

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CP (IB) 2529/MB/2019

Under Section 7 of the I&B Code,  
2016

In the matter of

Nandkishore Harikishan Attal,

G-1 7<sup>th</sup> Floor, Padmavati Nagar  
Housing Society, Dhankawadi, Pune-  
411043, Maharashtra

... Petitioner

Vs.

Marvel Landmarks Private Limited,

Office no. 301-302, Jewel Tower,  
Lane no. 5, Koregaon Park, Pune-  
411001, Maharashtra

... Corporate Debtor

Order delivered on: 17.10.2019

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (J)

Hon'ble Shri V. Nallasenapathy, Member (T)

For the Petitioner: CS Ritesh R. Mahajan, Adv. Abhay Wadhwa

For the Corporate Debtor: Adv. Amit Gharte

*Per: V. Nallasenapathy Member (T)*

ORDER

1. Nandkishore Harikishan Attal (hereinafter called 'Petitioner') has sought the Corporate Insolvency Resolution Process against Marvel Landmarks Private Limited (hereinafter called the 'Corporate Debtor') on the ground that the Corporate Debtor committed default to the extent of ₹5,85,35,387/- as provided under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereafter called the 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The petition reveals that the Petitioner and the Corporate Debtor entered into an "Articles of Agreement" on 04.10.2011 and a "Correction deed" dated 13.08.2014, wherein the petitioners agreed

to buy a residential flat measuring 387.57 sq. mts., carpet area being No. 301 situated on the 3<sup>rd</sup> and 4<sup>th</sup> floors, E wing of the Complex known as "Marvel Ganga Sangria" under construction of the Corporate Debtor for ₹3,00,20,000/-. The Petitioner availed loan from Bajaj Finance to part finance the transaction along with payments from his proprietary concern named V. D. Logistics.

3. On 21.01.2019, the Petitioner issued demand notice upon the Corporate Debtor and the same is extracted below:

*"We have purchased flat at Marvel Ganga Sangaria, Flat no. 301 of E Building located at S. No. 21- Mohmmand Wadi, Pune.*

*As per agreement, till date we have paid ₹2,68,04,228/- to you against above flat. As per agreement terms, we should have got possession of our flat by 31<sup>st</sup> December 2013, but till date we have not got possession. After several follow up calls, meetings, communication, we were assured that we will get possession of our flat by 15<sup>th</sup> may, 2015. But, even after four years, we are yet to receive possession of the flat as well as compensation for delay in giving possession of the said flat. There has been delay of almost six years even though we have paid 80% of the flat value by December 2013 itself. We have suffered huge loss not only financial but also mental trauma. Hence, we request you to resolve the issue immediately.*

*We herewith demand you to waive off the balance outstanding payment in lieu of the delayed interest cost for which we have annexed the interest calculation sheet for your ready reference.*

*Hence, considering the above account scenario, we request you to give us the possession immediately without any further delay and balance amount of 2.78 Crores (approx.) within three months."*

4. The Corporate Debtor replied to the above notice on 11.03.2019 wherein at para no. 7 and 8, it was stated as follows:

*"7) In respect of the prayer made in your notice, the same is not genuine, proper and acceptable, hence denied by us. We would like to remind you that, our representatives continuously followed you for delivering possession of the said unit. Firstly on 27.04.2016, our representative has mailed you as follows, 'We are pleased to inform you that your unit is complete and ready for the furniture possession. Please find the attached full and final statement herewith for you reference. Request you to please make the payment and*

*complete the possession formalities. After the said mail, from time to time our representative requested you to clear the dues in respect of the unit and take the possession of the said unit, but unfortunately till date, you have not taken any steps for taking possession of the said unit by clearing payment due by you in respect of the said unit.*

*8) That, by this notice reply, we humbly request you to please clear the dues in respect of Unit No. E-301 and complete possession formalities as early as possible. For your perusal, we have attached herewith completion certificate of the unit, looking forward for your co-operation."*

5. The Petitioner filed this petition claiming a sum of ₹5,85,35,387/-, the principal amount being ₹2,68,04,228 (paid by the Petitioner from 03.10.2011 to 01.04.2014) and Rs 3,17,31,159/- as interest calculated at 18% per annum on the principal till 25.06.2019.
6. The Corporate Debtor filed reply to the Petition raising the following contentions:
  - (a) It is contended that the debt is barred by limitation since the date of default is mentioned as 01.04.2014 in the petition.
  - (b) The Corporate Debtor submitted that they have applied for completion certificate on 23.01.2017 but the same was granted by concerned authority on 13.04.2018.
  - (c) The Corporate Debtor submitted that they have paid an amount of ₹15,00,000/- on 15.12.2018 to the Petitioner as compensation for delay in giving possession. The Petitioner has also made an endorsement while receiving the above payment as below:  
 "Partial Compensation received towards delay in giving possession of flat at Marvel Sangria E-301."  
 Since the Petitioner has already accepted and received the compensation albeit partially, for the claim being compensation which is not yet determined, CIRP cannot be initiated for the claim of compensation.
  - (d) The Corporate debtor submitted that a sum of ₹1,04,09,381/- is payable by the Petitioner before taking possession of the flat and the same is pending.
  - (e) It is submitted that the Corporate Debtor informed the Petitioner on 17.04.2016 that the Unit is completed and ready for the furniture possession and also they have demanded the sum of ₹1,01,57,695/-

. Hence, the Corporate Debtor says that the property is ready for possession, but the Petitioner has not paid the balance amount.

- (f) The Corporate Debtor submitted that the Petitioner is an allottee in some of their other projects and had given a discount of 57.74 Lakhs in Marvel Diva Project and discount of ₹75.06 Lakhs was given in Marvel Edge Project and they have enclosed a letter dated 26.08.2016 which shows that the Petitioner was allotted four Units by the Corporate Debtor in other projects. This shows that the Petitioner is an investor who wants to make money in the booming real estate market at the relevant point of time.

7. The contention of the Corporate Debtor that the Petition is hit by Law of Limitation has to be accepted in view of the fact that the date of the default mentioned in the petition is 01.04.2014, but this petition was filed on 03.07.2019, which is more than three years after the date of default. It is beneficial to refer the judgements of the Hon'ble Supreme Court on limitation in Insolvency & Bankruptcy Petitions, viz *B. K. Education Services Pvt. Ltd. v. Parag Gupta & Associates (MANU/SC/1160/2018)*, *Vashdeo R Bhujwani v. Abhyudaya Co-operative Bank Ltd. & Anr.* (2019 SCC OnLine SC 1159) and *Sagar Sharma v. Phoenix ARC Limited (MANU/SC/1357/2019)*, wherein it was held that Article 137 of the Limitation Act will apply to the proceedings wherein three years is the limitation period. Hence, the Petition is liable to be dismissed as hit by limitation.

8. Apart from the point of limitation, let us discuss about the merits of the case and see whether the petition deserves admission based on the facts of the case and the law laid down by the Hon'ble Supreme Court in its judgements.

9. We are conscious that the Hon'ble Supreme Court in the case of "*Innoventive Industries Ltd. Vs. ICICI Bank and Ors. - (2018) 1 SCC 407*" observed as below:

*"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such*

*form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be."*

10. It is more important to cite the recent judgement of the Hon'ble Supreme Court in the case of *Pioneer Urban Land and Infrastructure Limited and Ors. Vs. Union of India (UOI) and Ors.* MANU/SC/1071/2019 wherein at para 50 it is observed as below:

"...

16. *Timelines for refund-Any refund of monies along with the applicable interest and compensation, if any, payable by the promoter in terms of the Act or the Rules and Regulations made thereunder, shall be payable by the promoter to the allottee within forty-five days from the date on which such refund along with applicable interest and compensation, as the case may be, become due.*

*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.  
..."*

11. Even though the Adjudicating Authority is mandated to look into the debt and default in a Section 7 Petition, the judgement of the Hon'ble Supreme Court in *Pioneer Urban Land and Infrastructure Limited* (cited supra) has expanded the jurisdiction of Adjudicating Authority to look into certain other aspects, apart from debt and default, as specified in the said judgement while deciding a petition filed by a home buyer.
12. This is a case where the Petitioner purchased five units from different projects of the Corporate Debtor. The Petitioner got substantial discount from the Corporate Debtor for some of the units. Further, the Petitioner has received a compensation of ₹15,00,000/- from the Corporate Debtor for the delay in giving possession of the Unit in this case.
13. The intention of the Petitioner is only to extract more compensation from the Corporate Debtor rather than the resolution of the Corporate Debtor.
14. Since the Petitioner has purchased five units from different projects of the Corporate Debtor, the petitioner is a speculative investor to get maximum advantage of the booming real estate market at that time, and when the real estate market is in difficult time, he wants to come out of the clutches of liability staring on him by shifting the liability on the Corporate Debtor.
15. Admittedly, the Flat is ready for possession but the Petitioner is adamant on taking refund. The interest of the Petitioner seems to be something other than the Flat. However, we refrain from making any comment on the motives of the Petitioner. In a project like this

where hundreds of flat buyers are involved, when compensation of this magnitude is acceded as demanded or CIRP is ordered, we are afraid that it may lead to utter chaos in the real estate market in the country and it will affect the real estate sector wholly and a situation may arise that no investor will be forthcoming to invest in real estate sector. This is not a case where many of the home buyers are duped or the Corporate Debtor/Developer had collected the money and done nothing. Admittedly the flat was ready and completion certificate was obtained on 13.04.18. We are of the view that petitions of this nature have to be dealt with in a macro economic perspective also, failing which it will scupper the prospects of real estate sector.

16. In view of the above discussion, the Petition is dismissed with liberty to the Petitioner to approach the appropriate authority for claiming compensation, if any, if he is so advised.

SD/-

V. Nallasenapathy

Member (T)

SD/-

Suchitra Kanuparthi

Member (J)