

**Note regarding the units allotted and possession given to real estate allottees shall not be appearing in the Information Memorandum and quantum of claims of allottee who had taken the possession.**

The Corporate Debtor is a real estate company having three part of single plot of land located at Plot No. GH-10, Sector 1, Greater Noida West, Greater Noida, Uttar Pradesh 201306 and registered with RERA vide RERA registration no UPRERAPRJ4689.

There are three parts of this projects the “Casa Royal”, “Sanskriti ” and “ Royal Bazar”. the “Casa Royal”and “Sanskriti” are residential part and “Royal Bazar” is a commercial complex.

The details (on the basis of employees information provided) of the units in the “Casa Royal”, “Sanskriti” and “ Royal Bazar” are as under:

<b>Particulars</b>	<b>Sanskriti</b>	<b>Casa Royal</b>	<b>Royal Bazar</b>
Total Number of units as per approved map/ plan	675	1284	78
Allotted	658	1140	77
Un-sold inventory	17	144	1

Note : there are 296 units of Casa Royal which are not approved which are not part of above table, out of 296 unit 79 units has allotted and 217 units are lying in inventory.

Before the insolvency commencement date, the Corporate Debtor has offered the possession :

- Sanskriti on the basis of temporary occupation certificate given by the GNIDA for tower A, B & C and
- offered the possession of Sanskriti for tower C1 & D without obtaining temporary occupation certificate from the GNIDA &
- offered the possession of Casa Royal for Tower A, B, K & L without obtaining temporary occupation certificate from the GNIDA

and pursuant to aforesaid offer 418 allottees of Sanskriti & 154 allottees of Casa Royal took the physical possession from the Corporate Debtor and currently about 400 buyers of both parts of the project are residing in their flats.

The Resolution Professional while preparing the Information Memorandum has to mention the details of assets and liabilities of the Corporate Debtor as on insolvency

commencement date. For ease of reference Regulation 36(2)(a) of the IBBI (CIRP) Regulations' 2016 is reproduced herein below:

**"36. Information memorandum.**

(2) The information memorandum shall contain the following details of the corporate debtor-

(a) assets and liabilities with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their values.

Explanation: 'Description' includes the details such as date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value, and any other relevant details."

The Corporate Debtor is following the Accounting Standard-7 (% of Completion method) and irrespective of any registered sub-lease had booked the following revenue from operations and reduced the inventory levels:

Total revenue from operations of the Corporate Debtor were Rs.509.38 crore during the financial year 2013-14 to 2018-19:

<b>Financial Year</b>	<b>Amount in Rs.</b>
2013-14	88,03,78,574
2014-15	1,64,87,68,499
2015-16	90,38,73,334
2016-17	39,57,72,537
2017-18	58,54,83,295
2018-19	67,96,06,063
<b>Total</b>	<b>5,09,38,82,302</b>

Note : Financial statement for the financial year 2019-20 are under preparation so the Resolution Professional is not in position to provide the figures.

Further, it is trite as per Transfer of Property Act' 1882 read with builder buyer agreement entered into Corporate Debtor with the Allottees, the transferee would get the title only after execution of registered sub-lease.

Therefore, theoretically speaking in the absence of any registered deed, all the units of the real estate projects are in the name of the Corporate Debtor and can be maximized as per the provisions of I & B Code' 2016.

But because the Corporate Debtor has given the possession of units to allottees and allottees are residing there. And moreover the Corporate Debtor has booked the revenue from operations on the percentage of completion method as per Accounting Standard-7. As a natural corollary at the time of booking of sales, the Corporate Debtor has reduced the inventory. Hence, as a result the units allotted, possession offered are not appearing in the inventory of the Corporate Debtor as on Insolvency commencement date.

Moreover, after offering the possession the third party interest in favour of allottee has been created. Moreover as per jurisprudence, ownership includes within it four kind of rights:-

1. Right to use of a thing;
2. Right to exclude others from using the thing;
3. Disposing of the thing and
4. Right to destroy it.

In Black's Law Dictionary (7<sup>th</sup> Edn.) ownership has been defined as "collection of rights to use and enjoy property, including right to transmit it to others".

Hence, it has been decided by the RP that for the purpose of Regulation 36(2)(a) of the IBBI (CIRP) Regulations' 2016, the units/flats of which possession has been granted by the Corporate Debtor shall not become the part of the assets of the CD in the Information memorandum and these flats cannot be maximized. Only the outstanding amount appearing the books of accounts of the Corporate Debtor as "Debtor" shall form part of the Information Memorandum and shall be available for the maximization.

Similarly, after taking the possession of units, the debt of allottees appearing in the books of the Corporate Debtor stands automatically adjusted and satisfied and nothing remains qua the allottees taken the possession. But in the present case, because possession was offered on the strength of the temporary Occupation certification and some work also remains in "Sanskriti". Hence, the debt of allottees of "Sanskriti" who have taken the possession is collated @ 10% only notionally representing the liability of the CD to complete the pending work in "Sanskriti".

And after completing the pending approved balance work in "Sanskriti" nothing shall remain outstanding qua the allottees except the discount offered through MoU, if any which shall finally be address by Resolution Applicant.

**Note:- This note has been prepared for discussion and disclosing the proposed approach of Resolution Professional. The Resolution Professional is ready to receive any constructive suggestion or change in approach but final decision shall be with the Resolution Professional.**