

Supreme Court on Amrapali - Perils of a Piecemeal Approach to Justice

written by Rajesh Sivaswamy | August 28, 2019

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With no end in sight to the number of real

estate bankruptcies in the country, the Hon'ble Supreme Court has been perhaps

the only beacon of light to home buyers who have been embroiled in a quagmire of litigations desperate to see light at the end of the tunnel.

A case on point is the recent judgment of the Hon'ble Supreme Court of India on July 23, 2019 in Amrapali case, where the court has cancelled the registration of the Amrapali Group of Companies (Amrapali) under the Real Estate Registration Act (RERA) and has anointed the National Building Construction Corporation Limited (NBCC) to supervise and complete unfinished projects of Amrapali and hand over possession to the buyers at a fixed rate of 8% as commission. The Court through an order dated August 26, 2019 transferred an amount equivalent to INR 7.16 crores approx. as project management fees into the account of the NBCC. While this order may come as a breath of fresh air to home buyers, it throws up several questions that require careful deliberation.

The Supreme Court has taken a clear stand

in favour of home buyers and has shown contempt and disdain to real estate firms who have been tardy with timely completion of projects. We should expect

more of such judgments on similar lines involving other realty firms. The Supreme Court has already demonstrated this intent in another matter where it dismissed a plea by a number of real estate firms who challenged the elevated pedestal that has been accorded to home buyers designating them as 'secured creditors' under the Insolvency and Bankruptcy Code.

Though the task of completion of pending

projects of Amrapali has been given to the NBCC with the noblest of intentions,

NBCC by itself may not be the white knight that can salvage the systemic rot that has crept into the real estate sector. NBCC is a Government of India enterprise which was established in 1960 under the erstwhile of the Ministry of

Housing and Urban Affairs, Government of India and primarily deals with construction projects. To its credit, the NBCC has posted substantial growth since its inception and its revenue in the financial year 2018-2019 crossed the

INR 10,000 crores mark contrasted with the revenue in the financial year 2002-2003 which was less than INR 500 crores.

Despite these accomplishments, the task

before the NBCC is daunting. Approximately 42000 homes are to be handed over to

ultimate buyers after the completion of the project by NBCC. The overall value

of the stalled units is estimated to be more than INR 1.77 trillion. With a few

more projects like Jaypee on the horizon, one feels that the challenges that the NBCC faces will go up incrementally.

On a purely legal evaluation, there is no

legal recourse to the home buyer in the event of further delays to the projects

on account of the procedures and the sheer enormity of the tasks. The home buyer also has limited legal remedies in terms of the agreements which have been executed with the developer. Questions surrounding the overall quality of

the construction as well as the delays remain unanswered and it is quite obvious that the home buyer is taking a haircut here.

To assuage concerns surrounding financial viability, the Hon'ble Supreme Court of India has ordered the Noida and Greater

Noida authorities that any dues proposed to be recovered from Amrapali shall be

undertaken through the attachment of other properties belonging to the promoters. It is not clear if these properties will in any way suffice the amounts to be recovered. It is also contemplated that a tripartite agreement would be executed post completion of the project between the home buyer, Noida or Greater authorities and NBCC. The Supreme Court has assured home buyers that it will personally supervise compliance of this order and directed them to deposit their balance sale consideration and all the money owed to the Amrapali Group to be submitted to the Court and to be maintained in

an escrow account, which shall be utilized by the NBCC for completion of the projects.

Despite these measures, treating the NBCC

as a panacea for all evils that plague the real estate sector may not be the right view. The RERA which was heralded as a revolutionary step in augmenting the real estate space providing guiding principles for governance has been rendered as a toothless tiger in many states with multiple state amendments and

ineffective implementation. It is high time that the legislature of states also

takes a re-look at the changes made to the RERA with the intent to bring back the efficacy that the legislation was originally intended. With the deteriorating health of the real estate industry, banks have become averse to lending to a sector which was, till a few years back, the hot cake of the financial world. It is necessary to

bring back some semblance of normalcy by ushering reforms in the lending process and adopting procedural safeguards which will balance the interests of

lenders and real estate firms. A holistic view of reforms in the real estate sector requires amongst others transparency in (I) land records making it available digitally, (II) land procurement process, (iii) reform in procuring registrations and permits. Unless such a holistic process is adopted and implemented by the state legislatures along with the banking and finance industry, the average home buyer will have to be satisfied with a piecemeal approach for justice.

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