

# **Bikram Chatterji & Ors. V. Union Of India & Ors**



**CA Mahadev Birla**

**Mahadev Birla & Associates**

**Chartered Accountants**

**+91 97123 78191**

**md.birla@gmail.com**

# Fact of Case

- ❖ *Year 2011, Place: Noiada and Greater Noida :- Various Real Estate Project of Aamrapali Group Started*
- ❖ *Approx. 42000 flats were there in the scheme*
- ❖ *Possession:- with in 36 Months with world class amenities*
- ❖ *Booking:- buyers booked apartment in 2010 to 2014*
- ❖ *Allotment cum flat buyer agreement were signed by the buyer*
- ❖ *Payment were made between 40 to 100 %, even though there was threat for forfeiture of payment*

# Fact of Case

- ❖ M/s. Amrapali Centurion Park Private Limited
- ❖ *Project completion date 30 months (plus-minus 6 months) from the date of commencement of excavation/signing of the agreement*
- ❖ *Builder to pay Rs 5 per square feet super area per month for the period of delay*
- ❖ *M/s. Amrapali Silicon City Private Limited and M/s. Amrapali Centurion Park Private Limited failed to give possession within 36 Months*
- ❖ *Failed to pay the amount to Noida and Greater Noida Authority and Bank*
- ❖ *Failed to deliver the possession even after revised date of completion set by builder*
- ❖ *failed to comply with its obligation under the subvention scheme*

# Fact of Case

- ❖ *Consumers filed the complaint before the National Consumer Dispute Redressal Commission (NCDRC) as per Section 12(1)(c) of the Consumer Protection Act, 1986*
- ❖ *The Bank of Baroda had filed Company Petition before the National Company Law Tribunal (NCLT) under Section 7 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*
- ❖ *The NCLT appointed the Interim Resolution Professional (IRP).*
- ❖ *Moratorium was also declared thereby restricting the institution of any suits against the corporate debtor*
- ❖ *The order of NCLT has affected the home buyer of Amrapali centurian park pvt ltd which was subsidiary of Amrapali Silicon City Private Limited (98.84%)*
- ❖ *For the interest of home buyer instant petition under article 32 -intervention application was filed*

✓ *Held that:*

- ❖ By the Amrapali Group, the buyers' money which has been obtained has not been invested in the construction activities, rather it has been diverted to a great extent. Money obtained from the banks has also not been invested in the projects and has been diverted elsewhere to acquire other assets
- ❖ The officials of the authorities have acted in clear breach of public trust. They have permitted the defaulting leaseholders to earn the amount by sub-leasing its land of which dues had not been cleared.
- ❖ The officials of the Noida and Greater Noida authorities have acted clearly in a breach of public trust and apart from that, they have failed to act as per the statutory mandate, the regulations and the terms of the lease deed

✓ *Held that:*

- ❖ By the Amrapali Group, the buyers' money which has been obtained has not been invested in the construction activities, rather it has been diverted to a great extent. Money obtained from the banks has also not been invested in the projects and has been diverted elsewhere to acquire other assets
- ❖ A blatant violation of the provisions of RERA has been done by the Amrapali Group. Since RERA contemplates timely completion of projects once registration has been granted under Section 5 and extension of registration under Section 6

✓ *Held that:*

- ❖ Section 7 provides that the Authority may on receipt of a complaint or suo motu or on the recommendation of the competent authority revoke the registration granted Under Section 5 in case promoter makes default in doing anything required by or under the Act or the Rules or the Regulation made thereunder
- ❖ In case the promoter indulges in any fraudulent practices, the registration can be revoked. Upon revocation of the registration, the promoter shall be debarred from accessing the website in relation to that project Under Section 7(4)(a). Under Section 7(4)(b), the Authority shall facilitate the remaining development works to be carried out in accordance with provisions of Section 8

✓ *Held that:*

- ❖ No accounts were prepared w.e.f. the years 2015-2018 and money withdrawn was diverted during the said period. The Statutory Auditor, failed in duty and was part of fraudulent activities as found in the Forensic Report
- ❖ failure to fulfil the obligations towards the buyers and the serious kind of fraud which has been played by them upon the home buyers, the registration of Amrapali group of companies under the Real Estate Regulation and Development Act, 2016 deserves to be cancelled



✓ *Held that:*

- ❖ The Noida and Greater Noida Authorities have to issue the Completion/Part Completion Certificate, as the case may be, to execute tripartite agreement and registered deeds in favour of the buyers on part-completion or completion of the buildings, as the case may be or where the inhabitants are residing, within a period of one month
- ❖ **The registration of Amrapali Group of Companies under RERA shall stand cancelled**
- ❖ **The various lease deeds granted in favour of Amrapali Group of Companies by Noida and Greater Noida Authorities for projects in question stand cancelled and rights henceforth, to vest in Court Receiver**

✓ *Held that:*

- ❖ Noida and Greater Noida Authorities shall have no right to sell the flats of the home buyers or the land leased out for the realization of their dues. Their dues shall have to be recovered from the sale of other properties which have been attached.
- ❖ NBCC is appointed to complete the various projects and hand over the possession to the buyers. The percentage of commission of NBCC is fixed at 8 percent
- ❖ The home buyers to deposit the outstanding amount within 3 months in the Bank account opened in UCO Bank in the Branch of Court

✓ *Held that:*

- ❖ FD will be created out of the money received from home buyers and shall be utilised in proportion to completion of the project.
- ❖ Companies/Directors who has money of the home buyers as per the report of Forensic Auditors are directed to deposit the same in the Court within one month
- ❖ R. Venkataramani, learned Senior Advocate is appointed as the Court Receiver.
- ❖ Noida and Greater Noida Authorities are directed to execute the tripartite agreement within one month concerning the projects where homebuyers are residing and issue completion certificate.



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