

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP(IB)/185(CHE)/2022

[filed under Section 7 of the Insolvency and Bankruptcy Code, 2016]

In the matter of Ozone Projects Private Limited

- 1. Mr. Arumugam Thimmarayan**
S/o Shri. K. T. Thimmarayan
R/o No. 60, Brigade Aspiro,
Block D2, no.1 chanakiyan main road,
Annamalai Avenue, Nolambur,
Tiruvallur, Tamil nadu – 600095
- 2. Mrs. M.D. Poovarasi**
W/o Mr. Arumugam Thimmarayan
R/o No.60, Brigade Aspiro,
Block D2, No.1 Chanakiyan Main Road
Annamalai Avenue, Nolambur,
Tiruvallur, Tamil nadu – 600095
- 3. Mr. G. Senthil Kumar,**
S/o late S. Govindan,
R/o D18-406, Purva Windermere,
Bhavani Amman Koil Street,
Pallikaranai, Chennai – 600100
- 4. Mrs. Shyamala Senthil Kumar**
W/o Mr. G Senthil Kumar
R/o D18-406, Purva Windermere,
Bhavani Amman Koil Street,
Pallikaranai, Chennai – 600100
- 5. Mr. N.A. Paramaguru Raja Nellaiappan**
S/o Shri Nellaiappan Alagappan

R/o 51/10, Muniyasampuram 2nd street,
Thoothukudi – 628003

6. Mr. Nithi S. Anand

S/o. Shri M.C. Selvaraj
R/o 4079, Oak Forest Circle
Marietta, GA – 30062 USA

7. Mr. Manoj Parekh

S/o. Late Sri Chhotalal R Parekh
R/o Rushab Apartments, New No. 53,
And Old No. 24, Ritherdon Road,
First Floor, Vepery, Chennai – 600 007

8. Mrs. Sheetal M. Parekh

W/o. Mr. Manoj Parekh
R/o Rushab Apartments, New No. 53,
And Old No. 24, Ritherdon Road,
First Floor, Vepery, Chennai – 600 007

9. Mr. Sreenivasulu Lekkala

S/o Shri Venkata Krishnaiah Lekkala
R/o 1166, Sunnyvale Saratago RD APT 35
Sunnyvale CA, USA 94087

10. Mr. Bobby Doddi

S/o. Shri B. Chandrasegaran
R/o 4692, Bishop Lake RD
Marietta, GA 30062

11. Mr. Suresh Nagarajan

S/o Shri S. Nagarajan
R/o New No. 23, Old 31/2
South Gangai Amman Koil
First Street Choolaimedu,
Chennai – 600 094

12. Mrs. Jagadamma Sobhana Prasanna Kumar

D/o Shri Madha Van Pillai
R/o # 406, 18609 SE Newport Way
Issaquah, Washington 98027, USA

13. Mr. Vijayan Chandran

S/o Shri Chandran Kanagaraj
R/o 39/E5, Sudha Colony, Kaatoor,
Metupalayam, Coimbatore – 641 305

14. Mrs. Shradha Paresh Tolia

D/o. Shri Paresh Nandalal Tolia
R/o 7 K Grand Cayon Apartments
East Venkatsamy Road, RS Puram,
Coimbatore – 641 002

15. Mr. P. Balaji

S/o Shri Pandurangan R.V.
R/o 2B-A3, Block, Olympia Grande,
328, GST Road, Pallavaram,
Chennai – 600 043

16. Mr. N.R. Vijayasekaran

S/o Shri A.R.P.N. Rajamanickam]
R/o No. 41, Vanivilas Road,
Basa Vanagudi, Bangalore – 560 004

17. Mr. Biswajit Deka

S/o. Late Bhubaneswar Deka
R/o H No. 4, Lane 1,
Bishnu Path, Rukminigaon,
Guwahati – 781022

18. Mrs. V. Rajani

W/o. Shri N.R. Vijayasekaran

R/o No. 41, Vanivilas Road,
Basavanagudi,
Bangalore – 560 004

19. Mr. G. Raja Gopal
S/o Shri Gengama Naidu
R/o No. 76, T.S. Krishna Nagar,
Anna Nagar (W) – 600 037

20. Mr. Gopal Krishna
S/o Shri A.K. Prasad
R/o K- 901, Metrozone,
Chennai – 600 040

... Petitioners / Financial Creditors

Vs.

1. M/s. Ozone Projects Private Limited
Through its Directors(s)
(CIN: U70101TN2005PTC056894)
Having its Registered Office at New No. 63, G.N. Chetty Road,
T. Nagar, Chennai – 600 017, Tamil Nadu.

For Petitioners : Raj Kumar Jhabakh, Advocate
For Respondent : S.R Rajagopal, Senior Advocate
Chandramouli Prabhakar, Advocate

Along with

IA(IBC)/1866(CHE)/2025

IN

CP(IB)/185(CHE)/2022

*[filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 R/w Rule 11 & 49 of
NCLT Rules, 2016]*

In the matter of Ozone Projects Private Limited

1. M/s. Ozone Projects Private Limited

A Company incorporated under the provisions
of the Companies Act 1956

(CIN: U70101TN2005PTC056894)

Having its Registered Office at New No. 63, G.N. Chetty Road,
T. Nagar, Chennai – 600 017, Tamil Nadu.

Represented by its Managing Director Mr. S. Vasudevan

... Applicant

Vs.

1. Mr. Arumugam Thimmarayan

S/o Shri. K. T. Thimmarayan

R/o No. 60, Brigade Aspiro,

Block D2, no.1 chanakiyan main road,

Annamalai Avenue, Nolambur,

Tiruvallur, Tamil nadu – 600095

2. Mrs. M.D. Poovarasi

W/o Mr. Arumugam Thimmarayan

R/o No.60, Brigade Aspiro,

Block D2, No.1 Chanakiyan Main Road

Annamalai Avenue, Nolambur,

Tiruvallur, Tamil nadu – 600095

3. Mr. N.A. Paramaguru Raja Nellaiappan

S/o Shri Nellaiappan Alagappan

R/o 51/10, Muniyasampuram 2nd street,

Thoothukudi – 628003

4. Mr. N.R. Vijayasekaran

S/o Shri A.R.P.N. Rajamanickam]

R/o No. 41, Vanivilas Road,

Basa Vanagudi, Bangalore – 560 004

5. Mrs. Shyamala Senthil Kumar

W/o Mr. G Senthil Kumar
R/o D18-406, Purva Windermere,
Bhavani Amman Koil Street,
Pallikaranai, Chennai – 600100

6. Mr. Manoj Parekh

S/o. Late Sri Chhotalal R Parekh
R/o Rushab Apartments, New No. 53,
And Old No. 24, Ritherdon Road,
First Floor, Vepery, Chennai – 600 007

7. Mrs. Sheetal M. Parekh

W/o. Mr. Manoj Parekh
R/o Rushab Apartments, New No. 53,
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First Floor, Vepery, Chennai – 600 007

8. Mr. Sreenivasulu Lekkala

S/o Shri Venkata Krishnaiah Lekkala
R/o 1166, Sunnyvale Saratago RD APT 35
Sunnyvale CA, USA 94087

9. Mr. Bobby Doddi

S/o. Shri B. Chandrasegaran
R/o 4692, Bishop Lake RD
Marietta, GA 30062

10 Mr. Suresh Nagarajan

S/o Shri S. Nagarajan
R/o New No. 23, Old 31/2
South Gangai Amman Koil
First Street Choolaimedu,
Chennai – 600 094

11. Mr. Nithi S. Anand

S/o. Shri M.C. Selvaraj

R/o 4079, Oak Forest Circle
Marietta, GA – 30062 USA

12. Mrs. Jagadamma Sobhana Prasanna Kumar

D/o Shri Madha Van Pillai
R/o # 406, 18609 SE Newport Way
Issaquah, Washington 98027, USA

13. Mr. Vijayan Chandran

S/o Shri Chandran Kanagaraj
R/o 39/E5, Sudha Colony, Kaatoor,
Metupalayam, Coimbatore – 641 305

14. Mrs. Shradha Paresh Tolia

D/o. Shri Paresh Nandalal Tolia
R/o 7 K Grand Cayon Apartments
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15. Mr. G. Senthil Kumar,

S/o late S. Govindan,
R/o D18-406, Purva Windermere,
Bhavani Amman Koil Street,
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16. Mr. Biswajit Deka

S/o. Late Bhubaneswar Deka
R/o H No. 4, Lane 1,
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17. Mrs. V. Rajani

W/o. Shri N.R. Vijayasekaran
R/o No. 41, Vanivilas Road,
Basavanagudi,
Bangaolre – 560 004

18. **Mr. G. Raja Gopal**
S/o Shri Gengama Naidu
R/o No. 76, T.S. Krishna Nagar,
Anna Nagar (W) – 600 037
19. **Mr. Gopal Krishna**
S/o Shri A.K. Prasad
R/o K- 901, Metrozone,
Chennai – 600 040
20. **Mr. P. Balaji**
S/o Shri Pandurangan R.V.
R/o 2B-A3, Block, Olympia Grande,
328, GST Road, Pallavaram,
Chennai – 600 043

. . . Respondents

Present:

*For Applicant : S.R Rajagopal, Senior Advocate
Chandramouli Prabhakar, Advocate*

For Respondents : Raj Kumar Jhabakh, Advocate

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 15th April, 2026

ORDER

(Heard through Hybrid Mode)

1. This petition under Section 7 of IBC has been filed by the Petitioners / Home Buyers against the Corporate Debtor Ozone Projects Private Limited for initiating Corporate Insolvency Resolution Process (CIRP).
2. Part – I of the petition sets out the details of the Petitioners (20 Nos) / Home Buyers. Part – II of the petition sets out the details of the Corporate Debtor Ozone Projects Private Limited. It was incorporated on 13.07.2005 with paid up capital of Rs. 143,57,70,000/-. Its registered office is situated at New No. 63, G.N. Chetty Road, T. Nagar, Chennai, Tamil Nadu within the jurisdiction of this Tribunal. In Part – III of the petition, the Petitioners have proposed the name of Mr. Amarpal having registration No. IBBI/IPA-01/IP/P01584/2018-2019/12411 as Interim Resolution Professional. In Part – IV of the petition, the Petitioners have given the particulars of the financial debt being Rs. 21,71,30,421/- summarized as below:

APPLICANT NO.	NAME OF THE FINANCIAL CREDITORS	AMOUNT PAID (Rs)
1.	Arumugam Thinmarayan	28,37,840.00
2.	M.D. Poovarasi	28,37,840.00
3.	Senthil Kumar G & Shyamala Senthil Kumar	33,28,444.00
4.	Shyamala Senthil Kumar & Senthil Kumar G	32,07,514.00
5.	N. A. Paramaguru Raja Nellaiappan	88,52,324.00

5.	N. A. Paramaguru Raja Nellaiappan	88,52,326.00
6.	Nithi Selvaraj Anand	27,41,077.00
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7.	Manoj Parekh & Sheetal M Parekh	27,55,653.00
8.	Sheetal M Parekh & Manoj Parekh	26,86,902.00
9.	Sreenivasulu Lekkala	53,85,158.00
10.	Bobby Doddi & B Chandra Segaran	28,61,712.00
10.	Bobby Doddi & B Chandra Segaran	27,07,712.00
11.	Suresh Nagarajan	2,28,42,169.00

12.	Jagadamma Sobhana Prasanna Kumar & Prem Prasanna Kumar	1,75,35,885.00
13.	Vijayan Chandran	89,68,644.00
14.	Shradha Paresh Tolia	62,42,160.00
15.	Balaji P & Suranya M	28,09,664.00
15.	Balaji P& Suranya M	28,09,664.00
16.	N. R. Vijayasekaran	78,78,042.00
17.	Biswajit Deka	2,34,37,749.00
18.	Rajani Vijayasekaran	78,78,042.00
19.	G Raja Gopal & R Ranjinin	42,20,556.00
20.	Gopal Krishna & Nadini	49,41,820.00

The date of default is stated as 31.10.2019. This petition has been filed on 04.08.2022. In Part –V of the petition, the Petitioners have placed the copy of refund orders passed by TNRERA as Annexure A5 collectively, copy of sample agreements as Annexure A3, copy of letters / emails / supplementary agreement promising refund of money along with interest as Annexure A4 collectively, copy of cumulative receipts / bank statements issued by the Corporate Debtor to the Petitioners against the payments received along with default computation sheet as Annexure

A6 collectively, consolidated computation sheet of default as Annexure A7, record of financial information filed with NeSL by the Petitioners as Annexure A8 and consent form given by the proposed IRP as Annexure A9.

3. As per the averments made, the Corporate Debtor is engaged in the business of real estate and infrastructural development including construction and development of residential and commercial complexes. This petition relates to the project “The Metro Zone” located at Koyambedu Village, Egmore, Nungambakkam Taluk, Chennai being developed by the Corporate Debtor which is registered with TNRERA vide registration No. TN/29/Building/0095/2019.
4. It is alleged that while launching the project, the Corporate Debtor made misrepresentation to the public through advertisements and brochures to lure the buyers to make investments / purchase flats. The Petitioners and other Financial Creditors paid the amount to the Corporate Debtor during the period from 2015 to 2017 against the allotment of units based on the assurance by the Corporate Debtor that the possession of the flats would be delivered within the time specified in the agreements. It is stated that the Corporate Debtor executed

separate agreements i.e. construction agreements, agreements for sale and tri-partite agreements with the Petitioners who made the payments approximately 80% to 90% of the total consideration. The total principal amount paid to the Corporate Debtor is Rs. 16,13,59,974/-. It is stated that the Corporate Debtor despite extracting huge money from the Petitioners under one sided agreements / allotment letters made no progress in the construction of the project. The towers of the project where the units were booked did not even get one stone laid till date. It was informed by the Officials of the Corporate Debtor that these towers are being scrapped and the land is being put on sale for other purpose. It is stated that the Petitioners made multiple visits to the office of the Corporate Debtor and filed the criminal complaints regarding misappropriation of money etc., upon which the Corporate Debtor accepted its default and acknowledged to pay the debts as paid by the Petitioners in a time bound manner. It is stated that the Corporate Debtor sent letters / mails / supplementary agreements to the Petitioners whereby the Corporate Debtor acknowledged the default so committed against the financial debt and agreed in writing to refund the amount of financial debt within a definite period of time. It is stated

that few Petitioners also approached TNRERA which took cognizance of the same and directed the Corporate Debtor to refund the amount paid by the Petitioners with penalty. It is stated that the Hon'ble Supreme Court in the case of *Dena Bank Vs. Shivakumar Reddy in 2021 SCC Online SC 543* has held that any judgment / decree of any Court or Tribunal for payment of money, if not satisfied, would fall within the ambit of financial debt. It is stated that the communication of acceptance of default and refund of money through letters or emails was made pursuant to the cancellation of allotments of units. It is stated that consequent to this acknowledgment and letters / mails to refund the money to the Petitioners, the respective Buyers ceased to become the Home Buyers or Allottees any more and became the Financial Creditors under Section 5(8) of IBC.

5. The Petitioners have given the summary of amounts paid, acknowledgment of default of debt and its repayment:

APPLICANT NO.	NAME OF THE FINANCIAL CREDITOR(S)	PAID AGAINST UNIT NO(S).	AMOUNT PAID (Rs)	ACKNOWLEDGMENT OF DEBT	DATE OF DEFAULT
1.	Arumugam Thimmarayan	AG-929	28,37,840.00	Letter dated 23.01.2020 & Email dated 16.03.2021	30.06.2020 31.07.2021
2.	M.D. Poovarasi	AG-930	28,37,840.00	Letter dated 23.01.2020	30.06.2020

				& Email dated 16.03.2021	31.07.2021
3	Senthil Kumar G, Shyamala Senthil Kumar	AG-1229	33,28,444.00	Supplement agreement dated 19.12.2018	01.08.2020
4.	Shyamala Senthil Kumar, Senthil Kumar G	AG-1230	32,07,514.00	Supplement agreement dated 19.12.2018	July' 2022
5.	N. A. Paramaguru Raja Nellaiappan	AF-1401	88,52,324.00	Email dated 09.06.2021	31.12.2021
5.	N. A. Paramaguru Raja Nellaiappan	AF-1402	88,52,326.00	Email dated 09.06.2021	31.12.2021
6.	Nithi Selvaraj Anand	AG-509	27,41,077.00	Email dated 06.09.2021	31.12.2021

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6.	Nithi Selvaraj Anand	AG-510	27,41,077.00	Email dated 06.09.2021	31.12.2021
7 & 8.	Manoj Parekh, Sheetal M Parekh	AF-1405	27,55,653.00	TN-RERA judgement dated 30.07.2021	31.12.2021

8.	Sheetal M Parekh, Manoj Parekh	AF-1406	26,86,902.00	TN-RERA judgement dated 30.07.2021	31.12.2021
9.	Sreenivasulu Lekkala	AF-1707	53,85,158.00	Email dated 27.01.2021	31.07.2021
10.	Bobby Doddi, B Chandra Segaran	AG-1331	28,61,712.00	Email dated 06.09.2021	31.12.2021
10.	Bobby Doddi, B Chandra Segaran	AG-1332	27,07,712.00	Email dated 06.09.2021	31.12.2021

11.	Suresh Nagarajan	W-1102	2,28,42,169.00	Email dated 29.07.2019	31.10.2019
12.	Jagadamma Sobhana Prasanna Kumar, Prem Prasanna Kuma	AF-1604	1,75,35,885.00	Supplement agreement dated 20.09.2018	30.09.2021
13.	Vijayan Chandran	AF-1101	89,68,644.00	TN-RERA judgement dated 11.04.2022	10.05.2022
14.	Shradha Paresh Tolia	AF-1005	62,42,160.00	Email dated 21.01.2021	31.05.2021
15.	Balaji P, Suranya M	AG-905	28,09,664.00	Email dated 23.08.2021	31.12.2021
15.	Balaji P, Suranya M	AG-906	28,09,664.00	Email dated 23.08.2021	31.12.2021
16.	N. R. Vijayasekaran	AF-1501	78,78,042.00	Letter dated 13.02.2020	31.05.2020

17.	Biswajit Deka	Z-002	2,34,37,749.00	Email dated 06.11.2019	31.03.2020
18.	V. Rajani	AF-1502	78,78,042.00	Letter dated 13.02.2020	31.05.2020

19.	G. Rajagopala & R. Ranjini	AF- 404	42,20,556.00	E-mail dated 11.12.2020	31.03.2021
20.	Gopal Krishan & Nandini	AF-405	49,41,820.00	E-mail dated 11.05.2021	31.10.2021
TOTAL			16,13,59,974.		

6. It is stated that the Corporate Debtor failed to honor its contractual liabilities to repay the financial debt despite acknowledging the debt and promising its repayments along with interest in a time bound manner and thus committed default. It is stated that as on 31.05.2022, total amount in default with interest standing against the Corporate Debtor is Rs. 21,71,30,421/- as per computation Annexure A6 collectively. It is stated that the Petitioners squarely fall under the definition of financial creditors and the payments as made by them are the financial debts as per Section 5(8) of IBC. It is stated that the amount paid by the Petitioners was against the time value of money and has the commercial effect of borrowing. As per Section 7 of IBC, a Financial Creditor either itself or jointly with other Financial Creditors can file a petition for initiating CIRP against the Corporate Debtor. In this case, the petition has been filed jointly by the Financial Creditors. It is stated that the debt has been duly acknowledged vide respective

mails / refund order letters / agreements / Court orders carrying different rate of interest. It is stated that the amount in default is more than Rs. 1.0 Crore which is more than the threshold limit for initiating CIRP against the Corporate Debtor.

7. The Respondent / Corporate Debtor filed the reply wherein it denied the allegations set forth in the petition. It is stated that the petition has been filed by Arumugham Thimmarayan (Petitioner No. 1) claiming to be authorized by the Power of Attorney of other Petitioners by a document titled "Letter of Authorization". It is stated that the power of attorney is invalid as the same has not been stamped / insufficiently stamped / not adjudicated before the Collector. As per Indian Stamp Act, 1899, a power of attorney is an instrument which is chargeable with duty under Schedule 1 and any power of attorney executed outside India has to be adjudicated in India within a period of three months.
8. It is stated that the petition fails to meet the threshold required under second proviso to Section 7 of IBC. The project relates to Real Estate project which comprises of 2414 units and the present petition has been filed jointly by 20 Petitioners referred to as Allottees who collectively own only 24 units. The threshold is atleast 100 allottees to support the

petition or 10% of total allottees whichever is less. This is with an objective of protecting the Corporate Debtor from being dragged into insolvency proceedings by an isolated set of Creditors. Section 5(8)(f) of IBC and Section 2(zn) of RERA Act, 2016 define the financial debt, allottee and real estate project. It is stated that the total allotment shall be the criteria and not phase wise or tower wise for ascertaining the threshold. In the present case, total number of units allotted are 2099 and thus the threshold is either 100 or 209.9.

9. It is stated that the Petitioner No. 7, 8 and 13 have obtained orders from TNRERA seeking refund of amount collected in lieu of residential units which they are claiming that they have ceased to be “Real Estate Allottees” and their allotments shall not be taken into consideration while computing the 10% threshold. It is stated that this contention is untenable and unsustainable. The original claim of the Petitioners against the Corporate Debtor was in the nature of real estate allottee and as per the settled law, the basic nature is to be ascertained. From the very nature of the allotment letter, it can be seen that such Petitioners can only be treated as real estate allottees and the orders of TNRERA cannot alter such position.

10. It is stated that the Petitioners are not the Financial Creditors under Section 5(8)(f) of IBC, since they have subsequently entered into an agreements with the Respondent / Corporate Debtor i.e. supplemental agreements opting to either retain the unit or enforce the Respondent / Corporate Debtor to buy back the units by paying the loan / advance amount. It is stated that the Petitioners cannot be considered as Financial Creditors but are the speculative investors who cannot be given benefit.
11. The Petitioners filed the Rejoinder wherein they denied the averments made in the reply and reiterated what they stated in the petition. It is stated that the Financial Creditors have authorized Mr. Arumugam Thimmarayan through letter of authorization under IBC Rules, 2016 to facilitate joint filing of the petition under Section 7. The letter of authorization is not a power of attorney. The Petitioners have approached this Tribunal in the capacity of Financial Creditors duly acknowledged by the Corporate Debtor not as Home Buyers. The financial debts have been duly acknowledged by the Corporate Debtor vide mails / refund letters / agreements / RERA orders / promise of repayments along with interest as tabulated below.

APPLICANT NO.	NAME OF THE FINANCIAL CREDITOR(S)	AMOUNT PAID (RS.)	ACKNOWLEDGMENT OF DEBT	PAGE NO.
1.	Arumugam Thimmarayan	28,37,840.00	Letter dated 23.01.2020 & Email dated 16.03.2021	129 of the main petition
2.	M.D. Poovarasi	28,37,840.00	Letter dated 23.01.2020 & Email dated 16.03.2021	130 of the main petition
3	Senthil Kumar G, Shyamala Senthil Kumar	33,28,444.00	Supplement agreement dated 19.12.2018	131 – 133 of the main petition
4.	Shyamala Senthil Kumar, Senthil Kumar G	32,07,514.00	Supplement agreement dated 19.12.2018	134 – 136 of the main petition
5.	N. A. Paramaguru Raja Nellaiappan	88,52,324.00	Email dated 09.06.2021	138 – 139 of the main petition
5.	N. A. Paramaguru Raja Nellaiappan	88,52,326.00	Email dated 09.06.2021	140 of the main petition
6.	Nithi Selvaraj Anand	27,41,077.00	Email dated 06.09.2021	<u>19</u> of the present Rejoinder
6.	Nithi Selvaraj Anand	27,41,077.00	Email dated 06.09.2021	<u>19</u> of the present Rejoinder
7 & 8.	Manoj Parekh, Sheetal M Parekh	27,55,653.00	TN-RERA judgement dated 30.07.2021	152 – 165 of the main petition
8.	Sheetal M Parekh, Manoj Parekh	26,86,902.00	TN-RERA judgement dated 30.07.2021	152 – 165 of the main petition

9.	Sreenivasulu Lekkala	53,85,158.00	Email dated 27.01.2021	20 of the present Rejoinder
10.	Bobby Doddi, B Chandra Segaran	28,61,712.00	Email dated 06.09.2021	21 of the present Rejoinder
10.	Bobby Doddi, B Chandra Segaran	27,07,712.00	Email dated 06.09.2021	21 of the present Rejoinder
11.	Suresh Nagarajan	2,28,42,169.00	Email dated 29.07.2019	141 of the main petition
12.	Jagadamma Sobhana Prasanna Kumar, Prem Prasanna Kumar	1,75,35,885.00	Supplement agreement dated 20.09.2018	142 – 144 of the main petition
13.	Vijayan Chandran	89,68,644.00	TN-RERA judgement dated 11.04.2022	161 – 165 of the main petition
14.	Shradha Paresh Tolia	62,42,160.00	Email dated 16.02.2021	145 of the main petition
15.	Balaji P, Suranya M	28,09,664.00	Email dated 23.08.2021	146 of the main petition
15.	Balaji P, Suranya M	28,09,664.00	Email dated 23.08.2021	
16.	N. R. Vijayasekaran	78,78,042.00	Letter dated 13.02.2020	147 of the main petition
17.	Biswajit Deka	2,34,37,749.00	Email dated 06.11.2019	148 of the main petition
18.	V. Rajani	78,78,042.00	Letter dated 13.02.2020	149 of the main petition
19.	G. Rajagopala & R. Ranjini	42,20,556.00	E-mail dated 11.12.2020	150 of the main

				petition
20.	Gopal Krishan & Nandini	49,41,820.00	E-mail dated 11.05.2021	151 of the main petition
TOTAL		16,13,59,974.		

12. These 20 Financial Creditors have debt of about Rs. 16.0 Crores. As per the judgment in the case of *ES Krishnamurthy & Ors. Vs. Bharat Hi Tech Builders Pvt. Ltd in Civil Appeal No. 3325 of 2020*, this Tribunal has to see the debt and default only and not the cause of defaults.

Form 1 of IBC states as under:

"Annex IV- where the application is made jointly, the particulars specified in this form shall be furnished in respect of all the joint applicants along with a copy of authorization to the financial creditor to file and act on this application on behalf of all the applicants"

13. Reference is made of the case *Dena Bank (Now Bank of Baroda) Vs. C. Shivakumar Reddy & Anr in Civil Appeal No. 1650 of 2020*, where it was held that decree or recovery certificate from the Court would give separate cause of action. The Respondent has already acknowledged to pay the debt in a time bound manner. In the present case, the Financial Creditors have cancelled their units and are no more the allottees. In the supplementary agreements, the Respondent has undertaken to repay the amount to the Petitioners. They are not the speculative investors but have cancelled their units.

14. In the present case, because of non-appearance of the Respondent, it was set as ex-parte vide an order dated 09.10.2025. Thereafter, the Respondent filed an application IA/1866/2025 for setting aside the ex-parte order. It is stated that upon being served copy of the petition, the Respondent engaged a Counsel who filed the preliminary reply to the petition raising issue on the very maintainability of the petition. On 01.05.2023, this Tribunal passed an order in CP/5/2023 initiating CIRP against the Respondent. The Respondent preferred an appeal and obtained stay order from Hon'ble NCLAT on 10.05.2023. The stay was extended from time to time. It is stated that on 21.07.2025, the stay order was modified by Hon'ble NCLAT to the extent that the CIRP against the Respondent / Corporate Debtor is completely stayed and the moratorium is lifted. It is stated that the Respondent was under the bonafide belief that upon revival of the petition, its Advocate would duly fully represent the Respondent before the Tribunal and update the Respondent but it did not happen. The Respondent then engaged a new legal team and has filed the application for setting aside the ex-parte order.

15. Considering the submissions and the circumstances, after hearing the Counsels for the parties, we allow the application IA(IBC)/1866(CHE)/2025 and set aside the ex-parte order dated 09.10.2025.
16. Pleadings in the present petition are complete.
17. The parties have filed written synopsis besides oral arguments advanced by the Counsels appearing for the parties.
18. Ld. Counsel for the Petitioners / Home Buyers argued on the lines of the petition and the Rejoinder and contended that the Petitioners are the Financial Creditors of the Corporate Debtor who have invested their hard earned money pursuant to the allotment agreements in the project “The Metrozone” being developed by the Corporate Debtor for purchase of residential units by raising funds from their own resources and through loans. There is a default of Rs. 16,13,59,974/- by the Corporate Debtor which it has acknowledged. The Petitioners have approached this Tribunal in the capacity of Financial Creditors not as Home Buyers since the units booked were cancelled and the Corporate Debtor

did not refund the amounts. Ld. Counsel submits that after the cancellation, the Petitioners would not be the Home Buyers anymore but are the Financial Creditors as the debt is towards time value of money. He stated that in the case of *“Gaurav Jindal Vs. Debashish Nanda, RP Bulland Buildtech Pvt. Ltd.”*; *“Vishal Chelani & Ors. Vs. Debashis Nanda (2025 SCC Online SC 1972)”* and *“Rahul Gyanchandani & Ors. Vs. Parsvnath Landmark Developers Pvt. Ltd., 2024 SCC Online NCLAT 469”*, the Allottee had voluntarily sought for cancellation of allotted unit and the cancellation was not occasioned by project abandonment or developer default but in the present case, the Corporate Debtor failed to commence the project and consequently, the Petitioners were constrained to cancel the allotments. They also entered into supplementary agreements which changed the nature of the financial debt. The submission of the Respondent that the Petitioners are speculative investors is misconceived. Once the allotments stood cancelled, the Corporate Debtor is obligated to refund the money. He referred the case of *ES Krishnamurthy & Ors. Vs. Bharat Hi Tech Builders Pvt. Ltd in Civil Appeal No. 3325 / 2020*, where it was held that the

Tribunal is required to see the debt and default and not the cause of default.

19. Ld. Counsel contended that the Petitioners have signed letters of authorization in favour of Mr. Arumugam Thimmarayan for the institution of this petition and the same cannot be equated as letter of authorization with power of attorney and as such Section 1A of Power of Attorney Act, 1882 does not apply. This petition has been filed as per Form 1 of the IBBI Rules and authorization letters are sufficient to file the petition and no stamping is required.
20. Ld. Counsel submits that the petition meets the threshold. He referred the case of *Dena Bank (Now Bank of Baroda) Vs. C. Shivakumar Reddy & Anr. in 2021 SCC Online SC 543*, where it was held that the decree or recovery certificate from the Court would give separate cause of action. The Respondent has acknowledged to pay the debt in a time bound manner. The Petitioners have cancelled their units and are no more the allottees. Ld. Counsel submits that the Petitioners are not the speculative investors. They waited for an unreasonable period for commencement and completion of the project and it was thereafter they

cancelled their allotments and entered into the supplementary agreements.

21. Ld. Counsel for the Corporate Debtor per contra argued that the petition does not meet the threshold under second proviso as amended in 2018 to Section 7(1) of IBC. Irrespective of whether they have not received the possession nor their deposit amounts have been refunded, they still remain as Financial Creditors as held in the case of *Shailendra Agarwal Vs. Asit Upadhyaya & Ors.* (NCLAT CA(AT)(Ins) No. 327 of 2025). Ld. Counsel submits that “The Metrozone” project comprises of total 2414 units out of which 2099 units have been allotted. As per proviso, the minimum threshold to initiate CIRP is 210 allottees but the present petition has been filed by 20 allottees (24 units). Hon’ble Supreme Court in *Vishal Chelani & Ors. Vs. Debashis Nanda* (2025 SCC Online SC 1972), has held that allottees who have obtained decree from RERA continue to be part of the class of Home Buyers and cannot be treated differently. This is followed by Hon’ble NCLAT in the case of *Rahul Gyanchandani & Ors. Vs. Parsonath Landmark Developers Pvt. Ltd.*, 2024 SCC Online NCLAT 469 and *Shailendra Agarwal Vs. Asit Upadhyaya* (2025) *ibclaw.in* 283 NCLAT. Ld. Counsel also referred the case of *Manish*

Kumar Vs. Union of India (2021) 5 SCC 1, where Hon'ble Supreme Court has held that the second proviso to Section 7(1) is a conscious legislative safeguard introduced to prevent individual or minuscule groups of allottees from weaponising the insolvency framework.

22. Ld. Counsel further contends that the Petitioners are not the genuine Home Buyers but the speculative investors who entered into the transactions with the Respondent purely for financial gain as evident from the supplemental agreements which contain buy back clauses. Hon'ble Supreme Court in *Mansi Brar Fernandes Vs. Shubha Sharma*, 2025 SCC Online SC 1972, has held that presence of buy back clauses and assured returns are strong indicators of speculative intent. They being the speculative investors are attempting to use the IBC as a coercive recovery mechanism which is impermissible.
23. Ld. Counsel submits that the Petitioners with RERA decrees are the allottees, bound by the Section 7 threshold. It is a malafide intent on their part to execute the RERA decrees through the IBC. Hon'ble NCLAT in *Sushil Ansal Vs. Ashok Tripathi in Company Appeal (AT) (Ins) No. 452 of 2020* has held that IBC is a forum for resolution and not a mechanism for executing individual decrees. Ld. Counsel submits that

the petition is vitiated due to invalid letters of authorization which are on a plain paper with no stamp duty.

24. Ld. Counsel further submits that the claim of certain Petitioners who have requested for cancellation and refund cannot be treated as financial debt for the purpose of initiating CIRP. They are still entitled to continue with the allotment since the Company has not cancelled the units and refunded the monies. In *Gaurav Jindal supra* Hon'ble NCLAT has held that an allottee cannot be considered as a Financial Creditor when the allotted unit is cancelled at its request. In *Manish Kumar supra*, it was held that the legislative intent was to prevent a single disgruntled allottee from derailing the insolvency resolution of a massive real estate project, thereby protecting the collective interest of the majority of allottees. The allottees even those with refund decrees / orders remain subject to the collective threshold and voluntary disengagement and do not create a new class for threshold evasion. Ld. Counsel submits that an appeal against the order initiating CIRP against the Corporate Debtor in CP(IBC)/5(CHE)/2023 is pending before Hon'ble NCLAT in CA(AT)(CH)(Ins) No. 134 of 2023.

25. Ld. Counsel submits that the Petitioners herein are not remediless. They still can approach TNRERA for refund of their amounts or for any compensation in the event they are aggrieved by the non-repayment of their booking amounts or for failure to deliver possession.
26. We have given our thoughtful consideration to the rival contentions and perused the record.
27. A perusal of the petition reveals that the Corporate Debtor engaged in the business of real estate and infrastructure development had launched a project “The Metrozone” at Koyambedu village, Chennai. The Petitioners booked the flats during the period 2015-17 and were allotted units with the assurance that the units / flats would be delivered to them within the time specified in the agreement. They executed construction agreements and tri-partite agreements with the Corporate Debtor and paid 80% to 90% of the total consideration against the sale consideration of their respective units. This petition has been filed by 20 persons (24 units) in the capacity of Financial Creditors under Section 7 of IBC through Mr. Arumugam Thimmarayan, authorized representative in whose favour the Petitioners have given letters of authorization placed at page 58 to 88 of the petition. The Petitioners

have also placed copy of one of the construction agreement at page 91 to 113, agreement for sale by the Corporate Debtor in favour of the Petitioner at page 114 to 123 and tri-partite agreement among the Petitioner, Corporate Debtor and Housing Development Finance Corporation Limited at page 124 to 128 of the petition. As per the construction agreement, the timely payment of installments as per the payment schedule was the essence of the transaction. In the event of delay, the Developer was entitled to terminate the agreement and forfeit 15% of the amount paid as liquidated damages. As per the agreement to sale, the Corporate Debtor had agreed to sell an undivided right, title interest in the property to the Petitioner / Purchaser. The Corporate Debtor failed to timely complete the project and hand over the flats to the allottees. It however confirmed that it would pay interest @ 9% per annum vide letter dated 23.01.2020 at page 129. A mail was also sent on 16.03.2021 undertaking to settle the entire amount including pre EMI on or before July 2021. It also entered into a supplemental agreement, format placed at page 131 which finds mention that the Corporate Debtor has assured to buy back the residential unit and shall pay two times the initial advance paid by the Purchaser and liquidate the loan

outstanding between 28 to 30 months from the date of first disbursement which would expire in January 2020 and give 30 months lock-in period from January 2020 after taking steps for selling the residential unit before the expiry of 30 months period or buy back the same. Pursuant to that the allottees / Petitioner made the correspondence seeking refund which the Corporate Debtor did not make. Record shows that the Allottees kept on paying the EMIs towards the loans availed from the Financial Institution. Some of the allottees also made request for cancellation which the Corporate Debtor confirmed having received the request vide letter dated 13.02.2020 placed at page 149. Some of the allottees approached TNRERA and obtained orders on 30.07.2021 and 11.04.2022 placed at page 152 and 161 of the petition wherein it was held that the allottees are entitled for refunds of the amount paid by them and other reliefs including interest and compensation. It was ordered that the charge of the aforesaid amount shall be on the flats booked by the allottees till their repayment and the allottee shall execute the cancellation of agreements and sale deed of UDS land as the case may be on satisfaction of their claims.

28. As seen from the aforesaid documents, although few allottees / Petitioners obtained orders from TNRERA but these orders have not been honoured by the Corporate Debtor. Till date, Allottees have not filed any execution petition for execution of the orders before TNRERA / Civil Court. There is no document indicating that pursuant to the request made by the allottees / Petitioners, the Corporate Debtor cancelled their units. There is only an acknowledgment to the effect that the Corporate Debtor has received the request for cancellation of units.
29. As regards speculative investment as pleaded by the Corporate Debtor, there is no record indicating that the allottees / Petitioners had purchased the flats for speculative investment. They had rather raised loans from the Financial Institutions after entering into the tri-partite agreements and paid the consideration to the Corporate Debtor towards purchase of the flats. It is true that there is a clause in the agreement to sale that in case of delay, the Corporate Debtor would pay the interest but the said clause cannot be construed in any manner a speculative investment. Time was the essence of the agreement. In case of delay by the Allottee, the Corporate Debtor was entitled to charge interest and

similarly the allottee in case of delayed allotment was entitled to interest / compensation / damages. Entering into a supplementary agreement after the lapse of timeline would not change the character of the debt. In the instant case, they had cancelled their units and entered into supplemental agreements after waiting for a long period for commencement and completion of the project. That being the position, the case of *Mansi Brar Fernandes supra* would not come to the rescue of the Respondent / Corporate Debtor and the Petitioners cannot be said to be speculative investors.

30. Now coming to the contention that the Petitioners do not meet the threshold under second proviso as amended in 2018 to Section 7(1) of IBC. Section 7(1) provides that a Financial Creditor either by itself or jointly with other Financial Creditors may file an application for initiating CIRP against the Corporate Debtor when a default has occurred provided that for the Financial Creditors referred to in Section 21, sub Section 6A(a)(b), an application for initiating CIRP against the Corporate Debtor shall be filed jointly by not less than 100 or such Creditors in the same class or not less than 10% of the total number of such Creditors in the same class, whichever is less. Provided further,

for the Financial Creditors who were allottees under a real estate project, an application for initiating CIRP against the Corporate Debtor shall be filed jointly by not less than 100 or such allottees under the same real estate project or not less than 10% of total number of such allottees under the same real estate project whichever is less.

31. As evident from the record, the Metrozone project comprises of total 2414 units out of which 2099 units have been allotted. As per proviso Section 7(1) of IBC, minimum threshold to initiate CIRP is 210 allottees but this petition has been filed by 20 allottees (24 units). Hon'ble Supreme Court in the case of *Vishal Chelani supra* has held that with introduction of explanation, home buyers and allottees of real estate projects were included in the class of Financial Creditors because financial debt is owed to them. It was held that this Court is unpersuaded by the submission of RP that once an allottee seeks remedies under RERA and opts for return of money in terms of the order made in her favour, it is not open for her to be treated in the class of Home Buyer. It was held that only Home Buyers can approach and seek remedies under RERA and no others. To treat a particular segment of that class differently for the purposes of another enactment,

on the ground that one or some of them had elected to take back the deposits together with such interest as ordered by the Competent Authority would be highly inequitable. In any case, the distinction made by the RP is artificial and it amounts to hyper classification and falls afoul of Article 14. Such an interpretation cannot therefore be countenanced.

32. In the light of above legal proposition, we are of the view that the allottees who have obtained decree from RERA continue to be part of the class of home buyers and cannot be treated differently. In *Manish Kumar supra*, Hon'ble Supreme Court has held that second proviso to Section 7(1) is a conscious legislative safeguard introduced to prevent individual or minuscule groups of allottees from weaponising the insolvency framework. Permitting such individual actions would paralyse large real estate projects and operate against the interest of the overwhelming majority of home buyers.

33. It was contended by the Petitioners that the decree or recovery certificate from the Court would give separate cause of action; the Respondent has acknowledged to pay the debt in a time bound manner and the Petitioners have cancelled their units and they are no more the

allottees. As discussed supra, although the Petitioners had requested for cancellation of their units but there is no document indicating that the Corporate Debtor had cancelled their units. Supplemental agreement is only an assurance to buy back the residential unit and pay two times the initial advance amount paid by the Purchaser and liquidate the non-outstanding amount between 28 to 30 months from the date of first disbursement. The supplemental agreement also provides a clause that in the event the Purchaser intends to retain the residential unit, the same shall be communicated to the Corporate Debtor within 28-30 months and the Purchaser shall pay the balance due in terms of sale and construction agreements and take possession. From the supplemental agreement, it cannot be inferred that the Corporate Debtor had acceded the request of the buyers and cancelled the flats as claimed.

34. Section 5(8)(f) defines Financial Debt. It means a debt along with interest if any which is disbursed against the consideration for the time value of money and includes any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of borrowing. As per explanation, any amount

raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of borrowing and the expressions allottee and real estate project shall have the meanings respectively assigned to them in clauses (d) and (zn) of Section 2 of RERA Act, 2016. In the present case, the Corporate Debtor has raised the amount from the allottees / Petitioners under the real estate project which has the commercial effect of borrowing. The Petitioners are the allottees of the Corporate Debtor in the aforesaid project and cannot be ceased to be allottees. So, they would be treated as Financial Creditors under Section 5(8)(f) explanation and are required to meet the threshold as provided under Section 7 of IBC i.e. minimum 100 or 10% of the units which they failed to meet. The Petitioners though holding TNRERA decrees continue to be the allottees. The existence of a decree merely crystallizes their claim but does not alter their fundamental status as allottees who must act collectively. Further, in the case of *Gaurav Jindal Vs. Debashish Nanda, in Company Appeal (AT) (Ins.) No. 2076 of 2024*, Hon'ble NCLAT has held that an allottee cannot be considered as Financial Creditor when the allotted unit is cancelled at their request. Even mere acceptance of a cancellation request without a full refund

does not sever this fundamental link to their allottee status. Their claim for money is still a claim as allottee for amounts paid towards a real estate project. The Hon'ble Supreme Court upheld this threshold observing that the legislative intent was to prevent a single disgruntled allottee from derailing the insolvency resolution of a massive real estate project, thereby protecting the collective interests of the majority of allottees. Hon'ble Supreme Court in *Vishal Chelani supra* which is followed by Hon'ble NCLAT in *Rahul Gyanchandani supra* has held that the allottees even those with refund decrees / orders do not create a new class for threshold evasion. The allottee cannot be said to go out of the definition of allottee merely because he has an order in his favour by RERA and the contention of that person that he should be treated in a different category i.e. category of decree holder cannot be accepted. The allottee even after the order of RERA directing for refund by the Corporate Debtor continues to be allottee and has to mandatorily comply with Section 7 (1) 2nd Proviso. The Home Buyers whether they have an order or decree from the RERA or who do not have any decree or order from RERA belong to same category of allottees and no distinction can be made on the said ground. This was also reiterated in

the case of *Shailendra Agarwal Vs. Asit Upadhyaya & Ors. in Company Appeal (AT)(Ins.) No. 327 of 2025* by the Hon'ble Principal Bench of NCLAT where it was clarified that the issuance of a recovery certificate does not alter the status of the allottee as a Financial Creditor.

35. As regards the contention that the petition has been filed by one allottee Mr. Arumugam Thimmarayan on the basis of letters of authorization given in his favour by the 19 allottees without any power of attorney, on perusal of the authorization, we find that 19 allottees have given authorization to Mr. Arumugam Thimmarayan to file the petition jointly for himself and on behalf of 19 allottees. Section 7 clearly provides that the Financial Creditors can file the petition jointly. As per Form 1 of IBC (Annexure IV), where the application is made jointly, the particulars specified in this form shall be furnished in respect of all the joint applicants along with a copy of authorization to the financial creditor to file and act on this application on behalf of all the applicants. That being the position, we do not find any merit in the contention of the Respondent / Corporate Debtor that no power of attorney has been given by the allottees in favour of Mr. Arumugam Thimmarayan or the

authorization by the allottees who have been residing abroad have not been stamped in India under the Indian Stamp Act.

36. In the light of above discussions and the settled position of law, we **dismiss** the petition CP(IB)/185(CHE)/2022 since the petition does not meet the requisite threshold as provided under Section 7 of IBC.
37. No orders as to cost.
38. File be consigned to records.

Sd/-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-

SANJIV JAIN
MEMBER (JUDICIAL)