

[Print This Page](#)

SC's Amrapali judgment: A watershed moment for real estate sector?

Harsh Parikh and Amruta Joshi

The duel between homebuyers and developers has become more intense, with the Supreme Court ruling in favour of 49,575 homebuyers in the projects being constructed by the Amrapali Group of Companies in Noida and Greater Noida area. The landmark judgment seeks to bring to book all the errant stakeholders who have their skin in the game.

The top court had given adequate opportunities to Amrapali to complete construction of the projects. However, Amrapali failed to comply with the directions. Therefore, the court issued directions on October 11, 2018, for conducting forensic audit on Amrapali. The forensic auditors unravelled alarming irregularities such as (i) diversion of funds of homebuyers to other projects, dummy companies (ii) siphoning off funds out of the country in violation of FEMA laws (iii) non-maintenance of books of accounts (iv) making false promises to homebuyers by selling flats which were not part of the approved project layout and (v) construction finance availed from various banks / financial institutions for creation of personal assets of the directors and promoters.

The court called out the fraud and took an unprecedented decision to cancel the RERA registration granted to Amrapali though such power is vested with local RERA authorities. In its attempt to secure homebuyers interest, the court further appointed National Building Construction Corporation to complete construction of the projects at 8 percent commission.

By doing so, not only has the apex court punished Amrapali, but has also set an example for all errant developers habituated to circumventing the law.

The court has also come down heavily on public land owning authorities like Noida and Greater Noida Authority which had granted development rights to Amrapali. It observed that the Noida authorities have acted in collusion with Amrapali and were not vigilant to protect their rights. Furthermore, it has been noted by the court that homebuyers paid the premium to Amrapali which was in turn to be paid to the Noida authorities. However, Amrapali failed to pay the same and such failure of Amrapali cannot affect the rights of homebuyers. The court has concluded that the Noida authorities had a duty to ensure that Amrapali acts in compliance of the leases granted to it and thus cannot seek to reclaim the lands or make attempts to sell the constructed flats leaving home buyers in the lurch and thereby directed that rights of Amrapali to the land shall vest in the court receiver, appointed by it. The Noida authorities were further directed to issue completion certificate within a period of one month from the date of application.

The highest court has curbed the unquestioned supremacy exercised by the land-owning authorities, by giving out a clear message that lack of timely vigilance would mean losing control and interest on their lands.

The lenders were in for a rude shock when the apex court ruled that the mortgage created by Amrapali in their favour was bad in law, as the mortgage was subject to the conditions imposed by the Noida authorities, which were never fulfilled by Amrapali, thus stopping the lenders from enforcing the mortgage. It also observed that inaction of the lenders in ensuring that Amrapali complies with the conditions, was contumacious and hence no leniency can be shown to the company. Also, it would be the duty of the lenders to ensure the funds are utilised for the real estate project and in case there is any diversion of funds, such acts should have been objected to and promptly dealt with.

This is an eye opener for many lenders, who would need to ensure that the security given against loan is clear beyond any reasonable doubts. The responsibility of the lender does not end with funding, but the lender is required to continuously monitor the end use of such disbursements. While the lenders monitor the funds received by the developers from the sale of units, the extent to which they can micro monitor the end use of disbursements, is questionable.

By directing all state authorities to take appropriate actions for similar projects, the SC has made it loud and clear, that vigilance must be exercised by all players, at all times.

Has the long-awaited watershed moment in the real estate sector finally arrived?

Harsh Parikh is Partner and Amruta Joshi a senior associate at Khaitan & Co. Views are personal.