NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH-V

(IB) 283 (ND)/2022

In the matter of:

1. **Indiabulls Housing Finance Limited**
Through its authorised signatory Uttam Nagar
Having its Registered Office at
M-62 & 63, First Floor, Connaught Place,
New Delhi-110 001 **...Applicant/Financial Creditor**

V/s

Revital Reality Private Limited
1114 Hamkund Chambers,
11th Floor, 89 Nehru Place,
New Delhi-110 019 **...Respondent /Corporate Debtor**

SECTION: U/S 7 of IBC, 2016

Order delivered on: 23.05.2022

Coram:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

SH. HEMANT KUMAR SARANGI, HON'BLE MEMBER (T)

PRESENT: -

For the Applicant: Adv. Sumesh Dhawan, Adv. Avni Sharma and Adv. Angad Baxi

ORDER

Mr. Abni Ranjan Kumar Sinha, Member (Judicial)

1. We have heard the Ld. Counsel appearing for the Financial Creditor/Applicant on the point of issuance of notice. Ld. Counsel for the Financial Creditor/Applicant, in the course of his arguments submitted that the Financial Creditor/Applicant had entered into a loan agreement with the

Corporate Debtor and accordingly, sanctioned the loan amount of Rs. 85 crores. He further submitted that the installments have not been paid in time and the Corporate Debtor had made various payments by cheques or RTGS transactions from 09.05.2016 to 24.01.2019 and the said amounts have been adjusted towards the amount due and payable till 19.07.2018. He further submitted that the Financial Creditor/Applicant vide notice dated 25.03.2022 recalled the loan including the principal amount and interest and directed the Corporate Debtor to repay the entire amount within three days of the date of issuance of loan /recall notice and when the amount was not paid within that period, then the default has occurred. He further submitted that is the reason for showing the date of default as on 28.03.2022 in Part-IV Column-2 of the application. He further submitted from that day the application is within time.

2. In terms of submissions raised on behalf of the Financial Creditor/Applicant, we have perused the averments made in the application as well as the documents enclosed with the application.

3. At this juncture, we would like to refer to the loan agreement on the basis of which, the Financial Creditor/Applicant has paid that the amount, which was due and payable. The relevant clauses have been referred to by Ld. Counsel for the Financial Creditor/Applicant in his written synopsis i.e. Clauses 12.1.1 and 12.2. The scanned copy of the same are reproduced below:-

EVENTS OF DEFAULT

2.1 Each of the events or circumstances set out herein is an Event of Default.

12.1.1 Non-payment

The Borrower(s) and/or the Co-Borrower(s) does/do not pay by the Due Date(s) the Borrower's Dues (or part thereof) and/or any amount payable pursuant to a Loan Document.

12.2 **Consequence of an Event of Default**

On and at any time after the occurrence of an Event of Default, Lender may, with or without any notice to any of the Obligor(s) and with or without the intervention of the court/arbitrator, (i) cancel/recall the Loan whereupon the Borrower's Dues shall become immediately repayable/payable by the Obligor(s); and/or (ii) initiate/exercise any or all of its rights, actions, remedies and powers under the Loan Documents and/or applicable laws(including issuance of show-cause notice(s) to the Obligor(s) and for making submissions before the relevant committee of the Lender); and/or (iii) enforce, allot, sell, invoke, deliver, deal with, take possession, convey, transfer, assign, lease, sub-lease, encumber and/or dispose off in any manner (including by private treaty and/or auction), on such terms and conditions including the sale/transfer price of the Security or any part/unit thereof as deemed fit by the Lender, any/ all/part of the Security including the guarantees and/or the demand promissory notes, and/or do such other things in relation to and/or with respect to the Security (any part thereof) which may be permitted under law.

If the net sum realized through the enforcement/sale/ transfer of Security is insufficient to cover the Borrower's Dues. then without prejudice to the other rights and remedies of the Lender under the Loan Documents and/or in law, the Obligor(s) agree(s) and undertake(s) to pay to the Lender forthwith at the Lender's demand such amount as will make up the shortfall. The decision made by the Lender with respect to any matter under the Loan Documents shall be final and binding on the Obligor(s).

For Indiabulls Housing Finance Ltd.

Authorised Signatory

4. Apart from this Clause, at this juncture, we would also like to referto Clauses 3, 4, 4A. The scanned copy of the same are reproduced below:-

3. REPAYMENT/PAYMENT

3.1.1 The Borrower(s) and/or the Co-Borrower(s) shall repay/pay the entire Loan and interest thereon to the Lender in such manner as agreed/specified by the Lender from time to time and/or as per the Payment/Repayment Schedule. Subject to Clause 3.1.2, the Borrower(s) and/or the Co-Borrower(s) agree to pay to the Lender interest on the Loan or such part thereof as may be outstanding from time to time at such Interest Rate(s) as mentioned in Schedule I of this Agreement. Unless otherwise specified by the Lender from time to time, (a) interest shall be payable every month by the Borrower(s) and/or the Co-Borrower(s) on the Due Date(s) mentioned in the Payment/Repayment Schedule; (b) interest shall accrue from the Date of Disbursement; (c) interest shall be computed on the basis of a year of 360 days and the actual number of days elapsed; (d) interest shall be computed on monthly rests or on such periodic rests as may be decided by the Lender from time to time; and (e) in case of any payment default on the Due Date(s) by the Obligor(s) under the Loan Documents, interest shall be compounded (at the prevailing Interest Rate(s)) every month on the overdue amount and the Obligor(s) shall be liable to pay such compounded interest to the Lender.

3.1.2 Notwithstanding anything to the contrary in any Loan Documents, the Lender reserves its rights to alter, amend, increase and/or vary from time to time the Interest Rate(s) in terms of the provisions relating to Interest Rate(s) mentioned in Schedule I hereunder and shall notify (by email or by any other manner) the revised Interest Rate(s) payable under the Loan Documents to the Borrower(s) and/or the Co-Borrower(s) and the same shall be binding on the Obligor(s) with effect from such date(s) as may be specified by the Lender.

3.1.3 All sums payable by the Obligor(s) under the Loan Documents shall be paid free of any restriction or condition and free and clear of and without any deduction or withholding, whether on account of tax or otherwise (except for income tax deducted at source). If the Obligor(s) is/are obliged by law to make any deduction or withholding from any such sum (except for income tax deducted at source), then the sum payable by the Obligor(s) shall be increased to the extent necessary to ensure that, after making the deduction or withholding, the Lender receives and retains (free from any liability except for tax on overall net income) a net sum equal to what the Lender would have received and so retained if no such deduction or withholding had been required or made.

3.1.4 The Obligor(s) shall repay/pay the Borrower's Dues and other monies payable under the Loan Documents through the following modes as agreed between the Borrower(s) and/or the Co-Borrower(s) and the Lender – post-dated cheques / electronic clearing system / through an escrow account(s) maintained under the Loan Documents/ RTGS/ any other method. The Lender may, in its sole discretion, specify the mode(s) of payment/repayment under the Loan Documents from time to time and the same shall be binding on the Obligor(s). The Borrower(s) and/or the Co-Borrower(s) agree and undertake to forthwith issue fresh post-dated/undated cheques to the Lender, fresh standing instruction(s) to bank and/or fresh instruction for electronic clearance system, as the case may be, from time to time as may be requested by the Lender. Notwithstanding anything to the contrary, all payment/amounts shall be deemed to have been received by the Lender under the Loan Documents only when such payments/amounts are actually credited/transferred in the Lender's bank account. If the Obligor(s) cancel or revoke or attempt(s) to cancel or revoke such payment/repayment mode(s) without the prior consent of the Lender, the Lender shall be entitled to initiate appropriate criminal proceedings against the Obligor(s) without prejudice to the Lender's other rights under the applicable laws. The Borrower(s) and/or the Co-Borrower(s) shall pay cheque dishonor charges and miscellaneous payment charges to the Lender as specified/agreed by the Lender. Submission of undated/post-dated cheques by the Obligor(s) to the Lender shall be deemed to be an unconditional and irrevocable authority given by the Obligor(s) to the Lender to present them for payment on or after the dates filled in on such cheques. The Obligor(s) shall ensure that each of such cheques is honoured on first presentation.

For Indiabulls Housing Finance Ltd.
Authorised Signatory

3.1.5 The Borrower(s) and/or the Co-Borrower(s) shall, on the execution of this Agreement, issue and hand over to the Lender specific number of post-dated/undated cheques as mentioned in Schedule I hereunder for repayment/payment of the Loan and interest. The Borrower(s) and/or the Co-Borrower(s) shall also forthwith handover any replacement/additional cheque(s) as requested by the Lender from time to time.

For REVITAL REALITY P

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Dishonour / non realisation of the said cheques shall render the Borrower(s), the Co-Borrower(s) and the signatories of the cheques to an action under, inter alia, The Negotiable Instruments Act, 1881 and the Borrower(s), the Co-Borrower(s) and/or the signatories shall not be entitled to plead that the said cheques were not validly issued. Subsequent to a Due Date, the Lender shall return the unused post-dated cheque (relating to such Due Date) to the Borrower(s) and/or the Co-Borrower(s), provided there has been no breach/default by the Obligor(s) under/of the Loan Documents and/or no Event of Default has occurred.

4 DEFAULT INTEREST

If any of the Obligor(s) fail(s) to comply with its/their obligations under the Loan Documents including failure to create and perfect the Security and/or failure to pay any amount payable by it/them under any of the Loan Documents on the given Due Date(s) and/or if an Event of Default occurs under the Loan Documents, the Borrower(s) and/or the Co-Borrower(s) shall also be liable for payment of default interest (on the gross defaulted amounts in case of payment defaults and/or on the outstanding Loan in case of other defaults/Event of Default) at a default interest rate which is mentioned in Schedule I (**"Default Interest Rate"**) and such default interest shall be payable for the period of default. Any default interest accruing under this clause shall be immediately payable by the Borrower(s) and/or the Co-Borrower(s). Provided that the obligation to pay the Default Interest shall not entitle the Borrower(s) and/or the Co-Borrower(s) to set up a defense that no default/breach/Event of Default has occurred. The default interest payable by the Borrower(s) and/or the Co-Borrower(s) shall be in addition to the interest payable under Clause 3 of this Agreement. Default interest (if unpaid) as aforesaid will be compounded at the end of each month but will remain immediately due and payable.

4A. NOTICE FOR PAYMENT

No notice, reminder or intimation shall be given to the Obligor(s) regarding its/their obligation to repay/pay the Borrower's Dues and it shall be entirely the Obligor(s)' responsibility to ensure prompt and regular payment of such amounts payable by the Obligor(s) to the Lender when due and in the manner provided in the Loan Documents.

5. PREPAYMENT/FORECLOSURE AND CANCELLATION

5. On conjoint reading of the clauses referred to by the Financial Creditor/Applicant and the Clauses 3, 4 and 4A together, then we are of the view that as per Clause 4A, no notice, reminder or intimation shall be given to repay/pay the borrower dues and it shall be the responsibility of the borrower to make the regular payment of such amount to the lender when due and in the manner provided in the loan documents, in the terms and conditions of repayment of loan given in Schedule- II of the loan agreement placed at page 49 to 50 of the loan agreement . The scanned copy of the same is reproduced below:-

Schedule II

Subject to the provisions of this Loan Documents, the Payment/Repayment Schedule shall be as follows:

Sl. No.	Due Date(s)	Interest payable (Rs.)	Principal payable (Rs.)	Total Amount payable (Rs.)
1	19-Jun-16	7791667	0	7791667
2	19-Jul-16	7791667	0	7791667
3	19-Aug-16	7791667	0	7791667
4	19-Sep-16	7791667	0	7791667
5	19-Oct-16	7791667	0	7791667
6	19-Nov-16	7791667	0	7791667
7	19-Dec-16	7791667	0	7791667
8	19-Jan-17	7791667	0	7791667
9	19-Feb-17	7791667	0	7791667
10	19-Mar-17	7791667	0	7791667
11	19-Apr-17	7791667	0	7791667
12	19-May-17	7791667	0	7791667
13	19-Jun-17	7791667	0	7791667
14	19-Jul-17	7791667	0	7791667
15	19-Aug-17	7791667	0	7791667
16	19-Sep-17	7791667	12500000	20291667
17	19-Oct-17	7677083	12500000	20177083
18	19-Nov-17	7562500	12500000	20062500
19	19-Dec-17	7447917	12500000	19947917
20	19-Jan-18	7333333	12500000	19833333
21	19-Feb-18	7218750	12500000	19718750
22	19-Mar-18	7104167	12500000	19604167
23	19-Apr-18	6989583	12500000	19489583
24	19-May-18	6875000	12500000	19375000
25	19-Jun-18	6760417	12500000	19260417
26	19-Jul-18	6645833	12500000	19145833
27	19-Aug-18	6531250	12500000	19031250
28	19-Sep-18	6416667	12500000	18916667
29	19-Oct-18	6302083	12500000	18802083
30	19-Nov-18	6187500	12500000	18687500
31	19-Dec-18	6072917	12500000	18572917
32	19-Jan-19	5958333	12500000	18458333
33	19-Feb-19	5843750	12500000	18343750
34	19-Mar-19	5729167	12500000	18229167
35	19-Apr-19	5614583	12500000	18114583
36	19-May-19	5500000	12500000	18000000
37	19-Jun-19	5385417	12500000	17885417
38	19-Jul-19	5270833	12500000	17770833
39	19-Aug-19	5156250	12500000	17656250
40	19-Sep-19	5041667	12500000	17541667
41	19-Oct-19	4927083	12500000	17427083
42	19-Nov-19	4812500	12500000	17312500
43	19-Dec-19	4697917	12500000	17197917
44	19-Jan-20	4583333	12500000	17083333
45	19-Feb-20	4468750	12500000	16968750
46	19-Mar-20	4354167	12500000	16854167
47	19-Apr-20	4239583	12500000	16739583
48	19-May-20	4125000	12500000	16625000
49	19-Jun-20	4010417	12500000	16510417

For REVITAL REALITY PVT. LTD.

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50	19-Jul-20	3895833	12500000	16395833
51	19-Aug-20	3781250	12500000	16281250
52	19-Sep-20	3666667	12500000	16166667
53	19-Oct-20	3552083	12500000	16052083
54	19-Nov-20	3437500	12500000	15937500
55	19-Dec-20	3322917	12500000	15822917
56	19-Jan-21	3208333	12500000	15708333
57	19-Feb-21	3093750	12500000	15593750
58	19-Mar-21	2979167	12500000	15479167
59	19-Apr-21	2864583	12500000	15364583
60	19-May-21	2750000	12500000	15250000
61	19-Jun-21	2635417	12500000	15135417
62	19-Jul-21	2520833	12500000	15020833
63	19-Aug-21	2406250	12500000	14906250
64	19-Sep-21	2291667	12500000	14791667
65	19-Oct-21	2177083	12500000	14677083
66	19-Nov-21	2062500	12500000	14562500
67	19-Dec-21	1947917	12500000	14447917
68	19-Jan-22	1833333	12500000	14333333
69	19-Feb-22	1718750	12500000	14218750
70	19-Mar-22	1604167	12500000	14104167
71	19-Apr-22	1489583	12500000	13989583
72	19-May-22	1375000	12500000	13875000
73	19-Jun-22	1260417	12500000	13760417
74	19-Jul-22	1145833	12500000	13645833
75	19-Aug-22	1031250	12500000	13531250
76	19-Sep-22	916667	12500000	13416667
77	19-Oct-22	802083	12500000	13302083
78	19-Nov-22	687500	12500000	13187500
79	19-Dec-22	572917	12500000	13072917
80	19-Jan-23	458333	12500000	12958333
81	19-Feb-23	343750	12500000	12843750
82	19-Mar-23	229167	12500000	12729167
83	19-Apr-23	114583	12500000	12614583

For REVITAL REALITY PVT. LTD.

Director/Auth. Signatory

For Indiabulls Housing Finance Ltd.

Authorised Signatory

6. At this juncture, we would also like to refer to the definition of default. Section 3(12) of IBC is reproduced below:-

> ***Section 3(12):-"default"*** *means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [1][paid] by the debtor or the corporate debtor, as the case may be;*

7. On perusal of the definition referred to supra, we observe that default means non-payment of debt when whole or any part or instalment of the amount of debt became due and payable and is not paid by the debtor or the Corporate Debtor as the case may be.

8. Now, we consider the payment Schedule of the Financial Creditor/Applicant in terms of definition referred to supra and we are of the considered view that the amount is due and payable when the Corporate Debtor had defaulted in making the payment the instalment of the amount as per Schedule-II of the application and not from the date of recall of the loan amount.

9. At this juncture, we would also like to refer to Annexure-4, the statement of the account, on the basis of which, the Financial Creditor/Applicant has claimed the amount of default has occurred. The scanned copy of the same is reproduced below:-

ANNEXURE 4

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Indiabulls

INDIABULLS HOUSING FINANCE LIMITED

Branch:	CC-Gurgaon
Customer Name:	**Revital Reality Private Limited**
Customer Address:	1114, Hemkunt Chambers, 11 Floor, 89, Nehru Place, New Delhi, New Delhi-
Loan Account No.:	**5800239453**
Account Statment From:	09-May-2016 To: 25-Mar-2022
Statement Date:	25-Mar-2022

Loan Details		Due		**Received**	
Tenure:	80	Principal:	457317076	Principal:	285242439
Disbursement Date:	09-MAY-16	Interest:	157858217	Interest:	189735366
Status:	Active	Installment:	615175293	Installment:	474977805
Amount Sanctioned:	850000000	Others:	127500	Others:	84027159
Roi(%):	12.2			Pre Emi:	2561644
				2 Per cent Interest:	0

Due Date	Particulars	Debit (Rs.)	Credit (Rs.)
09/05/16	Pmnt Recd Vide Cheque No.:1839391170	0.00	127,350,000.00
09/05/16	Amt Financed-Payable	0.00	850,000,000.00
09/05/16	Interest-Due	141,500,000.00	0.00
09/05/16	TDS Receivable(Upfront Interest):09-MAY-16	0.00	14,150,000.00
09/05/16	Amount Paid Vide RTGS No.: PID0002154	850,000,000.00	0.00
19/05/16	Interest on Disbursal Due 19-May-2016	2,561,644.00	0.00
19/05/16	TDS Receivable(EMI):19-May-2016	0.00	256,164.00
02/06/16	Amount Recd. Vide RTGS No.: RTGSCORPH16154002876	0.00	2,536,027.00
19/06/16	Due for Installment 19-Jun-2016	7,791,667.00	0.00
19/06/16	TDS Receivable(EMI):19-Jun-2016	0.00	779,167.00
19/07/16	Due for Installment 19-Jul-2016	7,791,667.00	0.00
19/07/16	TDS Receivable(EMI):19-Jul-2016	0.00	779,167.00
28/07/16	Amount Recd. Vide RTGS No.: CORPH16210004478	0.00	6,781,952.00
08/08/16	Amount Recd. Vide RTGS No.: CORPH16221002844	0.00	7,012,500.00
19/08/16	Due for Installment 19-Aug-2016	7,791,667.00	0.00
19/08/16	TDS Receivable(EMI):19-Aug-2016	0.00	779,167.00
19/09/16	Due for Installment 19-Sep-2016	7,791,667.00	0.00
19/09/16	TDS Receivable(EMI):19-Sep-2016	0.00	779,167.00
28/09/16	Amount Recd. Vide RTGS No.: CORPH16270002326	0.00	14,025,002.00
28/09/16	TDS Receivable(Default Interest):28-Sep-2016	0.00	1,460.00
28/09/16	OD-20-MAY-16 / Default interest	14,598.00	0.00
28/09/16	TDS Receivable(Default Interest):28-Sep-2016	0.00	9,929.00
28/09/16	OD-19-JUN-16 / Default interest	99,289.00	0.00
28/09/16	TDS Receivable(Default Interest):28-Sep-2016	0.00	9,959.00
28/09/16	OD-19-JUL-16 / Default interest	99,587.00	0.00
28/09/16	TDS Receivable(Default Interest):28-Sep-2016	0.00	10,878.00
28/09/16	OD-19-AUG-16 / Default interest	108,783.00	0.00
19/10/16	Due for Installment 19-Oct-2016	7,791,667.00	
19/10/16	TDS Receivable(EMI):19-Oct-2016	0.00	

Loan Account No.: - 5800239453 Page 1 of 7

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10. On perusal of the Annexure-4, we notice that the first date of default has occurred as on 09.05.2016, thereafter the said instalment has not been paid on

several occasions. Hence, we are of the considered view, the date of default as mentioned by the Financial Creditor/Applicant in Part-IV on the basis of loan recall notice cannot be treated as a date of default. Rather the date of default is the date, when the first instalment was due and payable and the Corporate Debtor had not paid the amount i.e. in the year 09.05.2016, whereas the present application has been filed in the year 2022. Therefore, the present application is barred by limitation. Hence, the application is not maintainable. Accordingly, the **same is dismissed**.

-Sd-

Hemant Kumar Sarangi
Member (Technical)

-Sd-
23.05.2022

Abni Ranjan Kumar Sinha
Member (Judicial)