

**THE RAJASTHAN REAL ESTATE REGULATORY AUTHORITY,
JAIPUR**

Suo Moto

Versus

GRJ Distributors and Developers Pvt. Ltd. ... Respondent

File No. F.3(151)RJ/RERA/P/2017

Present

Smt. Venu Gupta, Hon'ble Chairperson

- 1) Adv Mohit Khandelwal, present on behalf of applicant
- 2) Adv Ajay Tyagi, present on behalf of the respondent, Invent Asset Securitisation and Reconstruction Pvt. Ltd.

Date of Order: 19.02.2026

ORDER

1. The present application has been filed on 17.11.2023 by the counsel for the complainant i.e. Avalon Royal Park Homebuyers' Association seeking initiation of appropriate action against ECL Finance Ltd. in respect of an alleged illegal mortgage created over the project "Avalon Royal Park". The application has been filed during the pendency of a suo motu complaint already initiated by this Authority against the Respondent Promoter.

2. The brief facts, as borne out from the record, are that the Respondent Promoter, M/s GRJ Distributors and Developers Pvt. Ltd., launched and developed a real estate project known as Avalon Royal Park. Various allottees booked flats in the said project during



the years 2012–2013 and paid substantial consideration amounts. Agreements for Sale were executed with such allottees during the said period. It is an admitted position that several allottees had availed housing loans from different financial institutions and the Respondent Promoter had issued No Objection Certificates permitting mortgage of the respective flats in favour of such banks.

3. It is the specific case of the Applicant that in the year 2018, the Respondent Promoter, with alleged mala fide intent, mortgaged the entire project in favour of ECL Finance Ltd. and availed a term loan of ₹50,00,00,000/-. A Mortgage Deed dated 14.02.2018 was executed creating charge over the entire project land and building. The Applicant contends that the said mortgage was created without the knowledge or consent of the existing allottees and without obtaining No Objection Certificates from their respective lending banks.

4. The Applicant has further alleged that the said mortgage was created after the commencement of the Real Estate (Regulation and Development) Act, 2016, and that ECL Finance Ltd. failed to conduct due diligence, including verification from the RERA portal, despite details of allotted units being publicly available. It is further alleged that ECL acted in contravention of RBI guidelines, failed to



conduct a proper title search, and did not monitor end-use of funds, thereby enabling diversion and siphoning of monies by the Promoter.

5. The Applicant has relied upon Section 11(4)(h) of the RERA Act, contending that once an Agreement for Sale is executed, the promoter is statutorily prohibited from creating any mortgage or charge affecting the allotted apartment, and even if such charge is created, the same shall not affect the rights of the allottee. Strong reliance has been placed upon the judgment of the Hon'ble Supreme Court in *Bikram Chatterji v. Union of India*, (2019) 19 SCC 161, to contend that such subsequent mortgages are unenforceable against the allottees.

6. The Applicant has further alleged that the Respondent Promoter submitted false and misleading declarations before this Authority by way of an undertaking dated 28.03.2018, wherein it was stated that only unsold units in the project had been mortgaged. However, according to the Applicant, a perusal of the Mortgage Deed reveals that the mortgage extends to the entire project, including units already sold to allottees. In support of this contention, reliance has been placed upon the Authority's internal notesheet dated 30.10.2018 in the suo motu file for getting



permission to allow encumbrances/loans on the said project, wherein it was recorded that mortgage could be permitted only in respect of unsold units and that no charge or encumbrance could be created over sold units, so as to safeguard the rights and interests of the allottees.

7. On the basis of the aforesaid allegations, the Applicant has prayed for impleadment of ECL Finance Ltd. as a necessary party, for a declaration that the Mortgage Deed is null and void to the extent it affects sold units, for an order restraining enforcement of any charge against the allottees, and for initiation of appropriate proceedings against the Respondent Promoter for the alleged violations.

8. Learned counsel appearing on behalf of the Respondent, Invent Assets Securitisation and Reconstruction Pvt. Ltd., has filed a detailed reply raising certain preliminary objections with respect to the maintainability of the present proceedings. It is submitted that the Corporate Insolvency Resolution Process (CIRP) has already been initiated against the Corporate Debtor, namely M/s GRJ Distributors and Developers Pvt. Ltd., pursuant to an order dated 29.09.2025 passed by the Hon'ble National Company Law Tribunal, New Delhi. It is further contended that consequent upon the



admission of the insolvency petition, a statutory moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC) is presently in force, and therefore, no proceedings can be continued or initiated against the Corporate Debtor during the subsistence of such moratorium.

9. The Respondent has further argued that by virtue of Section 238 of the IBC, the provisions of the IBC shall have an overriding effect over all other laws in force, including the Real Estate (Regulation and Development) Act, 2016 (RERA), in the event of any inconsistency. It is contended that once CIRP has commenced and a moratorium has been declared, all legal proceedings against the Corporate Debtor are required to remain in abeyance. In support of the said contention, reliance has been placed upon the judgment of the Hon'ble Supreme Court in Pioneer Urban Land and Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416, wherein the interplay between the IBC and RERA was examined and the primacy of the IBC in case of conflict was recognized.

10. It was further argued that the provisions of the RERA Act, 2016 are not applicable to banks and financial institutions. Learned counsel has placed reliance upon Section 35 of the Act, which empowers the Authority to call for information and conduct inquiries



from promoters, allottees, and real estate agents. It is contended that financial institutions do not fall within the categories of persons expressly mentioned under Section 35, and therefore, the Authority lacks the statutory power to examine or proceed against such institutions under the provisions of the Act.

11. Additionally, it has been submitted that ECL Finance Ltd. has assigned its entire debt in favour of Invent Assets Securitisation and Reconstruction Pvt. Ltd. by way of a registered Assignment Agreement dated 31.03.2023. Consequently, it is argued that ECL Finance Ltd. no longer retains any right, title, or interest in the subject debt and is therefore not a necessary or proper party to the present proceedings. It has also been contended that the Respondent financial institution has not taken possession of the sold units under the provisions of the SARFAESI Act.

12. Learned counsel further contended that a mere Agreement to Sell, in the absence of execution and registration of a proper Sale Deed, does not confer valid or complete title upon the allottees. It was submitted that under Section 54 of the Transfer of Property Act, 1882, a contract for sale does not, by itself, create any interest in or charge on the immovable property, and that legal title passes only upon execution of a duly registered conveyance deed.



Consequently, it was argued that the allottees cannot claim ownership rights solely on the basis of an Agreement to Sell.

13. On these grounds, it is argued that the present application is belated, vague, based on mere assumptions, and is in the nature of a criminal complaint, and that the Applicant Association lacks the requisite locus standi to maintain the same.

14. Learned counsel has further contended that this Authority lacks jurisdiction to entertain or adjudicate the present application against ECL Finance Ltd., in view of the bar created under Section 14 of the IBC upon commencement of CIRP. It is submitted that once the statutory moratorium is in operation, all proceedings, including those under the RERA Act, against the Corporate Debtor or in relation to its assets are liable to be stayed, and therefore the present proceedings are not maintainable in law.

15. In response, counsel for the applicant argued that the said project is an ongoing concern and hence, falls under the purview of the RERA Authority. Reliance is placed on the Hon'ble Supreme Court in Union Bank of India v. Rajasthan Real Estate Regulatory Authority & Ors., (2022). Hon'ble apex court in the said judgment held as follows:



"36. Our conclusions can thus be summarised as under:—

(iii) As held by the Supreme Court in the case of Bikram Chatterji (supra) in the event of conflict between RERA and SARFAESI Act the provisions contained in RERA would prevail.

(iv) RERA would not apply in relation to the transaction between the borrower and the banks and financial institutions in cases where security interest has been created by mortgaging the property prior to the introduction of the Act unless and until it is found that the creation of such mortgage or such transaction is fraudulent or collusive.

(v) RERA authority has the jurisdiction to entertain a complaint by an aggrieved person against the bank as a secured creditor if the bank takes recourse to any of the provisions contained in Section 13(4) of the SARFAESI Act."

3. However, it is clarified that para 36(v) reproduced hereinabove shall be applicable in a case where proceedings before the RERA authority are initiated by the home buyers to protect their rights.

With this, the Special Leave Petitions are dismissed."



16. It has also been contended that under the scheme of the Real Estate (Regulation and Development) Act, 2016, the relationship and transactions between the promoter and the allottees are regulated from the stage of execution of the Agreement to Sell and continue until the execution and registration of the Sale Deed. It is submitted that the execution of the Agreement to Sell itself creates enforceable rights in favour of the allottees in respect of the project,

and such rights stand recognized and protected under the provisions of the RERA Act.

17. This Authority has heard the learned counsels for the parties and perused the record. At the outset, it is observed that vide order dated 12.01.2026, Invent Assets Securitisation and Reconstruction Pvt. Ltd. has already been impleaded as a party in place of ECL Finance Ltd., the assignment having taken place prior to the filing of the present application. Accordingly, no further action can be directed against ECL Finance Ltd., and any proceedings, including those arising from the suo moto complaint, shall continue only against Invent Assets as the assignee of the secured debt.

18. With regard to the prayer seeking declaration of the Mortgage Deed dated 14.02.2018 as null and void, this Authority is of the considered view that adjudication upon the legality, validity, or enforceability of a registered mortgage deed per se falls outside the limited jurisdiction conferred upon this Authority under the RERA Act. Such issues are within the domain of competent civil courts or forums exercising jurisdiction under the IBC or SARFAESI Act.

19. However, this Authority cannot be a mute spectator where the statutory rights of allottees, expressly protected under the RERA



Act, are threatened. Section 11(4)(h) of the Act clearly stipulates that any mortgage or charge created after execution of an Agreement for Sale shall not affect the right and interest of the allottee, notwithstanding anything contained in any other law.

20. The legal position in this regard has been unequivocally settled by the Hon'ble Supreme Court in *Bikram Chatterji v. Union of India* (supra), wherein it has been held that banks and financial institutions cannot enforce security interests against allottees whose rights pre-date the mortgage, and that SARFAESI or other recovery mechanisms cannot override the protections granted under RERA.

21. Accordingly, while this Authority refrains from declaring the mortgage deed void, it is hereby directed, in exercise of powers under the RERA Act, that the secured creditor, including Invent Assets Securitisation and Reconstruction Pvt. Ltd., shall not initiate or continue any coercive action, recovery proceedings, or enforcement of security interest against those allottees who had acquired rights in their respective units prior to 14.02.2018, the date of creation of the mortgage.

22. It is further clarified that the rights of such allottees shall remain fully protected, and any recovery of dues by the secured



creditor shall be pursued strictly in accordance with law against the promoter or the corporate debtor or the guarantor, without prejudicing the interests of bona fide homebuyers. It is noteworthy that no action for recovery has so far been initiated against the guarantors of the loan.

23. Insofar as the initiation of CIRP and moratorium under Section 14 of the IBC is concerned, it is clarified that the present directions are not in the nature of execution, recovery, or adjudication of monetary claims against the Corporate Debtor, but are merely protective in nature to safeguard statutory rights of allottees under RERA, as recognised by the Hon'ble Supreme Court.

24. Accordingly, and in light of the observations made hereinabove, the present application filed by the Applicant is disposed of.




(Veenu Gupta)
Chairperson