



7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110 001

7th Oct, 2023

Subject: Judgment¹ dated 6th October 2023 of Hon'ble Supreme Court in Vishal Chelani & Ors. Vs. Debashis Nanda [Civil Appeal No(s).3806-2023]

Brief Facts-

The home buyers/ appellants herein had approached the UPRERA for the delay in the completion of the project and secured orders for refund of amounts deposited along with interest towards the allotment in the real estate project. In the meanwhile the insolvency proceedings against the CD were initiated. During the process, the resolution plan provided for the benefit of 50% better terms to those home buyers who did not approach RERA; thereby different treatment was meted out to home buyers, who had opted for remedies under UPRERA and those who did not do so. Home buyers herein have filed an IA before AA seeking directions to the resolution professional (RP) to call upon resolution applicant to amend the resolution plan was dismissed. On appeal NCLAT relying on judgment of Hon'ble Supreme Court in *Kotak Mahindra Bank Limited vs. A. Balakrishnan & Anr.* held that once the recovery certificate has been issued, the party in possession of the recovery certificate is to be considered as a financial creditor (FC) and upheld the differential treatment. The home buyers have filed an appeal before SC against the NCLAT judgment.

Issues Before Hon'ble Supreme Court:

Whether there can be different treatment of allottees in the resolution plan one who had invoked RERA and others who did not approach RERA?

Findings & Observations of the Hon'ble Supreme Court:

- SC while setting aside the order of NCLAT held that allottees who approached UP RERA are FC in terms of Explanation to section 5 (8)(f) of the Code.
- It observed that there can be no per se distinction between different classes of FC for the purposes of drawing a resolution plan. Such a distinction is artificial and amount to *hyper-classification* and contradictory to Article 14 of the Indian Constitution.
- SC observed that “*to treat a particular segment of that class differently for the purposes of another enactment, on the ground that one or some of them had elected to take back the deposits together with such interest as ordered by the competent authority, would be highly inequitable.*”

¹ Prepared by Legal Affairs Division for the sole purpose of creating awareness and must not be used as a guide for taking or recommending any action or decision, commercial or otherwise. One must do its own research or read the original text of the judgment or seek professional advice, if it intends to take any action or decision using the material covered here.