

ASSIGNMENT TOPIC
BIKRAM CHATTERJEE & ORS. V. UNION
OF INDIA & ORS.

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INTRODUCTION

Case Name: Bikram Chatterji & Ors. v. Union of India & Ors.

Appeal no.: Writ Petition(s) (Civil) no (s).940/2017

Appellant(s): Bikram Chatterji & Ors.

Respondents(s): Union of Indian & Ors.

Date of Judgment: 21-Aug-2018

Tribunal/Court: Supreme court of India

Old case references: Bikram Chatterji & Ors. v. Union of India & Ors. W.P.(C) No. 940-2017

FACT OF THE CASE

In 2011 in Noida and Greater Noida varied assets comes for housing were started. Within the varied comes the Amrapali cluster of firms projected to construct roughly 42,000 flats. Varied brochures were printed and it had been assured that the delivery of possession shall be created in 36 months and other World-class facilities were also promised. Various home buyers booked their apartments during the period 2010-2014. The buyers signed the Standard Form of Allotment-cum-Flat Buyers Agreement and even after payment of 40 to 100 percent of total consideration, they are faced with the threat of forfeiture of huge booking amount. The buyers invested their life savings and some of them had obtained the loan from the Bank. Most of the buyers have made the payment to the extent of 50 percent to 100 percent abiding by the payment schedule. Under Clause 14 of the agreement, the builder authorized itself to finance loans from any financial institution by way of mortgage/charge/securitization of receivable of the land and flats and the allottees will have no objection in this regard.

Clause 15 also authorized the builder to keep full authority over the flat depriving the allottees of any lien or interest despite payment of the entire amount thereof. The builder under Clause 19(a) was obliged to complete the flats of M/s. Amrapali Centurion Park Private Limited within 30 months from the date of commencement of excavation/signing of the agreement, which may vary for plus/minus 6 months. Under Clause 19(c), the builder fixed a paltry sum of Rs.5 per square feet super area per month for the period of delay, which would include any/all damages, compensation, claims for delayed possession. The dreams of the buyers of obtaining houses were given serious jolts when M/s. Amrapali Silicon City Private Limited and M/s. Amrapali Centurian Park Private Limited, respondent Nos. 3 and 4 herein respectively were found in serious breach of their obligation to deliver the flats within 36 months. They did not pay the amount both to the Noida or Greater Noida Authority and also to the Banks. Several revised dates of possession were fixed unilaterally, but they failed to deliver the flats. The Amrapali Group has failed to comply with its obligation under the subvention scheme, the tenure of which was approved by the bank/financial institution. The

builder had failed to comply with the abovementioned scheme as the buyer making the payment of EMIs to the banks, thereby causing a double loss. Some of the consumers approached the National Consumer Dispute Redressal Commission by filing Consumer Complaint No. 213 of 2017 under Section 12(1)(c)[1] of the Consumer Protection Act, 1986. The petition filed by 107 homebuyers led by Bikram Chatterji has sought enforcement of their fundamental rights that have been seriously abrogated by the provisions of the Insolvency and Bankruptcy Code 2016. They want the Code to be held ultra vires to the Constitution as being violative of Fundamental Rights -Right to Equality and Right to Life guaranteed under Articles 14[2] and 21[3]. The petition also prayed for quashing of the NCLT's September 4 order that appointed an Insolvency Resolution Professional (IRP) to take over the company and ordered a stay on all the court proceedings against the company, including those pending before the consumer courts till the corporate insolvency resolution process is on. Besides, they have sought a direction to restrain the IRP from creating any third party interest in the projects. The Bank of Baroda had filed Company Petition No. (IB)-121(PB)/2017 before the National Company Law Tribunal under Section 7 [4] of the Insolvency and Bankruptcy Code, 2016 for triggering the Corporate Insolvency Resolution Process in the matter of M/s. Amrapali Silicon City Private Limited, Respondent No. 3. A writ petition was filed by homebuyers of various projects aggrieved by the Corporate Insolvency Resolution Process being initiated by the National Company Law Tribunal in a Company Petition (No. (IB)-121(PB)/2017) filed by the Bank of Baroda against M/s Amrapali Silicon City Private Limited.

ISSUE OF THE CASE

- 1) The validity of the charge being claimed by the Authorities over the projects being developed by Amrapali Group?
- 2) The validity of the charge being claimed by the Banks over the projects being developed by Amrapali Group?
- 3) Whether the registration ("RERA Registration") obtained by the Amrapali Group under the Real Estate (Regulation and Development) Act, 2016 ("RERA Act") was liable to be canceled?
- 4) What relief can be provided to the homebuyers in light of the present facts and circumstances?

RULE OF LAW THAT APPLIES

Section 12(1) (c) in the consumer protection act, 1986

Section 12(1)(c) - one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or

Section 7 in the Provincial Insolvency Act, 1920

Section 7 Petition and adjudication — Subject to the conditions specified in this Act, if a debtor commits an act of insolvency, an insolvency petition may be presented either by a creditor or by the debtor, and the Court may on such petition make an order (hereinafter called an order of adjudication) adjudging him an insolvent. Explanation - The presentation of a petition by the debtor shall be deemed an act of insolvency within the meaning of this section, and on such petition the Court may make an order of adjudication.

Section 53 in the Provincial Insolvency Act, 1920

Section 53[5] Avoidance of voluntary transfer.—Any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or encumbrance in good faith and for valuable consideration shall, if the transferor is adjudged insolvent 1[on a petition presented] within two years after the date of the transfer, be voidable as against the receiver and may be annulled by the Court. Any transfer of property not being a transfer made before and in consideration of marriage or made in favour of a purchaser or encumbrance in good faith and for valuable consideration shall, if the transferor is adjudged insolvent 1[on a petition presented] within two years after the date of the transfer, be voidable as against the receiver and may be annulled by the Court."

ARTICLE 21 IN THE CONSTITUTION OF INDIA, 1950

Article 21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.

THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

STATE OF APPLICATION

Contended on Behalf of the Homebuyers that:

- 1) The dues of Authorities can not be treated at par with the dues of homebuyers which the charge of the money paid by the homebuyers should be treated because of the highest priority.
- 2) The Authorities square measure susceptible to issue Occupation/Completion Certificate ("OC/CC") for the assorted buildings that are completed and square measure being colonized by the homebuyers, despite the very fact that landdues of the Authorities haven't been paid by the Amrapali cluster.
- 3) The Authorities are liberal in their approach and didn't take any rigorous action against the Amrapali cluster despite the continuance of assorted infractions until date, together with non-payment of premium installments stipulated below the Lease Deeds, despite the very fact that almost all quantity has been realized from the homebuyers by the Amrapali Group;
- 4) The Public Trust belief enshrined below Article 21 of Constitution of India is extremely a lot of applicable upon the Authorities and a requirement is solid upon them to act fairly and fairly to market public sensible and public interest;

- 5) That by not taking corrective actions against the Amrapali cluster, the Authorities have acted in connivance with the Amrapali cluster and so broken the general public Trust belief and consequently the Lease Deeds deed by the Authorities must be cancelled;
- 6) That not solely the Authorities, however, the Banks were additionally negligent on their half as they gave loans to the Amrapali cluster inspite of the facts that no development of the comes had taken place and no diligence of any kind was conducted by the Banks before enabling loans to Amrapali Group;
- 7) The Banks once enabling of the loans antecede all their responsibilities and acted in connivance with the Amrapali cluster by turning a blind eye to the criminal diversion of funds being committed by the Amrapali Group;
- 8) The Mortgage Deeds issued between the Banks and Amrapali cluster don't have any sanction below no law, owing to the very fact that they were premised upon conditional NOC's by the Authorities, that clearly declared that the NOC is valid on condition that payment of premium and lease rent has been done.
- 9) The RERA Registration of the Amrapali cluster over the assorted comes is susceptible to be off owing to the continual and uninterrupted delay by the Amrapali cluster in finishing the project.

CONTENDED ON BEHALF OF THE AUTHORITIES THAT:

- 1) By virtue of the Lease Deeds deed by the Amrapali cluster, the Authorities had 1st charge over the comes and their charge would take precedent over alternative charges together with the fees created in favour of banks and alternative money establishments.
- 2) That trust school of thought isn't attracted within the gift case as there's no breach of trust and therefore the call of the Authorities to transfer lease when receipt of 100% of the premium was a rigorously thought out policy approved by the State Government;
- 3) That the Authorities had been diligent in their approach viz-a-viz the Amrapali cluster and are causation notices to the Amrapali cluster for payment of premium installments. The Authorities any submitted that they failed to need the forceful step of cancelling the Lease Deeds because the same step would then require demolition of all structures created on the varied parcels of land.
- 4) That no OC/CC may be issued until the time the dues of the Authorities are paid.

CONTENDED ON BEHALF OF THE BANKS THAT:

- 1) They were diligent in their conduct viz-a-viz the sanction native of loan and every one appropriate ways were deployed to watch the employment of funds post their sanctioning;
- 2) The title deed between the Banks and Amrapali cluster is valid and subsisting and in line with the terms there from, the Banks have charge over the comes until the time the loan

quantity is repaid;

- 3) The homebuyers aren't secured creditors and therefore don't have any right, title or interest on the idea of allotment through flat client agreement.
- 4) The Supreme Court, once considering the contentions of each the parties and also the report of the monetary Auditors, wherein, siphoning off of the funds by the Amrapali cluster was confirmed, declared that:
- 5) The Public Trust philosophical system is applicable upon the Authorities within the gift circumstances and it had been the duty of the Authorities to require social action for effective management of the Lease Deeds granted in favor of the Amrapali cluster, and also the homebuyers are separated to question its effectiveness;
- 6) The fact that the land of the farmers had been non-inheritable for the aim of housing and infrastructure desires by the regime, the Authorities were sure to make sure that builders act following the target behind the acquisition of land and also the conditions on that allotment had been made;
- 7) The Authorities were negligent in their conduct and failed to take any corrective step against the Amrapali cluster even if there have been continual infractions by them. The Authorities did not solely do not observe the terms of the Lease Deeds and keep track of the comes, however additionally allowable the Amrapali cluster to execute sub-lease of the comes, thereby permitting Amrapali cluster to earn a large quantity while not creating payment of the quantity thanks to them;
- 8) The Authorities have in collusion with the Banks and Amrapali cluster allowable diversion of funds of homebuyers and if rivalry of the Authorities/Banks with relevance their charge over the comes is accepted, fraud would be committed upon the homebuyers World Health Organization are taken on a ride for no fault of theirs.
- 9) The conditional secret agent issued by the Authorities to Amrapali cluster build is evident that the aforesaid secret agent is merely valid just in case wherever full payment of premium has been created and up to date annual lease rent had been paid, however, considering that no such payments were created by the Amrapali cluster, no mortgage was created in favour of the Banks over the project properties;
- 10) That not solely the Authorities, however, the Banks were negligent in their conduct and determined to sanction the loans to Amrapali cluster while not confirmative the conditions of the NOC's being issued by the Authorities;
- 11) That in lightweight of the current circumstances the principle "fraud vitiates" is attracted and the Court must not solely save the homebuyers however additionally make sure that they're not cheated.
- 12) The provisions of RERA Act are profaned by the Amrapali cluster and also the reliance by the Amrapali cluster on the tragedy provision of the RERA Act is misconceived because the situations enumerated by the Amrapali cluster is roofed below the extent of

the tragedy.

CONCLUSION

Supreme Court Observation: The Supreme Court ordered a forensic audit to look into the affairs of the Amrapali Group. The forensic report confirmed that

- i. There had been a diversion of funds by the Group by incorporating shell/dummy companies;
- ii. The Promoters had created a web of more than 150 companies for routing of funds and creating assets;
- iii. The Homebuyer's funds along with the loans from the banks were diverted to other Companies/Directors, such funds were used by the promoters to acquire personal assets, properties and applied towards other business ventures.

The Supreme Court also observed that the mortgage created in favour of the lenders required a NOC from the Authorities which was issued subject to certain conditions such as full/ timely payment of the lease rents/premiums to the Authorities. The Court held that in the eyes of law, no valid mortgage had been created in favour of the banks on account of the conditional NOC which had not been fulfilled.

Supreme Court Decision: In light of the observations made and the findings of the forensic report, the Apex Court issued the following orders:

- The RERA registrations of the various projects of the Group were cancelled and the National Building Construction Corporation (NBCC) was assigned the task of completing the projects.
- The Court Receiver has been given the right of the lessee and is authorised to execute the tripartite agreement and ensure that the title is passed on to the home buyers, free from any encumbrances.
- The Supreme Court further directed that the Authorities and the banks will have to recover their dues from other properties and assets of the Group which have been attached.
- The Homebuyers have been directed to deposit the outstanding amount as per the payment schedule under the builder buyer agreement with the promoters/developers in a court administered bank account within three months. The amount deposited by the homebuyers will be disbursed by the Court order as per the stage-wise completion by NBCC.

Further, the Court advised appropriate action to be taken against the leaseholders of similar projects not only in Noida and Greater Noida but in other cities as well. Central Govt. Ministries and State Govt. Agencies have been further directed to ensure completion of other projects in

a time-bound manner as contemplated in RERA and ensure that the home buyers are not defrauded.

- Lastly, the Noida and Greater Noida Authorities were further directed to issue completion certificate and registered conveyance deed to be executed within one month concerning the projects where the homebuyers were already residing.

In a major relief to thousands of homebuyers Apex Court off the registration of Amrapali cluster underneath realty Real Estate (Regulation and Development) Act 2016, and directed the National Building Construction Corporation take over its unfinished construction comes in bigger Noida and Noida.

The bench found that Amrapali cluster had siphoned off homebuyers cash with the connivance of bigger Noida and Noida authorities.

The Court has directed the social control board of directors to initiate action underneath the bar of cash wash Act and exchange Management Act against Amrapali directors and authorities, and update the Court with the progress of probe with periodic reports.

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