear the parties afresh and pass appropriate order in accordance with law.
- 4.5 Further, after the Hon'ble NCLAT's order, the Applicants/Financial Creditors filed an IA No.2763 of 2023 on 12.06.2023 for restoration of the Main Application and *vide* order dated 04.07.2023 passed by the Tribunal, the Main Application was restored. Thereafter, the Applicants/Financial



Creditors requested the Tribunal for time to file IA to demonstrate support of the required number/percentage of housing unit holders for the maintainability of the Main Application pursuant to the order of the Hon'ble NCLAT. The Tribunal *vide* order dated 24.04.2024, directed the Applicants/Financial Creditors to file the IA in 2 weeks.

- 4.6 Thereafter, I.A. No. 3892 of 2024 was filed on 14.05.2024, which was heard and reserved for order on 27.08.2024. The Applicants/Financial Creditors filed the aforesaid IA to implead Respondent Nos.2 to 38 in the Main Application as mentioned in the cause title of this IA so as to fulfil the criteria of the allottees as prescribed in the amendment to Section 7 of the Code.
- 4.7 While dealing with the present IA, a pertinent issue to be decided by this Tribunal is whether the Applicants/Financial Creditors and the proposed Financial Creditors are allottees of a real estate project. As per Section 2(d) of Real Estate (Regulation and Development) Act, 2016 the expression "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. It is a matter of record that none of the Applicants/Financial Creditors/Proposed Financial Creditors has either obtained any Allotment Letter or executed any Agreement to Sell a plot or apartment with the Corporate Debtor.



- 4.8 Therefore, in view of the aforesaid definition of “allottee” and in absence of “Agreement to Sell” or ‘Allotment Letter”, it emerges that the Applicants/Financial Creditors and the Proposed Financial Creditors do not qualify as “allottees” of a real estate project under the Code. In other words, we find that the Applicants/Financial Creditors and the Proposed Financial Creditors actually have invested money in the real estate project of the Corporate Debtor which has the commercial effect of a borrowing.
- 4.9 Therefore, in light of above discussion, we are of the considered view that the Applicants/Financial Creditors have failed to prove with the help of credible documentary evidence that Respondent Nos.2 to 39 are “allottees” of plots in the real estate project of the Corporate Debtor so as to substantiate the amendment of the Main Application and maintain this IA for their impleadment therein.

ORDER

In view of the above finding, we hold that the present application bearing **IA No.3892/2024** is not maintainable and is accordingly **dismissed**. The Main Application [**CP(IB) No. 2054/MB/2019**] shall be listed for further consideration before the Regular Bench on **26.05.2025**.

Ordered accordingly.

Sd/-

SANJIV DUTT
MEMBER (TECHNICAL)

\\Vani\\

Sd/-

K. R. SAJI KUMAR
MEMBER (JUDICIAL)