



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IBC Case Law Capsule

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VISHAL CHELANI & ORS. Vs DEBASHIS NANDA
CIVIL APPEAL NO. 3806 OF 2023

Date of Supreme Court Judgement: October 06, 2023

Facts of the Case: -

The present appeal is filed by Mr. Vishal Chelani & Ors. (hereinafter referred as 'Appellants') after being aggrieved by the decision of the Appellate Tribunal.

The Appellants, in the capacity of homebuyers, invested in a real estate project of Bulland Buildtech Pvt. Ltd. ('CD'). The Appellants were dissatisfied with the project's delays and sought relief through the Uttar Pradesh Real Estate Regulatory Authority (UPRERA). The UPRERA ruled in the appellants favor by upholding their right to refund along with interest. Meanwhile, the CIRP proceedings were initiated against the CD and the RP was appointed (hereinafter referred as 'Respondent')

After due consultations form CoC, a resolution plan was submitted before AA, which differentiated between home buyers who had sought remedies under the RERA and those who had not. Those who hadn't approached RERA were offered more favorable terms, with a 50% advantage over those who had obtained RERA orders or were decree holders. The Appellants being unhappy with the arrangement, filed an application with AA but their claims were denied by the AA. The Appellate Tribunal further turned down their appeal which led them to approach the Supreme Court.

The Appellants submitted that a distinction cannot be made between two set of home buyer allottees as the definition of financial debt u/s 5(8)(f), after the amendment in 2018, include home buyer allottees in real estate projects under the broad description of financial creditors.

The Respondent submitted that the appellants cannot be permitted to secure two benefits. Having approached the UPRERA, they fell into a different sub-class of home buyers, who were entitled to specified amounts and, therefore, were unsecured creditors, as compared with allottees who had not invoked RERA remedies.



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Supreme Court Observations:-

The Apex Court, citing the judgement in the case of **Mr. Natwar Agarwal (HUF) vs. Ms. Ssakash Developers & Builders Pvt. Ltd.**, emphasized that the 2018 amendment with the added explanation to section 5(8)(f), categorizes homebuyers and allottees of real estate projects as 'financial creditors.' The Apex Court stated that there's no inherent distinction among different classes of financial creditors when it comes to creating a resolution plan.

The Apex Court further stated that only homebuyers have the standing to seek remedies under RERA. Therefore, it would be highly inequitable to treat a specific segment of this class differently under another law solely because they opted to receive their deposits along with the interest. The fundamental claim of an aggrieved party remains unaltered by a court order or decree, and allottees retain their status as financial creditors.

Furthermore, Section 238 of the IBC includes a non-obstante clause, giving priority to its provisions over those of the RERA Act. The artificial distinction made by the Respondent constitutes "hyper classification" and contravenes Article 14.

Order/Judgement: The Apex Court set aside the impugned order of the Appellate Tribunal and declared the Appellants as financial creditors within the meaning of section 5(8)(f) explanation. Further the Court directed to treat the Appellant at par with the other home buyers/financial creditors, for the purposes of a resolution plan.

Case Review: The Appeal is allowed.