
BIKRAM CHATTERJI & ORS. V. UNION OF INDIA & ORS: SUPREME COURT ON DEFRAUDING HOME-BUYERS

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Supreme Court of India

2019 OnLine SC 901

(Decided on July 23, 2019)

1. Introduction

This judgement passed by the Supreme Court of India is indicative of the shift in the real estate industry following the introduction of RERA (The Real Estate [Regulation and Development] Act, 2016) which has resulted in the rights of the homeowners being safeguarded against the malice of builders and realtors.

The facts revealed that not a single construction or developmental project undertaken by Amrapali Group of Companies (hereinafter referred to as “the builders”) was completed during the period of 2010-2014, leaving approximately 42,000 flats incomplete ,until the agitated home-buyers filed a writ petition in the Supreme Court of India, in 2019¹. The court took cognizance of the issues, under Article 32, attracting copious amounts of intervention petitions.

Additionally, the builders had defaulted in lease rent payments to NOIDA and Greater NOIDA development authorities (hereinafter referred to as “local authorities”) amounting to Rs.3000 crore and both these intervening parties asserted to have a better claim to compensation as opposed to the home-buyers.²

Accordingly, The Court ordered forensic audit was conducted which revealed that no accounts were maintained since, 2015;sale proceeds from homeowners and banks were diverted to the

¹ Para 5 of 2019 SCC OnLine SC 901

² Id. Para 8

Directors of the firm through various shell companies³. Furthermore, gross negligence was committed on the part of the local authorities and financial institutions in keeping proper vigil.⁴

Hence, the Supreme Court was faced by a wide array of issues, enumerated below:

- *Whether the charge claimed by the local authorities and the banks, over the builders and their development projects were valid.*
- *Whether, the builders' were liable for revocation of their registration under Section 7 of RERA.*
- *Decide on appropriate relief to be granted to the home-buyers on the basis of the facts revealed in the Forensic Audit.*

2. The Judgement: An Analysis

2.1 Delay in Possession

The court heard arguments of all the three claimants on the basis of the aforementioned issues. The main contention of the homeowners was the fact that they had invested their savings in addition to taking loans from banks to buy apartments that they didn't get possession of till 2019⁵, which was in clear violation of Clause 19 (a) of the sale agreement, which stated;

"The builders sought to complete the flats within 30 months of signing of the agreement with an added extension of 6 months⁶."

Not only did builders commit a serious breach of contract, they also extended the date of completion without notice.⁷Prima facie, the court's decision in cancelling the builders' registration with RERA⁸ under Section 7, handing over of the incomplete projects to NBCC, directives to the Court Receiver to issue Occupancy and Completion Certificate to the home-buyers seems justified.

³Bhardwaj. P., 2019. SC cancels Amrapali Group's RERA registration for defrauding homebuyers. [Blog] SCC Online Blog

⁴ In re: Forensic Auditors; Para 592019 SCC OnLine SC 901

⁵ Supra Note 2

⁶ Id. Para 3

⁷ Supra Note 2

⁸Id. Para 148

However, the adequacy of the appropriation of relief granted to the allottees can be cross-examined, pursuant to Clause 19 (c) of the sale agreement, which established that the builder had fixed an amount of Rs.5 per square feet super area per month, for every month of delayed construction⁹. The judgement rendered by the court, only briefly mentions such relief being granted to the home-buyers without any practical implications of the same.

2.3 Due Diligence

Furthermore, the local developmental authorities contended that in capacity of the lease deeds of the developed lands, they enjoyed the premium charge on the projects, superseding any claims made by the home-buyers and the financial institutions. On the other hand, the financial institutions substantiated their charge over the developmental projects with mortgage deeds to the land being developed.

However, the Forensic Audit disclosed that there was a critical breach of diligence and supervision on the part of the local authorities and the lender banks. Despite continual non-payment of the lease rent, no action was taken by the authorities, even though the NOC provided by the authorities, for mortgaging of such leased land, as security for loans taken by Amrapali, was explicitly conditional in nature, and dependent on fulfillment of annual payment of rent on the leased land and premium.¹⁰

This points to the omission on the part of the lender banks, who were incompetent in making regular checks on the timely payments being made towards lease rent, as their status as “secured creditors” was dependent on the same. Additionally, they were inept in acting on their due diligence in conducting a substantial background check, both before and after sanctioning of the primary loan, and each time they released funds for the alleged development of the land.¹¹

Subsequent to such findings, the court in the light of reasonability, recognizing the gross negligence on the part of both of the parties, negated their pleas of having charge over the damages, over each other and the home-buyers, and established that neither of the parties have realization rights to their respective borrowed amounts from the sale of flats and have to resort to other attached properties of the builders for the same¹²

⁹ Id. Para 4

¹⁰ Supra Note 6

¹¹ Id. Para 150

¹²Supra Note 14

2.4 The Doctrine of Public Trust

The Public Trust doctrine is enshrined in Article 21 of the Indian Constitution¹³, essentially establishes effective management of resources by the state through affirmative actions, and, empowers citizens to hold such state authorities responsible in the event of breach of the same.¹⁴This doctrine finds pertinence in this case from when, the lands were acquired by the government from farmers with the powers vested in them under the Land Acquisition Act, 1894 and was later leased out as private property to the builders for housing and infrastructural work. This ensued an added responsibility on the State Government and the local authorities to keep proper vigil and make certain that the objective of such land acquisition was satisfied and the builders were acting within their legal capacity¹⁵.

The local authorities denied any breach of trust on their part and claimed that the lease was only transferred to the builders after they received 10% of the premium amount after seeking approval by the State Government, thereby establishing that the Public Trust Doctrine was not relevant in the current scenario¹⁶.

Notwithstanding these arguments, the Court stated the duty of the authorities in effectively managing the lease deeds granted to the builders and their omissions thereof reflecting back on the case of *In Association of Unified Tele Services Providers & Ors. V. Union of India & Ors* wherein the court deliberated that state and its agencies should work towards public good and make efforts to achieve the objective for which it exists and to that effect, have a duty to protect public interest in pursuance of Public Trust Doctrine.¹⁷

The principle duty of the state, as trustee of public resources, is to use the trust *corpus* for the benefit of the public and to protect it.¹⁸ In India it falls under the ambit of Article 21 flowing from its jurisprudence to uphold right to life and protection and preservation of environment, which is widely interpreted to include land along with air, sea, waters and forest.¹⁹ Hence, the callous and negligent attitude of the local developmental authorities towards supervision of the

¹³Vide *Erusian Equipment & Chemicals Ltd. v. State of West Bengal* AIR 1975 SC 266

¹⁴Steiner, F., & Roberts, J. (1986). Prospect: Public Trust Doctrine. *Landscape Architecture*, 76(3), 132-118.

¹⁵ In re: Public Trust Doctrine; Para 73 of 2019 SCC OnLine SC 901

¹⁶ Id. Para 36

¹⁷(2014) 6 SCC

¹⁸ Note, L., M., 1977. Proprietary Duties of the Federal Government under the Public Land Trust. *Michigan Law Review*, 75(3),

¹⁹ Arris, A., & Marsh, C. (2016). The Expansion of the Public Trust Doctrine in an Era of Resource Scarcity: Have We Reached the Tipping Point? *Natural Resources & Environment*, 31(1), 43-47. Retrieved June 15, 2020

projects, their inactions towards repeated infractions committed by the builders, granting permission to them to sub-lease such projects, proved a sheer breach of Public Trust Doctrine on their part and a rather enabling contribution to the offence committed.

2.5 Expulsion of Registration under RERA

Once, the forensic report concluded obvious siphoning of funds and commission of fraud on the part of the builders amounting to “unfair practices” under Section 7 of RERA²⁰, it culminated into cancellation of registration of the builders with RERA. Consequently, lease deeds made to that effect were cancelled and the company lost its developmental rights in projects beyond 500 sq. meters or eight apartments.²¹ The incomplete developmental projects were handed over to NBCC for completion with the profit margin of 8% and the project rights, sale of flats were vested on the Court Receiver who was directed to draw a new tripartite agreement and handover possession and OC/CC to respective home-buyers.²² It also insinuated a prima facie case on several criminal offences, like money laundering, violating FEMA, FDI regulations, and the court ensured substantial criminal proceedings against Amrapali.²³

Section 7(c) of RERA makes promoters guilty of unfair practices or irregularities liable to cancellation of RERA registration, which includes use of any unfair means or deceptive practice for the sale and development of a real estate project, and the promoter indulging in any fraudulent practices²⁴. In the light of the aforementioned commission of crimes, revealed in the report, there was an apparent fraud committed by the builders, justifying their liability to cancellation.

3. Judicial Adequacy and its’ Implications

This judgement has proved effective in protecting the rights of the home-buyers against the incessant abuse of power of the promoters, in the post-RERA period. Optimistically, this decision will bring the mechanism of real estate business at crossroads to establish order and controlling the arbitrary and baffling actions of the promoters, in addition to being a tough lesson for the local authorities and banks, for their negligent and callous actions.

²⁰The Real Estate (Regulation and Development) Act, 2016

²¹Id., §3(2).

²²Para 154 of 2019 SCC OnLine SC 901

²³Id. Para 130

²⁴Section 7(c) Explanation (A) (d) of RERA, 2016

3.1 Compensation Granted to Home-buyers

Section 19(4) (1) of RERA elaborates on the rights of allottees to compensation from the promoter in case of failure to give possession due to suspension or revocation of his registration.²⁵ Reiterating to Clause 19 (c) of the sale agreement, buyers additionally have a rightful claim towards compensation. The rights of the allottees to compensation in pursuance of the agreement has been put second to the completion of projects in order of preference, provided any amount is left, from the funds to be collected from the outstanding of the home-buyers²⁶, which though is pragmatically understandable, is not befitting to the distress that the home-buyers have undergone. Unlike the banks and the local authorities, home-buyers are not granted the right to claim their compensation from other properties attached by the builders despite having a valid legal instrument substantiating such claim even though the court explicitly dictates that they are not absolving their right to enforcement of right of compensation through NCDRC. There are a number of precedents by NCDRC wherein builders have been ordered to provide compensation for delayed possession of flats²⁷ like in *Jitendra Balani v. Unitech* the buyers were awarded an interest at the rate of 18% to 24% per annum for each year of delay, amongst others.²⁸ Additionally, in 2019, NCDRC declared that buyers are authorized to demand for full refund in the event of an entire year of delay in possession, reinforcing repeated opinions of Supreme Court and consumer courts' that home-buyers wait indefinitely.²⁹ This is possibly the only juncture at which the judgement falls short of justice, as the several years of distress and suffering of the allottees, of being deprived of possession for quite a significant amount of time were not adequately addressed, and Supreme Court, being the highest judicial court failed to provide recourse to the same.

Having said that, it is undeniable that this judgement has been nothing short of a blooming piece of legislation in the field of Real Estate, expected to act as a deterrent in future, set a strong precedent, at the least.

²⁵ Id. Para 58

²⁶ Id. Para 124

²⁷ Rab, A., 2017. Redressal Mechanism Under The Real Estate (Regulation And Development) Act 2016: Ouster Of The Arbitration Tribunal?. *The Nuj's Law Review*, 10(1)(Rev. 1).

²⁸ Consumer Case No. 510 of 2015

²⁹ Choudhury, A., 2019. Homebuyers can seek refund if flat delayed beyond 1 year: NCDRC. *Times of India*, p.1.