IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

COURT- IV

IA No.3045 of 2024

In

C.P (IB) No.1420 of 2020

[Under Section 65 Insolvency and Bankruptcy Code, 2016]

In the matter of

K. D. LITE DEVELOPERS PRIVATE LIMITED

…Applicant

Vs.

M.S. Gopikrishnan

…Respondent No. 1

Anand Krishnamurthy and Hetal Sanganee

…Respondent No. 2

Arun Srinivasan & Anand

…Respondent No. 3

C. Ayyaswamy

…Respondent No. 4

Denzil Fernandes

…Respondent No. 5

Judith Pereira

…Respondent No. 6

Keyur Meghani

…Respondent No. 7

Mandar A. Ponkshe & Rupali M. Ponkshe

…Respondent No. 8

Shailendra Agarwal & Rani Agarwal

…Respondent No. 9

Veena Gadia

…Respondent No. 10

Sunil Agarwal

…Respondent No. 11

Ganapathy Ramakrishna Golikere

…Respondent No. 12

B. Prasanna

…Respondent No. 13

Sarath Pendyala

…Respondent No. 14

Pranav Jha

…Respondent No. 15

Rupal Girish Shukla

…Respondent No. 16

Praveen Visesh & Aparnna Praveen

…Respondent No. 17

Amrish Baliga

…Respondent No. 18

In the matter of

M.S. Gopikrishnan and Ors.

…Financial Creditor

Vs.

K. D. LITE DEVELOPERS PRIVATE LIMITED

…Corporate debtor

Pronounced: 06.07.2026

CORAM:

SHRI ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

SHRI K. R. SAJI KUMAR
MEMBER (JUDICIAL)

Appearance	***:***	***Hybrid***
For the Applicant / CD	:	Sr. Adv. Janak Dwarkadas, Adv. Rohit Gupta a/w Adv. Viraj Parikh, Adv. Samit Shukla, Adv. Shivani Khanwilkar, Adv. Mustafa Nulwala Adv. Vidhi Goradia i/b Trilegal
For Respondents / Petitioners	:	Adv. Shyam Kapadia, Adv. Ayush Chaturvedi, Adv. Nikhil Bhargava, Adv. Anchal Agarwal, Adv. Sudeshna Roy, Adv. Treenok Guha i/b Saraf & Partners

ORDER

Per: Anil Raj Chellan, Member (Technical)

1. The present I.A. No. 3045 of 2024 has been filed under Section 65 of the Insolvency and Bankruptcy Code, 2016 (Code) by K. D. Lite Developers Private Limited, which is the Respondent in the Company Petition (IB) No. 1420 of 2020 (Company Petition) filed under Section 7 of the Code. The Applicant prays for the following reliefs:

a) This Hon'ble Tribunal may be pleased to declare that Company Petition (IB) No. 1420 of 2020 has been filed by the Respondents / Original Petitioners

fraudulently or with malicious intent for any purpose other than for the resolution of insolvency.

b) *This Hon'ble Tribunal may be pleased to pass an order dismissing Company Petition (IB) No. 1420 of 2020 under Section 65 of the Code in accordance with the decision of the Hon'ble Supreme Court of India in paragraph no. 56 in Pioneer Urban v. Union of India (2019) 8 SCC 416.*

c) *This Hon'ble Court may be pleased to pass an order declaring that the Petitioners have failed to fulfil the requisite for filing Company Petition (IB) No. 1420 of 2020.*

d) *This Hon'ble Tribunal may be pleased to impose a penalty on the Respondents of an amount of Rs. 1 crore (or such other amount as this Hon'ble Tribunal deems fit.*

e) *Without prejudice to the above prayer clause (a) to (c), this Hon'ble Tribunal may be pleased to:*

   i) *Declare that Petitioner No. 12 and 13 herein (originally Petitioner No. 14 and 15) fail to satisfy the requisites of filing the present Petition under Section 7 of the Code; and*

   ii) *Delete Petitioner No. 12 and 13 from the array of parties.*

f) *This Hon'ble Tribunal may be pleased to reject Company Petition (IB) No. 1420 of 2020 on the grounds that the Petitioners fail to meet the threshold of 10% as required under the Code.*

g) *Pending the hearing and final disposal of the present Application, this Hon'ble Tribunal may be pleased to not finally hear and dispose of Company Petition (IB) No. 1420 of 2020.*

h) *For costs.*

i) For such other reliefs as this Hon'ble Tribunal deems fit in the facts of the present matter.

2. Submissions of Applicant

2.1 The present Applicant is the Corporate Debtor in the Company Petition filed under Section 7 of the Code by the Respondents herein. The present Applicant submits that the Respondents, who are the Petitioners in the Company Petition, are claiming to be allottees of a real estate project developed by the present Applicant, the Corporate Debtor. The minimum threshold for filing an application under Section 7 of the Code shall be at least 10% of the allottees in a real estate project or one hundred of such creditors, in terms of Section 7(1) of the Code. However, the Company Petition is filed by only 18 individuals, who claim that the total number of allottees in the Project is 124.

2.2 It is submitted that the total number of allottees in the Project as per the Maharashtra Real Estate Regulatory Authority (MahaRERA) website was 124 as on December 2020, when the Company Petition was filed. However, the total number of allottees in the Project is 203. It is further submitted that each and every allotment in the Project is supported by an allotment letter or Index II of the registered agreement for sale, and actual receipt of monies.

2.3 The Applicant submits that the MahaRERA website is not updated on a daily basis and is required to be updated every quarter as per Section 11 of the Real Estate (Regulation and Development) Act, 2016 (RERA). Additionally, the delays in uploading data to the RERA website were due to the COVID-19 pandemic and were condoned by MahaRERA. It is stated that MahaRERA has taken no action against the Applicant for any purported failure to upload the data in a timely manner.

2.4 It is submitted that at least 21 Petitioners should have jointly filed the Company Petition in order to meet the requirement specified in Section 7 of the Code. However, as only 18 Petitioners have joined in the Company Petition, it is asserted that the same is not maintainable.

2.5 It is also submitted that the Respondents/Petitioners had invested in 2012, more than 20-30% of the total flat value of the Project, prior to the demolition of existing structures to commence the construction of the Project. The Petitioners were expecting a high rate of return on their investment, as evidenced by Clause 4 of the allotment letters, which stipulates an interest rate of 24% p.a. Although the allotment letter does not specify any provisions for compounding of interest, the Petitioners have sought 24% p.a. on a compounding basis in the Company Petition. As a result of this calculation, the interest claimed on the principal amount of Rs. 5.98 crore mounts to Rs. 32.6 crore, which is six times the principal amount.

2.6 It is further submitted that Petitioner Nos. 11 and 17 have also booked flats in other projects of the present Applicant/Corporate Debtor, which shows a clear pattern of investment. It is also stated that Petitioner Nos. 11 and 17 invested in Flat No. 1405 and Flat No. 4804 of Project 'Ruparel Ariana' developed by the Ruparel Group, promoted by Shree Sukhakarta Developers Pvt. Ltd., in which the Applicant is also part of the group company. Thus, the Petitioners in the Company Petition have made multiple financial arrangements with the Ruparel Group on multiple occasions.

2.7 The Applicant/Corporate Debtor submits that the background of the Petitioners clearly demonstrates that they are high income professionals having lucrative jobs at reputed companies such as Respondent No.1, Respondent No. 7, Respondent No.8, Respondent No.9, Respondent No.11, Respondent No.14, Respondent No.17 and Respondent No.18. Consequently, it is sufficiently clear that there is no justifiable reason for them to purchase 1BHK and 2BHK flats in a slum rehabilitation scheme in Chembur, Mumbai. The Respondents have given these funds with the intention of utilising them as an investment.

2.8 It is further submitted that the Respondents/ Petitioners never sought possession of the flats, though they claim termination of the allotment letter in December 2015. There was no communication between the Petitioners and the present

Applicant/Corporate Debtor to seek any update on the construction/progress of the Project, as would be expected of genuine homebuyers.

2.9 It is further submitted that Petitioners in the email dated 19.08.2018 admitted that they had invested in the project at Chembur in 2012. It is also stated that, despite having no familial relations amongst Respondents No. 1 to 9, they entered into an allotment letter for the same flat, which clearly demonstrates that they never intended to live together in the same flat and were only investing in the Applicant's project.

2.10 The Applicant submits that the flats originally allotted to the Petitioners were sold further with their knowledge, without any objection from them. If the Petitioners were truly interested in their flats, they would never have permitted such a further sale and would have objected to it. Some of the Petitioners even benefited from the further sale.

2.11 It is submitted that the flats of Respondent Nos. 12 and 13 (Original Petitioner Nos. 14 and 15) have already been sold to another buyer, and they have received full and final settlement from the persons to whom they had sold the flats, prior to the filing of the Company Petition. As a result, Respondent Nos. 12 and 13 (Original Petitioner Nos. 14 and 15), having no right, title, and interest in their respective flats, could not have been parties to the main Company Petition. They do not meet the essential criteria for filing an application under Section 7 of the Code, as they are not allottees of the real estate project.

2.12 It is also submitted that the Applicant had filed a complaint before MahaRERA against the Petitioners to accept the refund of the monies along with the MahaRERA rate of interest levied at MCLR+2% p.a., calculated on a simple interest basis. However, they refused to accept it, insisting instead on an impractical interest rate of 24% p.a., calculated on a compounding basis. The Applicant/Corporate Debtor has expressed its willingness to settle the matter and refund the Petitioners at the RERA interest rate.

2.13 The Applicant submits that pushing the Applicant into the Corporate Insolvency Resolution Process (CIRP) will have an adverse impact on the stakeholders since the Project is almost complete, part of the occupancy certificate has been obtained for the rehabilitation wings and sale wings. Total 225 out of 312 slum dwellers have taken possession of the flats, and the CIRP will affect the pending construction and handover of the Project. The Applicant is a one-project company.

2.14 The Applicant submits that the facts of the case unequivocally demonstrate that the Petitioners are not genuine homebuyers and are speculative investors. The Applicant, relying on Para 56 of the judgement in *Pioneer Urban v. Union of India* [(2019) 8 SCC 416]*,* seeks dismissal of the Company Petition.

3. Submissions of Respondents

3.1 The Respondents have filed their reply affidavit denying the submissions made by the Applicant.

3.2 The Respondents submit that the Company Petition was filed on 03.12.2023 and was heard and disposed of by this Tribunal by order dated 08.02.2023 by commencing the CIRP against the Applicant (‘Admission Order’). Subsequently, on the appeal filed by the then-suspended director of the Applicant, in Company Appeal (AT) (Ins.) 206 of 2023, the Hon'ble NCLAT, by its order dated 24.01.2024, set aside the Admission Order and remanded the matter back to this Tribunal for reconsideration (‘Remand Order’). There has been a considerable delay in the adjudication of the Company Petition. The present Interlocutory Application has been filed by the Applicant as a dilatory tactic to delay the re-hearing and re-consideration of the restored Company Petition, as directed by the Remand Order.

3.3 The Respondents submit that, except for the allegations by the Applicants, the Petitioners Nos. 11 and 17 have booked flats in other projects of the Applicant/Corporate Debtor and that they never sought the possession of the flats; all other allegations were denied and extensively argued in the earlier round

of considering the Company Petition and the Appeal preferred against the Admission Order. The said arguments and submissions are reiterated in the present Application.

3.4 It is reiterated by the Respondents that on the date of filing of the Company Petition on 03.12.2020 (Filing Date), the disclosure on the MahaRERA website showed that the Applicants had 124 allottees in the Project of Applicant. Accordingly, 20 individuals filed the Company Petition, which constitutes more than 16% of the total number of allottees as on the Filing Date (i.e., 20 out of 124 allottees). Therefore, the threshold required under the Code is fulfilled as of the filing date. Moreover, as per Section 11 of the RERA Act, Promoter/Developer is duty-bound to update and provide the true and correct information of the Project on the MahaRERA website, and hence the allotment disclosure available on the MahaRERA website as on the Filing Date must serve as the sole factor for assessing the requirement of 10% to file the Company Petition. The Applicant has not denied that the total number of allottees disclosed on the Filing Date was not 124; instead, the Applicant is only pressing its failure to update the quarterly reports on the MahaRERA website regarding the total number of allottees.

3.5 The Respondents admit that during the course of the hearing of the Company Petition, the Applicant has settled the claim of 2 of the Petitioners, i.e., Petitioner Nos. 9 and 12.

3.6 The Respondents submit that, in case, as alleged by the Applicant/Corporate Debtor, there were 203 allottees as on the date of filing and the numbers were updated in the MahaRERA website in February 2021, then, as of November 2020, there ought to have been 186 flats and not 124 flats. Hence, the allotment letters provided in the Affidavit in Reply to the main Company Petition are false. The Respondents have relied on the judgment in *Manish Kumar v. Union of India,* [(2021) 5 SCC 1], wherein the provisions of Section 11 of the RERA Act are reiterated to address homebuyers' concerns regarding the asymmetry in the availability of information. The Respondents submit that the reliance should not be placed on the Allotment Letter, which is a concocted, manipulated, and self-

serving document to mislead this Tribunal and ought to only rely upon the statutory records available on the MahaRERA website as on the filing date.

3.7 The Respondents state that payment of money by the Petitioners, issuance of allotment letters to them, and the Corporate Debtor's failure to repay the monies in accordance with the Allotment Letter are all admitted by the present Applicant. The settlement of the claim of original Petitioner Nos. 9 and 12, during the pendency of the Company Petition, serves as an acknowledgment of debt.

3.8 The Respondents contend that they are genuine allottees in the Project and not speculative investors. It is submitted that the Petitioners are covered by the expression 'allottee' under the *Explanation (ii)* to Section 5(8)(f) of the Code. It is settled law that any amount raised by an allottee under a real estate project shall be deemed to have the commercial effect of a borrowing. Further, MahaRERA and the Maharashtra Real Estate Appellate Tribunal have repeatedly held that there is no difference between an investor and an allottee.

3.9 The Respondents deny the allegation that the purchase of flats by Petitioner Nos. 11 and 17 in another real estate project of the same group of company shows a pattern of investment, further reiterating that the net worth of the Petitioners has no bearing on the adjudication of the main Company Petition and their net worth or financial capabilities cannot be used as a ground to allege any malicious intent to file an application under Section 7 of the Code.

3.10 With respect to the allegation regarding the Petitioners not having sought possession of their flats prior to December 2015, it is submitted that the same is irrelevant, as the cause of action for the Petitioners to seek possession of flats as per the allotment letter arose only on 30.12.2015. Further, as per Clause 7 of the Allotment Letter, it was agreed that if the Petitioners did not get possession by 30.12.2015, they would be refunded the monies paid, along with the agreed rate of interest of 24% p.a.

3.11 As regards the allegation that Respondent Nos. 12 and 13 were already paid by third parties, and hence they cannot be termed as allottees, it is submitted that

this is incorrect, as the complete amount, inclusive of the interest, is pending repayment. Also, there is no documentary evidence to show that the debt was repaid. Even if the amount was received in full by both the aforesaid Respondents, the main Company Petition remains maintainable, since the threshold of 10% is still met by the other 16 Petitioners as on the date of filing.

3.12 Furthermore, it is contended that there were no multiple offers for settlement as alleged by the Applicant; there was only one settlement discussion with the Petitioners held on 14.07.2021. It is submitted that the Applicant/Corporate Debtor is trying to wriggle out of its statutory and contractual obligations by citing standard developer operating tactics and unjustified reasoning. The Respondents, therefore, seek dismissal of the Application with exemplary costs.

4. Analysis and Findings

4.1 We have heard the Ld. Counsel for the Applicant and the Respondents and perused the documents placed on record.

4.2 The admitted facts of the case are that the Applicant/Corporate Debtor was developing a project known as ‘Ruparel Orion’ wherein the Respondents/Petitioners in the Company Petition were allotted flats through identical letters of allotment. Under clause 7 of the respective letters of allotment, it was stipulated that if the present Applicant/Corporate Debtor failed to complete the construction of the proposed new premises or obtain an Occupation Certificate/part Occupation Certificate, or hand over possession of the Unit/flat to the present Respondents, the Applicant/Corporate Debtor would be liable to refund the entire payments made by the Respondents with applicable interest on 30.12.2015. According to the Respondents/Petitioners, since a default has occurred in the repayment of the monies paid by them, the Respondents, constituting 20 allottees of the Project, filed the Company Petition under Section 7 of the Code. Subsequently, the Applicant/Corporate Debtor filed an affidavit dated 11.07.2021 to bring on record the settlement reached between the Applicant and the original Petitioner Nos. 9 and 12. Accordingly, the original Petitioner Nos. 9 and 12 filed an affidavit to withdraw from the Company Petition.

After hearing the parties, this Tribunal, *vide* order dated 08.02.2023 admitted the Company Petition and initiated CIRP in respect of the Applicant/Corporate Debtor.

4.3 Subsequently, on the appeal filed by the then-suspended director of the Applicant, in Company Appeal (AT) (Ins.) 206 of 2023, the Hon'ble NCLAT, by its order dated 24.01.2024, set aside the Admission Order and remanded the matter back to this Tribunal for reconsideration. After the Remand Order, the Applicant/Corporate Debtor has filed the present Application, contending primarily that the Respondents have not met the threshold of 10% of allottees in the Project to file the Company Petition and that they are speculative investors in the Project who have invoked the provisions of the Code under the garb of being homebuyers.

4.4 The Applicant asserts that Section 7 of the Code imposes a minimum threshold of at least 10% of the allottees in a real estate project for filing an application under Section 7 of the Code. However, the Company Petition is pursued by only 18 Petitioners (after the settlement with two Petitioners) in the Project, which has 203 allottees, though the Respondents claim that the total number of allottees in the Project is only 124. It is further submitted that the RERA website showed 124 allottees as on the date of filing of the Company Petition, due to a delay in uploading data on the RERA Portal caused by the COVID-19 Pandemic. Pertinently, such a delay in updating every quarter, as stipulated under Section 11 of RERA, was condoned by MahaRERA. Additionally, MahaRERA has taken no action against the Applicant for any purported failure to make timely uploads. Consequently, according to the Corporate Debtor, the number of allottees in the Project is 203, and the number of Petitioners in the Company Petition is falling short of the required percentage under the Code.

4.5 On the other hand, the Respondents/ Petitioners contend that on the date of filing of the Company Petition, i.e., 03.12.2020, the disclosure on the MahaRERA website showed that the Applicant had 124 allottees in the Project. Hence, the 20 Petitioners constituted more than 10% of the allottees in the Project and

therefore met the threshold prescribed under the Code on the date of filing the Company Petition.

4.6 Before adverting to the rival contentions, it is necessary to notice that the explanation added to Section 5(8) of the Code states that (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. Therefore, we may extract the definition of 'allottee' and 'real estate project' under the said Act:

'(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;

(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;'

4.7 Thus, the word 'allottee' is to be understood in the sense in which the word has been defined in RERA, and the definition of 'allottee' in RERA indicates that a letter of allotment in the project is sufficient, and no agreement is necessary to treat a person as an allottee in the project. In the present case, the Respondents/ Petitioners have produced the allotment letters issued by the Applicant in the Project 'Ruperal Orion,' which was being developed by the present Applicant.

Therefore, it is imperative to examine the dispute over the threshold criteria set out in the Code.

4.8 In the matter of *Pioneer Urban Land and Infrastructure Ltd v. Union of India* [(2018) 8 SCC 416], the Hon'ble Supreme Court emphasized the importance of information provided by the real estate developer under RERA and observed that this information, like the information from information utilities, makes it easy for the homebuyers/allottees to trigger the application under Section 7 of the Code. Furthermore, the Hon'ble Supreme Court in *Manish Kumar v. Union of India* [(2021) 5 SCC 1], while examining the vires of the second proviso to Section 7(1), which imposes conditions on allottees of the same real estate project for filing of insolvency applications, recognised the intention of the legislature to use the mechanism under RERA to gather information about the status of allotments, even though it is not necessarily confined to them. Thus, it is well settled that the information made available by the real estate developer on the RERA website serves as the primary source for determining the threshold delineated in Section 7(1).

4.9 The Ld. Counsel for the Respondents/Petitioners also sought to draw support from the orders passed by the co-ordinate Benches of NCLT in *Devinder Yadav & Ors v. GRJ Distributors and Developers Private Limited* [2022 SCC OnLine NCLT 33724] *and Chirag Jain and Ors v. Imperia Structures Ltd.* [(2023) SCC OnLine NCLT 68277]. It is submitted that the information available on the RERA website is the only platform through which Petitioners can get details about the Project, and it is presumed that the information available on the RERA website is the correct information given by the Corporate Debtor, as it is the duty of the Corporate Debtor to keep the list of allottees updated.

4.10 In the present case, it is admitted that on the date of filing of the Company Petition, i.e., 03.12.2020, the information available on the MahaRERA website showed 124 allottees in the Project. Nevertheless, the Applicant/Corporate Debtor asserts that there was a delay in uploading data on the RERA Portal due to the COVID-19 Pandemic, claiming that the actual number of allottees is 203.

The Applicant further justified the delay in updating the website by stating that MahaRERA has taken no action against them for any purported failure to make timely uploads. We find that this argument is unconvincing for two primary reasons: first, it is the duty of the real estate developer to get the information updated on the RERA portal; second, the Petitioners had no alternative sources to obtain this information. Moreover, as evidenced by the list of allottees provided by the Applicant/Corporate Debtor, many allotments were made and agreements executed with allottees during the COVID period. Therefore, considering that the Applicant had the capacity to allot and enter into agreements with allottees during the pandemic, the justification provided for the lack of timely updates on the portal of RAERA lacks merit. It is also relevant to point out that the numerical or percentage threshold imposed under Section 7(1) of the Code is intended to prevent frivolous or isolated insolvency triggers, serving as a structural filter. This threshold is not intended to exclude real estate projects from the resolution framework under the Code, nor to afford real estate developers the opportunity to engage with a limited number of allottees to keep the number of aggrieved allottees below the threshold.

4.11 In light of the above, we are of the view that the number of allottees shown on the RERA website at the time of filing the Company Petition shall be the basis unless it is demonstrated that alternate legally recognised sources concerning the allottees are available. Moreover, once the requisite number of allottees join together and fulfil the requirements to file an application under Section 7, a vested right is created to proceed with the action till its logical and legal conclusion. Consequently, allotments made subsequent to the filing of the application and settlements reached with a few allottees shall not be relevant to the assessment of the threshold specified under Section 7. In the present case, the Applicant/Corporate Debtor themselves have admitted that only 124 allottees were shown on the RERA website at the time of filing of the Company Petition, and that the Company Petition was filed by 20 allottees. In the circumstances, we have no hesitation in holding that the number of Petitioners surpasses the 10% threshold stipulated under Section 7 of the Code.

4.12 This brings us to another relevant issue to be considered at the stage of admission of application for initiation of CIRP under Section 7 of the Code, which is whether the Petitioners are speculative investors, as the decision of the Hon'ble Supreme Court in *Pioneer Urban* (supra) drew a distinction between speculative investors and genuine homebuyers, though no such distinction is made under the Code. Further, the Hon'ble Supreme Court, in *Mansi Brar Fernandes v. Shubha Sharma and another* [2025 SCC OnLine SC 1972], observed that the determination of whether an allottee is a speculative investor depends on the facts of each case, and that the inquiry must be contextual and guided by the intent of the parties. The nature and terms of the contract, as well as the overall conduct of the allottees/ Petitioners, need to be considered for such determination. Thus, such a determination is fact-specific, context-driven, and dependent on contractual intent and conduct, rather than amenable to a rigid rule-based classification.

4.13 It is, therefore, appropriate to notice some of the terms of the identical Allotment Letters issued by the Applicant/Corporate Debtor to the Respondents/Petitioners:

(a) Paras 3 (B) and (C)-

"(B) It is agreed by both parties that ***time is of the essence in relation to the performance of obligations of respective parties*** *under this allotment letter;*

(C) Upon receipt of our notice that we have commenced or completed a particular stage of construction, ***you shall be obliged to pay the Sale Price in the manner set out herein.*** *We shall notify you with accurate information regarding the progress of construction of the Building, such notice to be sent to your address notified herein."*

(b) Para 4-

"In the event of a ***failure by you to pay in accordance with 3(C)*** *above, we shall be entitled to deliver to you a* ***21 (twenty-one) calendar days' notice of termination and require you to pay the Sale Price together***

with interest *@ 24% per annum from the due date of payment to the date of actual payment by you. In the event that you fail to make such payment within 21 (twenty-one) calendar days,* ***this allotment letter shall stand terminated.*** *Upon such termination,* ***all amounts paid by you to date shall be refunded to you*** *after we have deducted any reasonable and actual expenses incurred by us (however no interest shall be payable by us to you any amounts paid by you to us). In such an event, provided we have fully refunded you. we shall be at the liberty to sell and/or allot the above referred Flat to any third person without any further notice to you."*

(c) Para 6-

"This Letter of Allotment is issued on the understanding and the assurance given by you to us that you will enter into a regular agreement for purchase of Unit / Flat pursuant to the provisions of Maharashtra Flat Ownership Act, 1963 prior to taking possession of the Unit / Flat with us. You shall have the right to require us to enter into an agreement for purchase of Unit / Flat at any time prior to taking possession of the Unit / Flat. At the time of entering into an agreement for purchase of property, you undertake to pay, in addition to the charges set out in clause 5, the applicable stamp duties, registration charges, levies, cess, Service, VAT taxes or any other such taxes, etc. levied and actual legal charges for preparing the agreement for purchase in respect of the Unit / Flat."

(d) Para 7-

"We shall undertake to complete the construction of the proposed new premises and obtain Occupation Certificate / Part Occupation Certificate and hand over possession of the Unit/Flat to you by 30th June 2015. After accounting for an additional grace period of 6 (Six) months (i.e. by 30th December 2015), in the event that ***we fail to complete the construction of the proposed new premises or obtain Occupation Certificate / Part Occupation Certificate or hand over possession of the Unit/Flat*** *to you, we shall* ***immediately refund any payments made by you towards the***

Sale Price together with an additional sum as interest payable on Sale Price payments made by you at the rate of 24% per annum. *Such interest shall be payable from the date of Sale Price payments to the date when we have fully repaid you. In the event of a* ***continuing force majeure*** *(which shall be limited to war or civil commotion, riots or Act of God and non-availability of essential building materials such as cement and steel, other building material, water or electric supply for a period of not more than six months or War, Civil Commotion, or any notice, order, rule, notification of the Government and/or other public or competent authority or changes in any rules, regulation, bye-laws of various statutory bodies and authorities affecting the development and the project or on account of delay in issue of the Occupation Certificate and/or any other Certificate/permission/approval as may be required in respect of the said free sale building by the said local authority or delay in grant of any NOC / permission / licence / connection for installation of any services, such as lifts, electricity and water connections and meters to the project / flat / road or completion certificate from appropriate authority for which such delay shall be condone by not be more than six months or any other concerned authority not due to any default on the part of the Promoter herein* ***or any cause beyond the control of the Promoters or any other reasonable cause*** *or and that the Purchaser/s hereby agrees to ignore such delay in getting possession due to any of the abovementioned reasons and/or for any reason beyond the control of the Promoters as per the provisions of section 8 of the MOFA or any stay, injunction or other order of any court, tribunal or authority) which lasts beyond 30 June 2016,* ***we shall be obliged to refund all Sale Price payments to you together with interest at the rate of 24%*** *for the periods that were not subject to a force majeure event."*

(e) Para 12-

"This Letter of Allotment sets out the commercial understanding between us and shall terminate upon execution of a formal agreement for purchase of the said Unit / Flat. The terms of such formal agreement for purchase of

the said Unit / Flat shall be materially consistent with terms of this Letter of Allotment."

(Emphasis added)

4.14 The terms of the Allotment Letter as above make it clear that time is of the essence in relation to the performance of obligations by the parties involved. In the event that the allottee fails to pay in accordance with the payment terms, such delay shall attract interest at the rate of 24% per annum, and the allotment shall stand terminated after twenty-one calendar days. Similarly, if the Applicant/Corporate Debtor fails to complete construction of the new premises and to hand over possession of the unit/flat by 30.06.2015, the Applicant is obligated to refund the sale price paid by the allottee together with interest at the rate of 24% per annum. It is observed that the Applicant has failed to complete the building within the stipulated timeframe.

4.15 The case of the Respondents/ Petitioners, as evidenced by Exhibits P to T annexed to the Company Petition, is that, due to breach of the terms, they contacted the Applicant/Corporate Debtor personally and over telephone many times and requested to cancel the allotment and refund the advance money with interest at 24% compounded annually within 15 days of the notice issued on 11.11.2016. The Applicant/Corporate Debtor, through various correspondences exchanged from November 2016 to May 2019, has contested the request of compounded interest but has proposed a different interest margin as per Rate Profit, a mode of calculation based on the prevailing Base Rate. It is pertinent to note that 10 of the 20 Respondents/Petitioners have received partial refunds of their respective debt amounts. Furthermore, the subject matter of the correspondence annexed to the Company Petition primarily pertains to the charging of interest and has never been the completion of the building or the handing over of possession of the flats booked by the Petitioners.

4.16 The Applicant/Corporate Debtor states that they were/are ready and willing to refund the payments/investments made by the Respondents/Petitioners along with interest as mandated by law. However, the Respondents demanded 24%

compound interest and declined the offer, showing an ulterior motive to derive undue gain from the Project. The Corporate Debtor even approached MahaRAERA to direct the Respondents/Petitioners to accept the respective amounts paid by them for the flats along with interest in terms of Section 18 of the RAERA. However, the MahaRAERA by order dated 24.01.2023 declined to pass any order noting that the Respondents/Petitioners have filed Company Petition before the NCLT. The MahaRAERA has also noted that the Allotment Letters in question have been terminated and cancelled, and that approximately 25% of the amounts have already been refunded by the Applicant/Corporate Debtor to the Respondents/Petitioners.

4.17 The Applicant/Corporate Debtor asserts that, in addition to the exorbitant rate of interest, there exist several indicative factors that demonstrate that Petitioners are speculative investors. The Project in question is being developed under the supervision of the Slum Rehabilitation Authority ("SRA") in accordance with the provisions of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ("Slum Areas Act"). The Petitioners willingly paid approximately 30% of the purchase consideration at the initial stage in 2012, without insisting on registering a formal agreement for sale as required under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, or subsequently under the RERA. Furthermore, the contention of the Applicant/Corporate Debtor is that the Petitioners are all high-net-worth individuals employed at senior management levels in reputable financial institutions, such as Deutsche Bank and that they never intended to live in the proposed flats. Some of the correspondence of the Petitioners has described themselves as a "group of friends" who had "invested' in the Project. Additionally, the Applicant/Corporate Debtor has relied on the judgement of the Hon’ble NCLAT in *Nidhi Rekhan v. Samyak Projects Pvt Ltd* [2022 SCC OnLine NCLAT 46] to argue that the nature of the transaction establishes that it is an investment.

4.18 On the contrary, the Respondents/ Petitioners assert that the high rate of 24% was not a stipulation only against the Applicant for defaulting on its obligations,

but also a stipulation for default by the Petitioners as well. The rate of interest, even if considered high, was not an assured return but a contractual obligation, equally binding on both sides, meant to deter them from defaulting on their respective obligations. The Respondents/Petitioners further argue that the allegation that they are high-net-worth individuals is irrelevant and has no bearing on the adjudication of the present Application filed by the Corporate Debtor. As per Clause 7 of the Letter of Allotment, the construction of the project was required to be completed by 30.06.2015, with a grace period till 30.12.2015. Nonetheless, the Applicant/Corporate Debtor has failed to complete the construction, obtain an Occupation/Part Occupation Certificate, or hand over possession of the flats to the Respondents/ Petitioners. As a result, the main Company Petition (IB) 1420/MB/2020 was filed by 20 Petitioners, all of whom are allottees of the Project. It is further asserted that once both debt and default are established, along with the fulfilment of the requisite threshold, the Adjudicating Authority must admit the application.

4.19 In light of the opposing arguments presented, it becomes essential to examine other factors that are to be taken into consideration for the admission of an application filed by allottees in a real estate project. The Hon'ble Supreme Court in *Pioneer Urban* (supra) held as follows:

"56. It can thus be seen that just as information utilities provide the kind of information as to default that banks and financial institutions are provided under Sections 214 to 216 of the Code read with Regulations 25 and 27 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, allottees of real estate projects can come armed with the same kind of information, this time provided by the promoter or real estate developer itself, on the basis of which, prima facie at least, a "default" relating to amounts due and payable to the allottee is made out in an application under Section 7 of the Code. We may mention here that once this prima facie case is made out, the burden shifts on the promoter/real estate developer to point out in their reply and in the hearing before the NCLT, that the allottee is himself a defaulter and would, therefore, on a reading of the agreement and the applicable RERA Rules and

Regulations, not be entitled to any relief including payment of compensation and/or refund, entailing a dismissal of the said application. At this stage also, it is important to point out, in answer to the arguments made by the Petitioners, that under Section 65 of the Code, the real estate developer can also ***point out that the insolvency resolution process under the Code has been invoked fraudulently, with malicious intent, or for any purpose other than the resolution of insolvency. This the real estate developer may do by pointing out, for example, that the allottee who has knocked at the doors of the NCLT is a speculative investor and not a person who is genuinely interested in purchasing a flat/apartment. They can also point out that in a real estate market which is falling, the allottee does not, in fact, want to go ahead with its obligation to take possession of the flat/apartment under RERA, but wants to jump ship and really get back, by way of this coercive measure, monies already paid by it. Given the above, it is clear that it is very difficult to accede to the Petitioners' contention that a wholly one-sided and futile hearing will take place before the NCLT by trigger-happy allottees who would be able to ignite the process of removal of the management of the real estate project and/or lead the corporate debtor to its death."*** (Emphasis added)

4.20 In the present case, the Allotment Letter specifically stipulated an exit provision from the Project in the event of default by the Applicant/Corporate Debtor to complete the project by 30.6.2015. This provision included a refund of the sale consideration, along with interest at a high rate of 24% per annum. The correspondence exchanged between the parties after the occurrence of default in completion of the Project focused on the interest or compensation payable, rather than on the fulfilment of the completion of the building or the handing over of possession of the flats booked by the Petitioners. Therefore, it is clear that the Respondents/Petitioners are primarily concerned with obtaining a refund of the advance amount together with a high rate of interest. They have effectively relinquished their intention to acquire the flats in the Project voluntarily. The Hon'ble Supreme Court in *Mansi Brar* (Supra) listed out certain indicative factors

to determine whether an allottee is a speculative investor, including (i) the nature and terms of the contract; (ii) the number of units purchased; (iii) presence of assured returns or buy-back clauses; (iv) the stages of completion of project at the time of investment; and (v) existence of alternative arrangements in lieu of possession. It has been held by the Hon'ble Court that possession of a dwelling unit is *sine qua non* of a genuine homebuyer's intent. Considering the overall conduct of the present Respondents/Petitioners, it emerges that they entered into a contract with the Applicant/Corporate Debtor, not with the intent of acquiring a home, but rather with the objective of obtaining property as an investment. By applying the various indicators mentioned in the judgement of *Mansi Brar* (supra), it becomes apparent that the Respondents/ Petitioners are speculative investors and are thus not entitled to invoke Section 7 of the Code. In view of the above, we have no hesitation in concluding that the Company Petition has not been filed for the purpose of resolving the insolvency of the Applicant/Corporate Debtor.

4.21 When we have found that the Respondents/Petitioners are speculative investors, they cannot be permitted to take advantage of the remedial framework available under the Code, which is intended for the rescue of corporate debtors and genuine homebuyers. Accordingly, the **Application No. 3045 of 2024** is **partly allowed**, and **Company Petition No. 1420 of 2020** is **rejected** as not maintainable. Other reliefs are not granted. In view of the facts and circumstances of the case, no order as to costs. File be consigned to records.

4.22 It is made clear that the disposal of the Company Petition No.1420/2020 is without prejudice to the exercise of other rights available to the Respondents/Petitioners in accordance with the law.

Sd/-

ANIL RAJ CHELLAN

MEMBER (TECHNICAL)

Sd/-

K. R. SAJI KUMAR

MEMBER (JUDICIAL)

/JJ/