

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Ins.) No. 187 of 2021**

In the matter of:

Abhijit Jasrasaria **....Appellant**

Vs.

JOP International Ltd. **...Respondent**

For Appellant: Mr. P.K. Sachdeva, Advocate.

For Respondent: Mr. Aayush Malhotra, Mr. Soham Kumar, Ms. Prarthana Singhania, Advocates.

ORDER

(Through Virtual Mode)

07.02.2022: Heard Learned Counsel for the Appellant and Learned Counsel for the Respondent.

2. This Appeal has been filed against the order dated 07.01.2021 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench-V by which Application filed by the Appellant under Section 7 of the 'I&B Code' has been rejected. The Appellant has filed an Application under Section 7 claiming dues of Rs. 87,38,000/- which was deposited by him towards cost of shops through Buyers' Agreement dated 24.02.2009. Copy of the Application filed under Section 7 has been brought on record at page 116 of the paper book. Part IV of the Application which gives the 'particulars of the financial debt' is to the following effect:-

Part-IV

PARTICULAR OF FINANCIAL DEBT		
1.	TOTAL AMOUNT OF DEBT GRANTED DATE(S) OF DISBURSEMENT	Rs.87,38,000/- deposited towards the cost of the shops acknowledged through Buyers Agreement dated 24.02.2009 + Intt. Rs. 32496260/- in Aggregate.
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	As per the Agreement dated 24.02.2009. The Financial Creditor was to get the possession of the property within 12 months from the date of signing the BA i.e. 24.02.2010, hence the initial date of default is 24.10.2010, which is still continuing as no possession till date. Working for Computation of amount and days is annexed herewith and marked as ANNEXURE P-3.

3. The date of default given by the Appellant himself is 24.10.2010. The Application under Section 7 has to be filed within the limitation as provided under Article 137 of the Limitation Act i.e. within three years from “when the right to apply accrues”.

4. Learned counsel for the Appellant submits that since the possession has not been delivered he has continuing cause of action and his right to file

Petition/ Application is still continuing and Application cannot be said to be barred by time.

5. Learned Counsel for the Respondent submits that the Appellant has already filed execution of the order passed by the RERA dated 06.03.2019 in favour of the Appellant in pursuance of which execution has already been ordered on 18.11.2021, due to which fact the Application under Section 7 need not be entertained.

6. Learned Counsel for the Appellant submits that he has right to take his remedy before RERA as well as under Section 7 of the Code.

7. We have considered the submissions of the Learned Counsel for the parties and perused the record.

8. Insofar as submission of the Counsel for the Appellant that he has right to avail all the remedies provided in law is concerned, we concur with the submission, a litigant can avail all the remedies provided in law, be it complaint filed under Real Estate Regulatory Authority or under IBC. We in the present case are concerned with the Application filed by the Appellant under Section 7 of the IBC. In Part-IV of the Application which we have already extracted above, the Appellant himself has shown the date of default as 24.10.2010. The limitation for filing an Application under Section 7 is provided under Article 137 of the Limitation Act which is to the following effect:-

Description of application	Period of limitation	Time from which period begins to run
137. Any other application for which no period of limitation is provided elsewhere in this division	Three years	When the right to apply accrues.

9. To meet the limitation provided under Article 137, submission of the Counsel for the Appellant is that he has a continuing cause of action since as per Agreement dated 24.02.2009, the Appellant had not been given possession of the shops. The fact that Appellant was not given possession of the shops by the Corporate Debtor may be ground and reason for filing complaint under Real Estate Regulatory Authority Act before UP RERA which complaint has already been filed by the Appellant and was allowed on 06.03.2019 but for filing Application under Section 7, Application has to be within three years from the date when right to apply accrues. When default of a financial debt was committed on 24.10.2010 as claimed by the Appellant, the right to apply accrue to him and no other date of default having been given in Part-IV, the limitation shall not stop running merely because Appellant claims that he has not been given possession of the shops. The Application was thus clearly barred by time and could not have been entertained by the Adjudicating Authority. The Application having been filed beyond three years from the date when right to apply accrues, the same deserves to be rejected.

10. Learned Counsel for the Appellant lastly contended that he will have fresh period of limitation after the order dated 06.03.2019 passed by the UP RERA. The said submission needs no consideration since neither there was any foundation in the Application filed under Section 7 nor there was any pleading that fresh period of limitation shall start from 06.03.2019. Hence, we need not consider the said submission in the present Appeal.

11. As noted above, on the complaint filed by the Appellant, an order has been passed by the UP RERA on 06.03.2019 directing for recovery of amount of Rs. 87,38,000/- along with interest/. The Appellant has already filed Execution Application to execute the order dated 06.03.2019 which as per submission of the counsel for the Appellant has already been allowed on 18.11.2021.

12. In view of the above, we see no reason to interfere with the order passed by the Adjudicating Authority dismissing Section 7 Application filed by the Appellant. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

**[Dr. Alok Srivastava]
Member (Technical)**

Anjali/nn