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Dear Allottees,

By way of this note the your IRP will clarify that the allottees of real estate projects Corporate Debtor do not have any security interest in the apartment/ flat booked by them.

Section 3 (31) of IBC'2016 defines the

security interest means right, title or interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction which secures payment or performance of an obligation and includes mortgage, charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person:

Provided that security interest shall not include a performance guarantee;

The homebuyers and the Corporate Debtor executed the standard Apartment Buyer's Agreement wherein the Corporate Debtor was required to execute the sub-lease deed when the apartment gets completed. In fact clause (jj) of definitions & interpretation of the Apartment Buyer's Agreement also defines the term sub-lease deed.

In this regard it is submitted that as per Transfer of property Act, 1882, the rights in a property can be conveyed only through execution of conveyance deed. Further, if the value of such conveyance is more than Rs. 100, then such document is required to be registered.

Hence, in the present case, merely execution of Apartment Buyer's Agreement does not confer/convey any right/title in the property to the buyer.

Furthermore, the clause (jj) of definitions & interpretation of the Apartment Buyer's Agreement clearly says that the allottee shall have no right, title or interest, whatsoever on the said apartment either during construction or after its completion till the due execution and registration of sub-lease deed.

Further, clause 1.13 of the Apartment Buyer's Agreement also binds the allottee to execute the sub-lease deed.

And clause 1.17 of the Apartment Buyer's Agreement provides that Subject to the terms and conditions of this Agreement and **upon execution of the sub-lease deed**, the Allottee shall have the following rights in the said apartment:

- (i) Ownership of Built Up Area of the said Apartment.

Hence, from the above it is clear that mere execution of Apartment Buyer's Agreement does not confer/convey any right/title in the property to the buyer.

And from the perusal of definition of security interest, **creation of** right, title or interest to property is mandatory. **Hence, in absence of any creation of** security interest it is difficult to suggest that the homebuyers of Corporate Debtor are secured creditor.

Your's Faithfully

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