NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 327 of 2025

[Arising out of the Order dated January 31, 2025, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Allahabad Bench, Prayagraj) in I.A. No. 250 of 2024 in Company Petition (IB) No. 11/ALD/2024]

IN THE MATTER OF:

Shailendra Agarwal
(Suspended Director of
M/S NHA Infrabuild Pvt. Ltd.)
Registered Address:
Jay-Pee Hotel Tv Tower,
25 Wide Link Road, Taj Nagri,
Phase-II, Agra - 282001,
Uttar Pradesh **...Appellant**

Versus

1. **Asit Upadhyaya,**
S/o Late Shri Laxmi Narain Upadhyaya,
Resident of 23/164,
Wazirpura Holy Crossing,
Agra-282002 **...Respondent No. 1**

2. **Nandini Garg,**
W/o Naveen Garg
Resident of 95, Kaveri Kunj Phase-2,
Kamla Nagar, Agra – 282005 **...Respondent No. 2**

3. **Vandana Garg,**
W/o Vikash Garg,
Resident of 95, Kaveri Kunj Phase-2,
Kamla Nagar, Agra-282005 **...Respondent No. 3**

4. **Harsh Mittal,**
S/o Late Shri Raghuvir Saran Mittal,
Resident of A-12, Basant Vihar,
Kamla Nagar, Agra-282005 **...Respondent No. 4**

5. **Ruchi Mittal,**
W/o Late Shri Harsh Mittal,
Resident of A-12, Basant Vihar,
Kamla Nagar, Agra-282005 **...Respondent No. 5**

6. **Vikash Garg HUF, Mr. Vikash Garg (Karta)**,
S/o Late Shri Mahendra Kumar Garg,
Resident of 95, Kaveri Kunj Phase-2,
Kamla Nagar, Agra- 282005 **...Respondent No. 6**

7. **Ravi Maheshwari,**
S/o Late Shri Rajeshwar Nath Maheshwari,
Resident of C-7, Manglam Estate,
Dayal Bagh, Agra-282005 **...Respondent No. 7**

8. **Meeta Jain,**
W/o Shri Mukesh Jain,
Resident of 1/12, Sahitya Kunj,
MG Road, Agra-282002 **...Respondent No. 8**

9. **Poonam Mathur,**
W/o Shri Ashish Mathur,
Resident of M-15, Lawyers's Colony,
Agra-282005 **...Respondent No. 9**

10. **Sonbala Mahrotra,**
W/o Shri Praveen Mahrotra,
Resident of 18/155, Maithan,
Agra- 282003 **...Respondent No. 10**

11. **Rajesh Goyal,**
S/o Late Shri Rajeshwar Dayal Goyal,
Resident of Flat No. 604,
Anant Desire, Shamshabad Road,
Rajpur Chungi, Agra-282001 **...Respondent No. 11**

12. **Nitin Aggarwal,**
S/o Late Shri Purshottam Agarwal,
Resident of D-571, Kamla Nagar,
Agra-282005 **...Respondent No. 12**

13. **Nitin Maheshwari,**
S/o Shri Ram Avtar Maheshwari,
Resident of Flat No. G-25,
Subham Apartment,
Halwai Ki Baghichi, Mathura Road,
Agra-282005 **...Respondent No. 13**

14. **Shalendra Gupta,**
S/o Shri Nand Kumar Gupta,
Resident of Flat No. A-404,
Manglam Estate, 100ft. Road,
Dayal Bagh, Agra-282005 **...Respondent No. 14**

15. **Veenu Gupta,**
W/o Shalendra Gupta,
Resident of Flat No. A-404,
Manglam Estate, 100ft. Road,
Dayal Bagh, Agra- 282005 **...Respondent No. 15**

16. **Chandra Shekhar Gupta,**
S/o Shri Ram Gupta,
Resident of East Masi Street,
357, Madurai, Tamil Nadu-625001 **...Respondent No. 16**

17. **Deepa Arora,**
W/o Gagan Arora,
Resident of H. No. 555,
Ward-12, Krishna Colony,
Gurugram, Haryana-122001 **...Respondent No. 17**

18. **Gagan Burman,**
S/o Shri S. K. Burman,
Resident of 26, Manglam Estate,
Dayal Bagh, Agra- 282005 **...Respondent No. 18**

19. **Mukesh Gupta,**
S/o Shri Sita Ram Gupta,
Resident of C-2/62, Bye Pass Road,
Kamla Nagar, Agra-282004 **...Respondent No. 19**

20. **Pratik Mehta,**
S/o Shri K K Mehta,
Resident of 6, Mahatma Gandhi Road,
St. John's Crossing, Agra- 282002 **...Respondent No. 20**

21. **N. K. Agarwal,**
S/o Late Shri M. L. Agarwal,
Jointly with Mr. Himanshu Agarwal,
S/o Shri Naresh Kumar Agarwal,
Resident of 34, Friends Enclave,
Dayal Bagh, Agra-282005 **...Respondent No. 21**

22. **Puneet Mehta,**
S/o K.K. Mehta,
Resident of 6, Mahatma Gandhi Road,
St. John's Crossing, Agra-282002 **...Respondent No. 22**

23. **M/s NHA Infrabuild Pvt. Ltd.,**
Registered Address-Jay-Pee Hotel Tv Tower,
125 Wide Link Road, Taj Nagri,
Phase-II Agra-282001, Uttar Pradesh. **...Respondent No. 22**

24. **Pramod Kumar Sharma**
Interim Resolution Professional

H. No. 16 Dasharath Kun- B
West Arjun Nagar, Agra,
Uttar Pradesh- 282001 **...Respondent No. 24**

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Anuj Tiwari, Mr. Bharat Bhusan Paul, Mr. Pawan Kumar Ray, Mr. Vaibhav Vats and Ms. Kaanchi Ahuja, Advocates.

For Respondent : Mr. Abhishek Anand, Ms. Babita Jain and Ms. Palak Kalra, Advocates.

Mr. K. Kohli, Advocate for IRP.

J U D G M E N T
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present appeal is being filed by the Appellant-Shailendra Agarwal (Suspended Director of M/S NHA Infrabuild Pvt. Ltd) before this Tribunal under section 61 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), being aggrieved by the order dated 31.01.2025 passed in the I.A. No. 250 of 2024 in Company Petition (IB) No. 11/ALD/2024 by the NCLT, Allahabad Bench, Prayagraj (AA-Adjudicating Authority), whereby the AA has allowed the Company Petition preferred by Respondent No. 1-22 and admitted the Respondent No.23-M/s NHA Infrabuild Pvt. Ltd into Corporate Insolvency Resolution Process (CIRP).

Brief facts:

2. The facts relevant for deciding the appeal are captured as follows:

20.09.2011 A Tripartite Agreement was executed among Maa Mansa Devi Sahkari Awas Samiti Ltd. (landowner), Nikhil Home Associates (developer/constructor), and Nikhil Homes Pvt. Ltd. (marketing company).

	All Builder-Buyer Agreements executed with the allottees were jointly signed by these three entities.
2012	Corporate Debtor-Nikhil Home Associates, Nikhil Homes Pvt. Ltd and Maa Mansa Devi Sahkari Awas Samiti Ltd. launched a housing project namely "*Nikhil Park Royale*, consisting of 5 towers (Tower A to E) at Shamsabad, Fatehabad Road, Agra Clause 20 (a) of the Agreement explicitly provides that possession will be given to the Allottee within a period of 36 months of signing the Agreement with 6 months grace period in addition to the 36 months.
28.05.2012	Housing project was approved by the Agra Development Authority (ADA)
10.06.2012	Construction of Project initiated by Appellant.
10.12.2015	**Date of Default** as mentioned in **Part – IV** of the Company Petition on account of failure to provide the possession of the flats.
10.06.2012	Construction of Project was initiated by Appellant.
10.12.2015	**Date of Default as mentioned in Part – IV of the Company Petition on account of failure to provide the possession of the flats.**
29.03.2016	Answering Respondent Approached UP RERA for seeking refund of the payment on default of Corporate Debtor in giving the possession of the Flats.
31.10.2017	The said project 'Nikhil Park Royale' **was registered with UPRERA wherein the start date was modified and the date of completion was**

	declared as 10.06.2019 in compliance with provisions of the RERA Act 2016.
21.11.2017 to 01.10.2021	Appellant was under judicial custody
2018-2019	Flat buyers and Respondent No. 1-22 began filing claims before UPRERA, seeking refunds and compensation.
25.03.2020	As per Supreme Court *Suo Moto* orders period from 15.03.2020 to 28.02.2022 and an additional period of 90 days from 01.03.2022 whichever is longer i.e., 31.05.2022, stood extended for purpose of calculation of limitation.
13.10.2020	UPRERA vide order directed to refund the amount through monthly installments to the complainants.
22.12.2021	Vide letter dated 22.12.2021 issued by the District Magistrate to the Punjab & National Bank and Agra District Cooperative Bank, Agra in compliance of UPRERA orders, the District Magistrate seized the bank accounts of the CD and recovered the amount in tune of approx. ₹56,00,000/- (Fifty-Six Lakhs) and repaid to the some of the Respondents in addition to the payment some of the Respondents had already received from the CD.
2020-2022	Nationwide lockdown caused impediments to completing the construction on time as the entire labor was forced to leave the construction site unexpectedly.
18.06.2022	UP RERA amended its earlier order by directing that

amount should be calculated again after obtaining necessary documents from both the parties.

30.06.2022	**Acknowledgement under Balance Sheet of Corporate Debtor.**
06.08.2022	Nikhil Home Associates was registered as a company in terms of Section 366 of the Companies Act, 2013.
24.12.2022	UP RERA vide public notice cancelled the registration of Project of Corporate Debtor.
12.01.2024	**Company Petition bearing C.P. No. 11 of 2024 was filed by the Answering Respondent before Ld. Adjudicating Authority u/s 7 of the IBC seeking initiation of CIRP against the CD.**
04.05.2024	Aggrieved by this, the CD filed an I.A-250/2024, seeking the dismissal of Company petition bearing CP (IB)-11/ALD/2024.
31.01.2025	Adjudicating Authority dismissed the I.A. No. 250 of 2024 in Company Petition (IB) no. 11/ALD/2024 and allowed company Petition (IB) NO. 11/ALD/2024.

Submissions of the Appellant:

3. Adjudicating Authority erroneously admitted the Company Petition and initiated the CIRP without considering the factual and legal contentions raised by the Appellant.

4. The Respondents claim default was dated 10.12.2015 in respect of Nikhil Park Royale housing project launched in 2012 at Agra whereas the Company Petition under Section 7 of IBC was filed on 12.01 2024 which is

beyond the prescribed period of limitation. The Adjudicating Authority erroneously relied upon Section 22 of the Limitation Act, 1963 and held the Company Petition to be within Limitation. Section 22 of the Limitation Act, 1963 would not apply to the present case. Further, the accounts were filed with RERA only on 30.06.2022 and cannot be relied upon even for purposes of Section 18 Limitation Act, 1963.

5. The Respondents, a group of homebuyers, had either withdrawn from the project, received refunds, or settled their claims. However, despite this, they initiated multiple legal proceedings before various forums, including the Uttar Pradesh Real Estate Regulatory Authority ("UPRERA") and subsequently under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC"). The Appellant had placed on record evidence demonstrating the following:

a) As regards 2 Original Petitioners i.e. Ravi Maheshwari and Rajesh Goyal, the entire claim amount has been repaid to them. For that matter, Mr. Ravi Maheshwari has admitted receipt of such amount in a proceeding u/s 138 of Negotiable Instrument Act, 1881 before the competent court at Agra.

b) As regards Mr. Rajesh Goyal, the entire claim amount has been refunded in pursuance of the bail order dated 07.08.2020 passed by Hon'ble Allahabad High Court (filed with application to bring on record additional document).

c) As regards 3 units of Mrs. Vandana Garg and Vikash Garg are concerned, the CD placed on record proof of payment of INR 1,19,19,807/- to Vandana Garg and Vikash Garg as repayment of the loan amount of INR 95,00,000/- disbursed by them. Also, the Corporate Debtor placed on record the forensic report evidencing the forgery of documents on the part of Vandana Garg and Vikash Garg to claim the status of an allottee.

d) As regards five units out of eight units claimed to be allotted to Nandini Garg, the entire principal amount has been repaid to her.

e) As regards one of the two units claimed to be allotted to Harsh Mittal, the entire principal amount has been paid to him. As regards, one of the two units claimed to be allotted to Ruchi Mittal, the entire principal amount has been paid to her.

f) As regards one unit of the three units of Nitin Agarwal, the entire principal amount has been paid to him.

g) As regards all other Original Petitioners, all of them have been repaid in part, save and except Original Petitioner No. 18, 19, 20, and 22.

Thus, the Original Petitioners by no means fulfil the threshold prescribed under Section 7 of IBC.

6. Furthermore, serious allegations of fraud and misrepresentation were raised against certain Respondents, including forgery of signatures on allotment letters and concealment of material information which was fortified by forensic reports brought on record.

7. Further, perusal of the Company Petition itself shows that at Original Petitioners are speculative investors which is evident from the following facts:

a. Nandini Garg individually has 8 units in her name, which makes it clear that such units have been taken as a speculative investor and nothing else; and

b. Harsh Mittal and Ruchi Mittal have four flats in their name which makes it clear that such units have been taken as a speculative investor and nothing else; and

c. Vandana Garg and Vikas Garg forged and fabricated documents to claim the status of the allottee- and Original Petitioners colluded with them to file the Company Petition

with the sole motive of extorting money from the Corporate Debtor; and

d. Mr. Ravi Maheshwari claimed the status of allottee despite making a clear admission of receiving their claim before a judicial forum; and

e. Mr. Rajesh Goyal claimed the status of the allottee despite getting repaid the entire claim amount as per the order dated 07.08.2020 of the Hon'ble Allahabad High Court.

f. Ms. Nandini Garg did not disclose repayment of INR 1,49,14,078/- to her and claimed the status of allottee of at least 5 of out of eight units illegally and by suppressing material facts; and

g. No disclosure was made that as regards one of the two units claimed to be allotted to Harsh Mittal, the entire principal amount has been paid to him; as regards one of the two units claimed to be allotted to Ruchi Mittal, the entire principal amount has been paid to her; and as regards one unit of the three units of Nitin Agarwal, the entire principal amount has been paid to him.

h. Mr. Harsh Mittal was arrayed as the Original Petitioner despite the fact that he was dead as on filing of the Company Petition.

Thus the Company Petition was filed for ulterior motives which is hit by Section 65 of the IBC.

8. CD is committed towards genuine homebuyers of the project and these proceedings are nothing but an extortion exercise which is detrimental to the interest of the genuine homebuyers. The CD has no loan from any financial institution, thus none of CD's account are NPA.

9. Appellant prays to set aside I.A. No. 250 of 2024, consequently and dismiss the Company Petition (IB) No. 11/ALD/2024.

Submissions of the Respondent:

10. Respondent contends that the Company Petition was within limitation. The issue of limitation can be adjudicated by the Court even in the absence of specific pleadings and relies on the judgment of Hon'ble Supreme Court in ***Sesh Nath Singh vs Baidyabati Sheoraphuli Co Operative, Civil Appeal No. 9198 of 2019***).

11. In the present case, the limitation is a continuing one as per Section 22 of the Limitation Act, 1963, which provides that in cases of a continuing breach, limitation runs afresh with each successive instance of default. The Respondent places its reliance on ***Mist Direct Sales Private Limited vs Nitin Batra & Ors., Company Appeal (AT) (Insolvency) No. 127 of 2023***.

12. The Respondent relies on the judgment of the Hon'ble Supreme Court in ***Kotak Mahindra Bank Ltd.*** **V.** ***A. Balakrishnan & Anr*** **– (2022) 9 SCC 186** in which the question of limitation from the perspective of issue of recovery certificate in terms of provisions of the Recovery of debits and Bankruptcy Act, 1993 was examined.

13. It is also contended by the Respondents that Company Petition satisfies the threshold requirements. It is claimed that in the present case, the total number of units in the project is 247, and the Answering Respondent collectively hold 34 allotted units, thereby meeting the statutory threshold. The Appellant's objection regarding the eligibility of certain allottees is without merit as the Answering Respondent satisfy the threshold requirement under Section 7(1) of the Code.

14. Respondent vehemently denies the claim of forgery and claims that the Adjudicating Authority under Code does not have the jurisdiction to adjudicate allegations of forgery, as held by this Hon'ble Appellate Tribunal in ***Shelendra Kumar Sharma v. DSC Ltd. (2019 SCC OnLine NCLAT 1274)***. The Respondnet also relies upon the judgment of the Hon'ble Supreme Court in ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India (2019) 8 SCC 416.***

15. It is further submitted that the Appellant has made misleading statements by alleging that certain allottees have been refunded their amounts. However, this claim is contrary to the records and stands refuted in detail at ***Pages 2163 to 2168 of the Appeal in Volume 9***. The said has been duly dealt with and considered in the Impugned Order at Paragraph 49 and 50.

16. It is also contended by the Respondents that RC/Decree Holders Fall within the definition of Financial Creditors under Section 5(8)(f) of the Code as against the claims of the Appellant that homebuyers who have obtained Recovery Certificates ("***RC"***) or decrees under the RERA Act are no longer allottees and, therefore, cannot be considered as Financial Creditors for the purpose of filing an application under Section 7 of the Code.

17. Respondents also contends that the present Company Petition has not been fraudulently or maliciously instituted against the Corporate Debtor. However, these allegations are entirely unfounded. It has been conclusively established that the applicants in the present case are genuine allottees

whose deposit amounts have not been fully refunded and whose outstanding claims exceed the statutory threshold of ₹1 crore. The Adjudicating Authority, after a detailed examination, has already held that the Corporate Debtor failed to produce any documentary evidence to substantiate its claim that the present proceedings were initiated with fraudulent or malicious intent. The mere fact that some applicants may have obtained recovery certificates does not preclude them from initiating proceedings under the Code, as long as the fundamental criteria of 'debt' and 'default' are satisfied, which has been established in this case.

18. Further, the settled position of law, as reaffirmed by this Hon'ble Appellate Tribunal in ***Monotrone Leasing Pvt. Ltd. v. PM Cold Storage Private Ltd., (2020 SCC OnLine NCLAT 581)***, makes it clear that penal action under Section 65 of the Code can only be taken where there is substantial evidence proving that the insolvency resolution process has been initiated fraudulently or for an ulterior motive.

19. Respondents also claim that the liabilities of the Corporate Debtor persist despite conversion under Section 369 of the Companies Act, 2013. It is claimed that the Corporate Debtor, M/s NHA Infrabuild Private Limited, was incorporated through the conversion of the partnership firm M/s Nikhil Associates, pursuant to a resolution dated 10.05.2022 and its execution on 06.08.2022. However, such conversion does not absolve the Corporate Debtor of its pre-existing liabilities, debts, or contractual obligations. Accordingly, all financial liabilities and obligations incurred by M/s Nikhil Associates before its conversion remain binding on M/s NHA Infrabuild Private Limited. The

Corporate Debtor cannot evade its pre-existing commitments by merely undergoing a change in its legal structure. The principles enshrined in Section 369 reaffirm that the entity continues to bear the same financial and contractual responsibilities, and the present proceedings must be adjudicated considering the continuity of obligations post-conversion.

20. Respondents contends that they have been due to non-delivery of possession of homes and refunds since 2011. The present case pertains to a long-standing failure of the Corporate Debtor to fulfil its contractual obligations towards the allottees. The project was initiated in the year 2011, yet till date, possession of the flats has not been handed over, nor has any refund been provided to the allottees. As a result, the allottees have suffered for over a decade due to the inaction and default of the Corporate Debtor. The construction remains incomplete, and the Appellant, despite filing an affidavit, has failed to place any material on record to demonstrate that an Occupation Certificate ("***OC***") has been issued for the project. The absence of an OC and the continued failure to deliver possession or process refunds substantiate the Corporate Debtor's inability to fulfil its obligations.

21. In light of the above facts, the Adjudicating Authority has rightly admitted the CIRP against the Corporate Debtor, recognizing the debt and default and the financial distress caused to the allottees. The Appellant's challenge to the admission order is untenable, as the default remains ongoing and unaddressed.

22. In view of the foregoing, the present appeal is devoid of merit and is liable to be dismissed.

Appraisal

23. Heard counsels of both sides and perused materials placed on record.

24. The main issues before us is whether the appeal can be allowed on the grounds that the Company Petition filed by the Respondents was time-barred, lacked the necessary threshold support, and was based on fraudulent claims and material suppression.

25. We first look into the issue whether the appeal is time barred or not.

26. The Company Petition was filed under Section 7 of the IBC, 2016, by a group of homebuyers, claiming default of payment by the Corporate Debtor. The petition was filed on 12th January 2024, while the alleged date of default was 10th December 2015, making the petition filed after nearly 8 years. The Appellant's primary argument is that the Company Petition is barred by limitation and AA cannot look into it. The Appellant argues that such a delay, coupled with no proper explanation of limitation, makes the petition barred by the Limitation Act, 1963. The Appellant argues that the petition was filed well beyond the prescribed limitation period of 3 years under the Limitation Act and Section 22 of the Limitation Act is not applicable in this case. Thus, the petition should have been rejected on the ground of being time-barred. It is also contended by the Appellants that the accounts filed with the Uttar Pradesh Real Estate Regulatory Authority (UPRERA) on 30.06.2022 do not amount to an acknowledgment of debt under Section 18 of the Limitation Act. The filing of financial statements with UPRERA does not extend the limitation period without a clear acknowledgment of liability.

27. The Appellant has placed reliance on the judgements of Hon'ble Supreme Court in ***Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal, Civil Appeal No. 323 OF 2021*** and also ***Asset Reconstruction Company India Limited Vs Uniworth Textiles Limited CA(AT) (Ins) No. 991 of 2020*** of this Appellate Tribunal. The relevant extracts of the judgement of Hon'ble Supreme Court are as follows:

> "14. Several judgments of this Court have indicated that an entry made in the books of accounts, including the balance sheet, can amount to an acknowledgement of liability within the meaning of Section 18 of the Limitation Act.
> …
> 16. An exhaustive judgment of the Calcutta High Court in Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, 1961 SCC OnLine Cal 128 : AIR 1962 Cal 115 ["Bengal Silk Mills"] held that an acknowledgement of liability that is made in a balance sheet can amount to an acknowledgement of debt as follows:
> …
> Importantly, this judgment holds that though the filing of a balance sheet is by compulsion of law, the acknowledgement of a debt is not necessarily so. In fact, it is not uncommon to have an entry in a balance sheet with notes annexed to or forming part of such balance sheet, or in the auditor's report, which must be read along with the balance sheet, indicating that such entry would not amount to an acknowledgement of debt for reasons given in the said note.
> …
> 22. A perusal of the aforesaid sections would show that there is no doubt that the filing of a balance sheet in accordance with the provisions of the Companies Act is mandatory, any transgression of the same being punishable by law. However, what is of importance is that notes that are annexed to or forming part of such financial statements are expressly recognised by Section 134(7). Equally, the auditor's report may also enter caveats with regard to acknowledgments made in the books of accounts including the balance sheet. A perusal of the aforesaid would show that the statement of law contained in Bengal Silk Mills [Bengal Silk Mills Co. v. Ismail Golam Hossain Ariff, 1961 SCC OnLine Cal 128 : AIR 1962 Cal 115] , that <u>there is a compulsion in law to prepare a balance sheet but no compulsion to make any particular admission, is correct in law as it would depend on the facts of each case as to whether an entry made in a balance sheet qua any particular creditor is unequivocal or has been entered into with caveats, which</u>

then has to be examined on a case by case basis to establish whether an acknowledgment of liability has, in fact, been made, thereby extending limitation under Section 18 of the Limitation Act…"

[emphasis supplied]

Thereafter, in the case of ***Asset Reconstruction Company India Limited Vs Uniworth Textiles Limited (supra)*** this Appellate Tribunal held that:

"It is therefore evident that mere entry in the Balance Sheet cannot be taken as unqualified acknowledgment of the debt. However, it may also not be correct to take every note or caveat regarding entries made in the Balance Sheet as ground to denying acknowledgement of debt in order not to extend the limitation period from such acknowledgment period. It is therefore desirable that while looking such entries of debt amounting to acknowledgment, one has to consider the overall scenario which may be evident from Director's Report, Auditor's Report, notes to the accounts etc. It may also be relevant to consider the entire series of events starting from such loans/ debts to the filing of application under section 7 of the Code, to gauge the true intent of such entries and caveats, if any, which impact the intended acknowledgements or genuine denial of liability on part of the Corporate Debtor. While doing this examination, it may be worthwhile to look into the overall eco system of such transactions which may help in understanding the impact on limitation period based on such acknowledgements."

[emphasis supplied]

Both the above noted judgements uphold the view that that entries in the Balance Sheet may amount to an acknowledgement of debt for the purpose of extending limitation under Section 18 of the Limitation Act and therefore don't help the cause of the Appellant.

28. In the present case, we don't find any caveats while acknowledging the amounts due to the Allottees in statement of accounts placed on record. We, therefore, find that these judgements don't help the case of the Appellant but rather support the argument for extending the limitation basis acknowledgement in the Balance Sheet.

29. We also note that the limitation period under the Limitation Act, 1963, is governed by Section 22, which provides that in the case of a continuing breach, limitation runs afresh with each successive instance of default. The Corporate Debtor's failure to hand over possession of the flats and its continuing default in refunding amounts to the allottees constitute a continuous cause of action. The directions issued by UP RERA from time to time, including the refund order dated 13.10.2020, its amendment on 18.06.2022, and the project registration cancellation on 24.12.2022, reaffirm the subsistence of debt and the ongoing breach by the Corporate Debtor. Furthermore, the acknowledgement of debt in the Corporate Debtor's balance sheet on 30.06.2022 extends the limitation period under Section 18 of the Limitation Act, 1963. It is to be noted that an acknowledgement of liability within the limitation period gives rise to a fresh period of limitation. Therefore, the present petition, filed on 09.01.2024, is well within time. Thus we find that the Appellant's contention that the Company Petition is barred by limitation is misconceived.

30. Further, the Hon'ble ***Supreme Court, in its Suo Motu Writ Petition (C) No. 3 of 2020***, extended the limitation period due to the COVID- 19 pandemic. The period from 15.03.2020 to 28.02.2022, along with an additional 90 days from 01.03.2022 (i.e., until 31.05.2022), is excluded from limitation computation. When this exclusion is factored in, the Company Petition remains well within the statutory period. In view of the above, the contention that the Company Petition is barred by limitation is untenable.

31. It was also claimed by the Appellants that the AA could not have gone into the issue of limitation on its own without it being argued by the Respondent-allottees before the AA. It has relied upon the Judgement of Hon'ble Supreme Court in ***Bachhaj Nahara vs Nilima Mandal and another, (2008) 17 SCC 491*** in which it was held as follows:

> "8. The High Court, in this case, in its obvious zeal to cut delay and hardship that may ensue by relegating the plaintiffs to one more round of litigation, has rendered a judgment which violates several fundamental rules of civil procedure. The rules breached are:
>
> (i) No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did arise from the pleadings and which was not the subject-matter of an issue, cannot be decided by the court
>
> (ii) A court cannot make out a case not pleaded. The court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.
>
> (iii) A factual issue cannot be raised or considered for the first time in a second appeal."
>
> ....
>
> 17. In the absence of a claim by plaintiffs based on an easementary right, the first defendant did not have an opportunity to demonstrate that the plaintiffs had no easementary right. In the absence of pleadings and an opportunity to the first defendant to deny such claim, the High Court could not have converted a suit for title into a suit for enforcement of an easementary right. The first appellate court had recorded a finding of fact that plaintiffs had not made out title. The High Court in second appeal did not disturb the said finding. As no question of law arose for consideration, the High Court ought to have dismissed the second appeal. Even if the High Court felt that a case for easement was made out, at best liberty could have been reserved to the plaintiffs to file a separate suit for easement. But the High court could not, in a second appeal, while rejecting the plea of the plaintiffs that they were owners of the suit property, grant the relief of injunction in regard to an easementary right by assuming that they had an easementary right to use the schedule property as a passage."
>
> [emphasis supplied]

Hon'ble High Court in the above case in a title suit granted relief based on easement rights which was not pleaded and these observations by the Hon'ble Apex Court emanate from those facts. The present case is distinguished as it is the question of limitation, which has to be looked into by the Court. It is noted from the records that Part IV of the CP mentions the date of commencement of default to be 10.12.2015. It also mentions that the act of non-handing of possession on the part of the corporate debtor resulted in default on the part of the corporate debtor and since the possession of the units has not been handed over till day, it resulted in continuing default/recurring cause of action in terms of section 22 of the limitation act in 1963. Further in part V of the CP, in the list of documents to be attached there is clear mention of documents which show continuing default committed by the CD. The Respondents-allotees had attached the copy of RERA publication dated 24.12.2022 for this project showing default committed by the CD. Respondents-allotees has also attached the statement of accounts as on 30.06.2022 of Nikhil Home Associates. We find that documents filed and the sequence of events clearly brings out the fact that the default is continuing and we cannot come to an inference that there is absence of pleadings. The judgement cited is therefore of no avail to the Appellants.

32. Respondents place reliance on ***Sesh Nath Singh vs Baidyabati Sheoraphuli Co Operative, Civil Appeal No. 9198 of 2019*** wherein it was held that the issue of limitation can be adjudicated by the Court even in the absence of specific pleadings, as it goes to the root of maintainability. It is a

settled principle that limitation is a mixed question of law and fact, requiring an analysis of both legal provisions and the factual matrix. The relevant extract of which is as follows:

> "....63. Section 5 of the Limitation Act, 1963 does not speak of any application. The Section enables the Court to admit an application or appeal if the applicant or the appellant, as the case may be, satisfies the Court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. Although, it is the general practice to make a formal application under Section 5 of the Limitation Act, 1963, in order to enable the Court or Tribunal to weigh the sufficiency of the cause for the inability of the appellant/applicant to approach the Court/Tribunal within the time prescribed by limitation, there is no bar to exercise by the Court/Tribunal of its discretion to condone delay, in the absence of a formal application."
>
> [emphasis supplied]

33. We find that all these points were duly considered by the Learned Adjudicating Authority, which recorded that the Company Petition was filed within the limitation period in its impugned order. The Adjudicating Authority gave its finding that the Company petition is well within the limitation, the relevant extract is as follows:

> "...As the outstanding deposits from the Applicant Financial Creditors against the flats booked by them have been acknowledged by the Respondent Corporate Debtor in its Balance Sheet as recently as up to 30.06.2022, the present Application filed on 19.01.2024 is found to have been filed within limitation period even as per section 18 of the Limitation Act, 1961. In view of our above findings, we hold that the present Application has been filed within the limitation period."

34. Therefore, we find that the present Application which was filed on 19.01.2024 is found to have been filed within the limitation period as per Section 18 of the Limitation Act, 1961 and we don't find any infirmity in the orders of the AA on this count.

35. Next we look into the issue of the threshold required under Section 7(1) of IBC.

36. It is claimed by the Appellant that Respondents-Allottees do not fulfil threshold Requirement under Section 7(1) of IBC as 22 Petitioners have filed Application for 34 Units. Total Units allotted in the Project are 247 Units. It is claimed by the Appellant that:

a. 3 Units claimed by Vandana Garg and Vikas Garg were never allotted. They disbursed a total of INR 95,00,000/- as unsecured debt- and have been repaid INR 1,19,19,807/-. Even the forensic reports placed on record shows that their allotment letters are forged. [Minus 3 units]
b. Principal Amount of 10 units claimed in the Application have also been paid as early as 2016. [Minus 10 units]
c. Further date of default with regard to each of the units is claimed as 10.12.2015.
d. At best, the total number of units qua which allottees can make claim are only 21- which does not meet threshold criteria.

As per claims of the Appellant, most Respondents either received refunds, partial repayments or settled claims, thereby not fulfilling the statutory threshold of 100 or 10% of allottees for initiating Section 7 petition. Pertinently, out of 22 Respondents, 18 Respondents representing 30 units received full/substantial repayments. It is claimed that the mandatory requirements under Section 7(1) (second proviso) of IBC are not satisfied.

37. Per contra Respondents contend that Company Petition satisfies the threshold requirements as being allottees/ homebuyers, they had booked units in the real estate project developed by the Corporate Debtor and have paid substantial amounts towards consideration. However, despite receiving these payments, the Corporate Debtor has failed to deliver possession within

the stipulated timeline, thereby committing default within the meaning of Section 3(12) of the Code.

38. We find that in terms of the second proviso to Section 7(1) of the Code, an application for initiation of CIRP against a real estate developer must be filed by at least 100 allottees or 10% of the total number of allottees, whichever is lower. In the present case, the total number of units in the project is 247, and the Answering Respondent collectively hold 34 allotted units, thereby meeting the statutory threshold. The Corporate Debtor's contention that certain allotment letters are forged is not borne out of the material placed on record and appears is misconceived. Thus we find that the Appellant's objection regarding the eligibility of certain allottees is without merit and the Respondent satisfies the threshold requirement under Section 7(1) of the Code. The Adjudicating Authority has also noted that *"the refunds claimed to have been paid to the applicants could not be fully established by the Corporate Debtor as the deposit amounts paid by them have been shown as outstanding in the balance sheet of the Corporate Debtor as on 30.06.2022 filed in MCA portal"*.

39. The Appellant has also contended that homebuyers who have obtained Recovery Certificates (**"RC"**) or decrees under the RERA Act are no longer allottees and, therefore, cannot be considered as Financial Creditors for the purpose of filing an application under Section 7 of the Code. In support of this contention, reliance has been placed on this Hon'ble Appellate Tribunal's decision in ***Sushil Ansal v. Tripathi & Ors.,***

2020 SCC OnLine NCLAT 680, which held that decree holders do not fall within the definition of Financial Creditors. However, this argument is untenable in the light of the Hon'ble Supreme Court's judgment in ***Vishal Chelani v. Debashis Nanda, (2023) 10 SCC 395***, wherein it has been categorically held that an allottee, who subsequently becomes a decree holder under the RERA Act continues to remain a Financial Creditor in the class of homebuyers and shall be governed by the threshold limit prescribed under the second proviso to Section 7(1) of the Code. This position has been reaffirmed by this Appellate Tribunal in the case of ***Rahul Gyanchandani & Ors. v. Parsvnath Landmark Developers Pvt. Ltd., 2024 SCC OnLine NCLAT 469***, which clarified that the issuance of a recovery certificate does not alter the status of an allottee as a Financial Creditor. Accordingly, the reliance placed by the Appellant on the ***Sushil Ansal (supra)*** is misplaced, as it stands overruled by the Hon'ble Supreme Court in ***Vishal Chelani (supra)*** and further clarified by this Appellate Tribunal in ***Rahul Gyanchandani (supra)***. We note that whether they have obtained recovery certificates or not, the Respondents - Allottees remain Financial Creditors under Section 5(8)(f) of the Code, as they have not received possession of the allotted flats, and their deposited amounts have not been refunded in full. The Corporate Debtor's claim that certain Applicants have settled their dues is also unsupported, as their outstanding amounts continue to reflect in the Corporate Debtor's financial statements. Therefore, for the purpose of determining the threshold under the second proviso to Section 7(1) of the Code, Answering Respondent, including those holding recovery certificates, will be

considered Financial Creditors.

40. Respondent relies on the judgement of the Hon'ble Supreme Court in ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India (2019) 8 SCC 416*** where it was clarified that remedies under RERA and Code operate in distinct spheres, and proceedings under Code are in rem, intended for the revival of the Corporate Debtor. The Court held that RERA and IBC are complementary, with both statutes operating in their respective domains. While RERA provides specific remedies for homebuyers, the IBC offers a comprehensive mechanism for collective resolution when the default is significant and affects multiple creditors. This judgment very well supports the arguments of the Respondents.

41. The Respondents have also placed their reliance on the judgements of the Hon'ble Supreme Court in ***Kotak Mahindra Bank (supra) Civil Appeal No. 689 of 2021, decided on 30.05.2022*** wherein the court had examined the question of limitation from the perspective of issue of recovery certificate. The relevant observation of Hon'ble Supreme Court in ***Kotak Mahindra Bank Ltd. V. A. Balakrishnan Kotak Mahindra Bank (supra)*** is as under:-

> "...
>
> 26. It could thus be seen that this Court in the case of Dena Bank (supra) in paragraphs 136 and 141, has in unequivocal terms held that once a claim fructifies into a final judgment and order/decree, upon adjudication, and a certificate of recovery is also issued authorizing the creditor to realize its decretal dues, a fresh right accrues to the creditor to recover the amount of the final judgment and/or order/decree and/or the amount specified in the Recovery Certificate. It has further been held that issuance of a certificate of recovery in favour of the financial creditor would give rise to a fresh cause of action to the financial creditor, to initiate

> proceedings under Section 7 of the IBC for initiation of the CIRP within three years from the date of the judgment and/or decree or within three years from the date of issuance of the certificate of recovery, if the dues of the corporate debtor to the financial debtor, under the judgment and/or decree and/or in terms of the certificate of recovery, or any part thereof remained unpaid."
>
> [emphasis supplied]

42. Next we look into the claim of the Appellant that whether the Company Petition under Section 7 of the Code has been initiated fraudulently and with malicious intent.

43. The Corporate Debtor-Appellant has alleged that the Company Petition under Section 7 of the Code has been initiated fraudulently and with malicious intent and the Respondents are speculative. Appellant seeks to impose penalties under Section 65 of the Code. The basis of this allegation is that certain allottees, who have purportedly withdrawn from the real estate project and obtained recovery certificates from UPRERA, are not entitled to invoke Section 7. We note that the allottees deposit amounts have not been fully refunded and also their outstanding claims exceed the statutory threshold of ₹1 crore. The Adjudicating Authority has held that the Corporate Debtor failed to produce any documentary evidence to substantiate its claim that the present proceedings were initiated with fraudulent or malicious intent. The mere fact that some applicants may have obtained recovery certificates does not preclude them from initiating proceedings under the Code, as long as the fundamental criteria of 'debt' and 'default' are satisfied, which has been established in this case.

44. Further, we note that this Appellate Tribunal in ***Monotrone Leasing Pvt. Ltd. v. PM Cold Storage Private Ltd., (2020 SCC OnLine NCLAT***

581), had held that penal action under Section 65 of the Code can only be taken where there is substantial evidence proving that the insolvency resolution process has been initiated fraudulently or for an ulterior motive. The relevant extract are as follows:

> "29. Section 65 of the Code provides for penal action for initiating Insolvency Resolution Process with a fraudulent or malicious intent or for any purpose other than the resolution. However, the same cannot be construed to mean that if a petition is filed under Section 7, 9 or 10 of the Code without any malicious or fraudulent intent, then also such a petition can be rejected by the Adjudicating Authority on the ground that the intent of the Applicant/Petitioner was not resolution for Corporate Insolvency Resolution Process. As the proceedings under IBC are summary in nature, it is difficult to determine the intent of the Applicant filing an application under Section 7, 9 or 10 of the Code unless shown explicitly by way of documentary evidence. This situation may arise in specific instances where a petition is filed under IBC specifically with a fraudulent or malicious intent."
>
> [emphasis supplied]

The proceedings under the Code are summary in nature, and the burden of proving fraudulent intent lies upon the party alleging it. In the present case, the Appellant has failed to produce any cogent evidence to support its allegations. The mere assertion that the applicants are engaging in forum shopping or that some allotments are disputed does not meet the rigorous standard required to invoke Section 65 of the Code. Moreover, even if certain allottees are excluded, the number of remaining applicants still satisfies the statutory threshold, rendering the present application maintainable. In view of the above, the allegation of fraudulent and malicious intent is completely baseless and has been rightly rejected by the Adjudicating Authority. We don't find any infirmity in the Impugned Order on this count.

45. Appellant-Corporate Debtor also contends that the original Petitioners could not have filed the Company Petition without meeting the pre-requisite of Section 370 of the Companies Act, 2013 i.e. "property of the company being insufficient to satisfy". We note that the Corporate Debtor, M/s NHA Infrabuild Private Limited, was incorporated through the conversion of the partnership firm M/s Nikhil Associates, pursuant to a resolution dated 10.05.2022 and its execution on 06.08.2022. We note that such conversion does not absolve the Corporate Debtor of its pre-existing liabilities, debts, or contractual obligations as per Section 369 and sec 370 of the Companies Act, 2013, which are extracted as follows:

> **"369. Saving of existing liabilities. —**The registration of a company in pursuance of this Part shall not affect its rights or liabilities in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.
>
> **370. Continuation of pending legal proceedings.** —All suits and other legal proceedings taken by or against the company, or any public officer or member thereof, which are pending at the time of the registration of a company in pursuance of this Part, may be continued in the same manner as if the registration had not taken place:
> Provided that execution shall not issue against the property or persons of any individual member of the company on any decree or order obtained in any such suit or proceeding; but, in the event of the property of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company 2 [in accordance with the provisions of this Act or of the Insolvency and Bankruptcy Code, 2016 (31 of 2016)]."

Therefore, the Statement of Affairs dated 30.06.2022 [@1105 to 1118 APB] correctly depicts the liabilities of the Corporate Debtor including the Respondents- allottees' liabilities which are duly acknowledged by the Corporate Debtor upon its conversion. Accordingly, all financial liabilities and obligations incurred by M/s Nikhil Associates before its conversion remain binding on M/s NHA Infrabuild Private Limited. The Corporate Debtor cannot evade its pre-existing commitments by merely undergoing a change in its legal structure. The principles enshrined in Section 369 reaffirm that the entity continues to bear the same financial and contractual responsibilities, and the present proceedings must be adjudicated considering the continuity of obligations post-conversion.

46. From the materials on record, we find the Applicants are genuine allottees who have not received the possession of their flats and the default by the Corporate Debtor remains unaddressed. The burden of proving fraudulent intent lies with the Appellant and mere assertions by the Appellant cannot be used to invoke penal action under Section 65 of the IBC. We do not find any material evidence on record to suggest any malicious and fraudulent intent on the part of the Applicants – Homebuyers. The Adjudicating Authority has noted that the claims of the Appellant in I.A. No. 250 of 2024 in its order, which was filed under Section 60(5)(a) and (c) read with Section 65 of the Code. It has given its at paras 53-54, which is extracted as follows:

> "....
> 53. In our findings so far discussed from para nos. 28 to 48 of this order, we have already held that all the Applicants as mentioned in the prayer of this IA and mentioned in previous para of this order are genuine allottees and their deposit amounts are not fully refunded and outstanding amount of their deposits are far

in excess of the threshold limit of Rs. 1 crore, and therefore it is held by us that present Application filed by these Applicants are admissible for initiating CIRP against the Corporate Debtor. Therefore, all the grounds raise by the Corporate Debtor in this respect are liable to be dismissed.

54. As regards for taking action u/s 65 against the Applicants, it is required to be proved by adducing substantial evidence that insolvency resolution process has been initiated fraudulently or with malicious intent for any purpose other than for the resolution of insolvency. The allegation of the Corporate Debtor is that 18 Applicants have withdrawn from the project and they have already obtained Recovery Certificates on account of the orders passed by UPRERA out of which four Applicants have been fully refunded and fourteen Applicants have been substantially/party refunded even before the order was passed by UPRERA. Therefore, as per the Corporate Debtor, these Applicants are not eligible for filing of Application u/s 7. By filing the present Application u/s 7, these Applicants are only indulging in Forum shopping to harass the Corporate Debtor with malicious Intent. For showing any fraud or malicious intent at the part of these Applicants while filing the present Application, the Corporate Debtor is required to bring on record the cogent supporting evidence before this tribunal which prima facie establishes such intent. In the instant case, there is no documentary evidence placed on record by the Corporate Debtor/Respondent against the Applicants to prove that the insolvency process was initiated fraudulently with malafide intent. The only plea taken by the Corporate Debtor was that the RC/Decree Holders cannot be considered as home buyers under the provisions of the second proviso of section 7, and hence they are not eligible to initiate Section 7 proceeding and as the Applicants have already got the order of UPRERA for getting refunds, they are only indulging in forum shopping by filing application under section 7. Both the above pleas taken by the Corporate Debtor have not been found to be maintainable as we have already given our findings in this order. In our considered view, such pleas taken by the Corporate Debtor are not indicative of any fraud or malicious Intent at the part of the Applicants on initiation of Section 7 Application. Only in respect of two allotees, it was claimed that the allotment letters were forged and criminal cases are filed against them and full amounts were refunded to them along with two more allottees but even if these four allottees are removed from the list of the Applicants the total remaining allotted units would be 30 in respect of balance 18 Applicants, which is still more than the threshold limit of 25 as discussed above, and hence the present petition would still remain maintainable, though these allegations have already been countered by the Financial Creditors as already have been discussed in this order."

[emphasis supplied]

47. Based on these findings, AA has come to the conclusion that the application is not fraudulent and not filed with any malicious intent as it cannot be substantiated with documentary evidence to show such a fraud and malicious intent. We do not find any infirmity in these findings.

48. The Appellant has relied on few more judgements which are being discussed in next there paragraphs. The reliance placed by the Appellant on ***Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd., AIR 2020 SC 4668*** is misplaced, as the present case is distinct on facts. In ***Babulal (supra)***, the Financial Creditor had pleaded only one date of default (08.07.2011, being the NPA date) without any reference to an acknowledgment or alternative default date, and the Hon'ble Supreme Court held that limitation is a mixed question of law and fact requiring proper pleadings and evidence. In contrast, the Company Petition here expressly pleads continuing default due to the Corporate Debtor's failure to deliver possession, attracting Section 22 of the Limitation Act, 1963. Further, the acknowledgment in the balance sheet dated 30.06.2022 extends limitation under Section 18 of the Limitation Act, 1963. Unlike Babulal (supra), where no acknowledgment was pleaded or proved, here, such documents are on record. Hence, the Appellant's reliance on Babulal (supra) is will not help him.

49. Appellant also places reliance on ***Mrs. Supriya Singh & Ors v. M/s Ansal Urban Condominiums Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 1974 of 2024***. This decision relied upon by the appellant is factually distinct and does not apply to the present case. In that case, the Appellate

Tribunal held that the Resolution Professional lacked adjudicatory powers to reverse pre-CIRP cancellations and that the issue was deliberated upon by the CoC, with the cancelled units being addressed in the Resolution Plan. The allottees had also approached UPRERA, obtained a refund, and participated in CoC meetings, indicating acceptance of the cancellation. This Appellate Tribunal had upheld the commercial wisdom of the CoC and found no procedural irregularity. In contrast, in the present case, the Respondents have neither accepted any refund nor acquiesced to any pre-CIRP action, and its claim is duly supported by documentary evidence on record. Unlike the allottees in ***Supriya Singh (supra)***, who had engaged in proceedings before UPRERA and accepted partial payments, the Respondents have consistently asserted their rights. Therefore, the reliance on ***Supriya Singh (supra)*** is misplaced and does not advance the case of the opposing party.

50. The Appellant's reliance on ***Vashdeo R Bhojwani Vs. Abhyudaya Co-Operative Bank Ltd. and Anr., Civil Appeal No. 11020 of 2018***, is also misplaced as it dealt with a financial creditor's claim based on a Recovery Certificate, where the Court held that limitation under Article 137 begins from the date of default and rejected the argument of a continuing wrong. In the case cited, there was no allottee under the Code and in contrast, the present case concerns an allottee, where the nature of default, statutory protections, and limitation principles differ significantly. The rights of an allottee under the Code cannot be equated with those of a financial creditor in a loan default scenario. Therefore, reliance on this judgment is misplaced.

51. Having gone through the materials on record, and looking at the sequence of events, we don't find the arguments of the Appellant convincing that several of the original Petitioners had either received refunds or settled their claims in various ways. This has also not been appropriately replied by the Appellant, even though there are claims by the Appellants that there are some original petitioners who have engaged in fraudulent practices including document forgery and the suppression of material facts. The issue of fraudulent practices including document forgery are being dealt in separately. On the issue of statutory threshold, we note that in terms of the second proviso to Section 7(1) of the Code, an application for initiation of CIRP against a real estate developer must be filed by at least 100 allottees or 10% of the total number of allottees, whichever is lower. In the present case, the total number of units in the project is 247, and the Answering Respondent collectively hold 34 allotted units, thereby meeting the statutory threshold. The Appellant's objection regarding the eligibility of certain allottees is without merit as the Answering Respondent satisfy the threshold requirement under Section 7(1) of the Code.

Conclusion

52. In brief the Appellant's claims that Section 22 of Limitation Act is not applicable to the present facts, and the accounts filed with UPRERA cannot constitute acknowledgment of debt for extending limitation under Section 18 of Limitation Act and the filing of financial statements/accounts with regulatory authorities does not independently extend the period of limitation without clear acknowledgment under Section 18 of Limitation Act don't stand

the judicial scrutiny as explained above. We find that the said default was more than threshold of Rs 1crs and continuous, hence the Section 7 application was not time barred. Appellants arguments that the applicants who are the homebuyers have been speculative investors and are using the IBC process for improper purposes and pushing the CD into insolvency are not convincing as this doesn't change the nature of the debt and default. We also find that the Allottees had met the statutory threshold.

Orders

53. In the above background, we, do not find any infirmity in the findings of the Adjudicating Authority and we uphold its orders. Accordingly, we dismiss the Appeal and the CIRP process must continue. All IAs stand disposed of. No orders as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi.
April 23, 2025.

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