

# REVERSAL OF CORPORATE INSOLVENCY RESOLUTION PROCESS ("CIRP")

**NSA**  
**LEGAL**

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# NCLAT'S EXPERIMENT

NCLAT exercised its power envisaged under Rule 11 of NCLAT Rules

Judgment is divided into two phases

- ✓ Reversal of CIRP
- ✓ Applicability of CIRP on specific projects

To achieve the objects of the Code in different way

- **Flat Buyers Association Winter Hill-77, Gurgaon v. Umang Realtech Pvt. Ltd. Through IRP and Ors.**

# NOVEL POINTS UNDER REVERSE CIRP



EXCEPTION ONLY FOR REAL ESTATE COMPANIES



INTERVENER/INVESTOR TO INFUSE FUNDS IN THE CORPORATE DEBTOR (IT CAN BE PROMOTER OR RELATED PARTY AS WELL) DURING CIRP



COMPLETION OF SPECIFIC PROJECT WITHIN A TIME FRAME



TO BALANCE THE INTEREST OF ALL THE STAKEHOLDERS (HOMEBUYERS, FINANCIAL CREDITORS, OPERATIONAL CREDITORS, PROMOTERS, EMPLOYEES, LABOURS AND OTHERS)

# DUTIES OF INSOLVENCY PROFESSIONAL

In the Judgment of **Rajesh Gupta v. Babita Gupta and Ors.**, certain improvisation were made by Hon'ble NCLAT to give effect to reversal of CIRP.

The matter is sub-judice before Hon'ble NCLAT

Following directions were given by Hon'ble NCLAT;



# DUTIES OF INSOLVENCY PROFESSIONAL

IRP will not constitute CoC and intimate all the allottees

IRP shall not give any intimation to any authority which may affect the company to keep it a going concern.

IRP shall take assistance of suspended board of directors/officers/ employees to keep the company going concern.

The person who is authorized to sign bank cheques may issue cheques but only after approval of the IRP.

The bank account of the Corporate Debtor was allowed to be operated for day to day functioning of the Company such as for payment of current bills of the suppliers salaries and wages of the employees'/workmen electricity bills etc.

## OTHER OBSERVATIONS

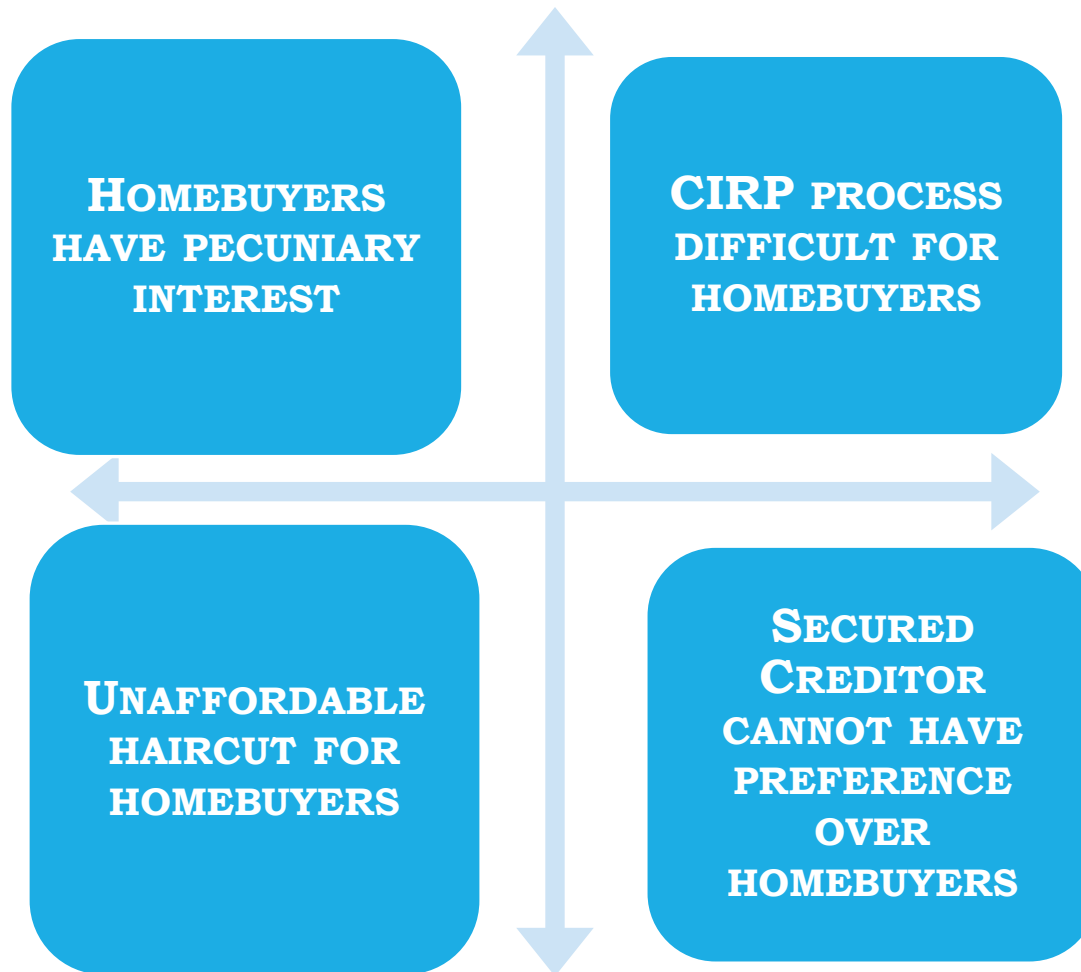
If the 'Promoter' fail to comply with the undertaking and fails to invest as financial creditor or do not cooperate with the Interim Resolution Professional/ Resolution Professional, the Adjudicating Authority (National Company Law Tribunal) will complete the Insolvency Resolution Process

The IRP can also sell the unsold flats/apartments, by way of a Tripartite Agreement between the Purchaser, Interim Resolution Professional/ Resolution Professional and Promoter

The resolution cost including fee of the Interim Resolution Professional will be borne by the Promoter

Allottees were directed to pay the remaining amount

# REASONS FOR REVERSAL OF CIRP



# **BIKRAM CHATTERJI & ORS. V. UNION OF INDIA & ORS. (AMRAPALI CASE)**

- ✓ **Writ petition filed by Homebuyers against Corporate Insolvency Resolution processed of NCLT**

## **Issues:-**

- ✓ **Charges of Greater Noida Authority Over project**
- ✓ **Validity of Charge of Banks over the project**
- ✓ **Cancellation of RERA Registration**
- ✓ **Relief to Home Buyers?**



# BIKRAM CHATTERJI & ORS. V. UNION OF INDIA & ORS. (AMRAPALI CASE)

## Submission by the Greater Noida Authority (Authority)

- Authority charge on the land is over and above ,the charge of Banks and other Financial Institutions
- The Public Trust doctrine is not applicable in this case
- There was no negligence on the part of Authority in respect of non payment of lease charges by Amrapali Group
- The completion certificate/Occupancy certificate can not be issued till the payment of lease is made

# **BIKRAM CHATTERJI & ORS. V. UNION OF INDIA & ORS. (AMRAPALI CASE)**

## **Submission by the Bank**

- There was no negligence on the part of Bank in respect of loan sanctioned and monitoring of fund.
- The Mortgage deed is valid and bank have first charges over the project
- The Home buyers are not secured creditors so they do not have any rights interest or title by way of allotment letter issued.

# BIKRAM CHATTERJI & ORS. V. UNION OF INDIA & ORS. (AMRAPALI CASE)

## Submission by Home Buyers

- Home buyers must be treated as highest priority
- The Authority is liable to issue Completion certificate/occupancy certificate if project is completed
- The Public Trust Doctrine applicable on Authority
- The Bank has not taken action against the Amrapali Group even after the diversion of fund.
- RERA registration of the various projects of Amrapali to be cancelled for delay in completion of project.

# BIKRAM CHATTERJI & ORS. V. UNION OF INDIA & ORS. (AMRAPALI CASE)

## Supreme Court Order

- The RERA Registration of Amrapali Group under RERA Act shall stand cancelled and the various projects shall now henceforth be completed by NBCC (India) Ltd
- The various lease deeds granted in favour of Amrapali Group Authorities for projects in question stand cancelled and all rights shall henceforth vest in Court Receiver (Senior Advocate, Shri R. Venkataramani);
- The Authorities and Banks shall have no right to sell the flats of the home buyers or the land leased out for the realization of their dues and all their dues shall have to be recovered from the sale of other properties of Amrapali Group which have been attached;
- The right of the lessee shall vest in the Court Receiver (earlier with the Amrapali Group) and he shall execute through authorized person on his behalf, the tripartite agreement

