



भारतीय दिवाला और शोधन अक्षमता बोर्ड  
Insolvency and Bankruptcy Board of India

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4<sup>th</sup> September 2023

***Subject: Judgment dated 28<sup>th</sup> August 2023 of National Company Law Appellate Tribunal, Chennai in the matter K. Jayant Prabhu & Juhi Santani Vs. Pankaj Srivastava Liquidator of M/s Samruddhi Realty Ltd.<sup>1</sup>[ Company Appeal (AT) (CH) (INS.) No. 254 of 2023]***

**Whether ‘security interest’ be created in favour of Homebuyer, where his/her property becomes part of the liquidation estate and such property does not have a registered sale deed?**

**Brief Background:**

The instant appeal has been filed before the National Company Law Appellate Tribunal (NCLAT) against the order dated 25.05.2023 in I.A No. 343 of 2021 in CP (IB) No. 189 / BB / 2018, passed by AA Bengaluru Bench).

A land admeasuring 6 acres was absolutely owned by Mr. Mahalakshmi Ramakrishnan. The land owner and the CD entered into a joint venture agreement for the development of the property. The homebuyers (HB) are appellants herein who had agreed to purchase a plot with all rights and appurtenances and also entered into a construction agreement with CD for construction of residential villa for consideration of Rs.81 lakhs with an aggregate sum being Rs.1.34 cr towards land and construction. HB admittedly reports that 95% of construction work of villa was completed and CD permitted HB to take possession of the villa while some interior work was pending.

In the meanwhile, the CD went into insolvency on the application filed by OC and thereafter liquidation under the Code. HB filed claim in Form-D for total consideration. But the liquidator informed the HB that they will not fall under homebuyers. HB filed an application before AA seeking direction to the liquidator for (a) exclusion of his villa property from liquidation estate, (b) for registration of the villa property and (c) completion of the remaining work. The AA dismissed of the application of HB, observing that no security interest is created in favour of the HB and the sale deed was not executed.

Aggrieved by the order, HB filed an appeal was filed against the order of AA

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**Findings and Observations:**

NCLAT, while dismissing the appeal of HB, it observed that admittedly no registered sale deed was executed between the HB and the CD as such no security interest is created in favour of the CD. Further, it was observed that

1. 'ownership of the subject property' rests with the CD.
2. 'agreement to sell' or being in possession of the property will not confer 'ownership rights' upon any person.
3. The conveyance of ownership is said to be completed only in respect of an 'execution' and 'registration' of a valid 'deed of conveyance'.

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