IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 2362 OF 2016
Debdas Prafulla Battacharya and others
-vs-
Housing & Urban Development Corpn.Ltd.and others

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Mr. A.C.Dharmadhikari, counsel for the petitioners.

CORAM : SMT. VASANTI A. NAIK &
MRS. SWAPNA JOSHI, JJ.

DATE : 22.04.2016.

By this writ petition, the petitioners challenge the communication of the respondent-Housing and Urban Development Corporation Limited, dated 12/06/2014 informing the petitioners that the property cannot be handed over or transferred in favour of the petitioners merely because the petitioners may have paid the cost of the villa/row houses into the Escrow Account, since the builder/developer has not repaid the loan amount to the Housing and Urban Development Corporation Limited.

The petitioners claim to have purchased flats/row houses in Ramnath City, situated in Mouza Bokhara, Tahsil and District Nagpur. It is the case of the petitioners that the petitioners had paid the consideration towards the purchase of the houses/apartments/row houses, except the charges that are required to be paid at the time of execution of the sale deed. According to the petitioners, the builder/ developer with whom the petitioners had entered into an agreement for purchase of the properties had availed a loan from the Housing and Urban Development Corporation Limited and the project properties, including the properties, which the petitioners claim to have purchased, were mortgaged with the Housing and Urban Development Corporation Limited. The petitioners and the other purchasers were required to deposit the amount that was liable to be paid towards the purchase of the property in the Escrow Bank. It is stated that the builder/developer, however, withdrew the amount from the Escrow Bank. It is stated that the Housing and Urban Development Corporation Limited initiated action against the builder/developer under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. In pursuance of the action under Section 13 of the Act of 2002, it is stated that an association of the persons that had entered into an agreement with the builder/developer to purchase the villas/apartments/row houses have filed an intervention application in the proceedings that are filed by the builder/developer under Section 17 of the Act of 2002. It is the case of the petitioners that since the petitioners have paid consideration to the builder/developer and only some amount is liable to be paid at the time of execution of the sale deed, it would be necessary to direct the Housing and Urban Development Corporation Limited to grant the no objection certificate for execution of sale deeds in favour of the petitioners. It is stated that the petitioners cannot be deprived of the properties for which they have paid the price. The order of the Housing and Urban Development Corporation Limited, dated 12/06/2014 is impugned in the instant petition.

On hearing the learned counsel for the petitioners and on a perusal of the documents annexed to the petition including the impugned communication received by the petitioners from the Housing and Urban Development Corporation Limited, it appears that the issues involved in this writ petition cannot be considered and decided, in exercise of the writ jurisdiction under Article 226 of the Constitution of India. This is a case where the petitioners have entered into an agreement with the builder/developer for purchase of flats/villas/row houses. If the properties that the petitioners have sought to purchase were mortgaged with the Housing and Urban Development Corporation Limited even before the execution of the agreement by the builder/ developer, in favour of the petitioners, as per the case of the Housing and Urban Development Corporation Limited, as could be seen from the impugned communication, it would not be proper for this Court to direct the Housing and Urban Development Corporation Limited to grant the no objection certificate for the execution of the sale deeds. According to the petitioners, the builder/developer has withdrawn the amount that was liable to be deposited in the Escrow Bank by the petitioners and the loan availed by the builder/developer is not repaid by the developer to the Housing and Urban Development Corporation Limited. The prayers made by the petitioners in the writ petition could be made in a civil proceedings, or in any other appropriate proceedings that could be filed under the Act of 2002. The issues involved in this case cannot be decided, in exercise of the writ jurisdiction nor can a direction be issued to the Housing and Urban Development Corporation Limited to grant the no objection certificate for execution of the sale deed in favour of the petitioners. The other directions that the developer/builder should not create third party interest in the properties in respect of which the agreement is executed in favour of the petitioners and the direction that the builder/developer should not evict the petitioners from the premises could be sought in appropriate proceedings. The issues involved in this case cannot be decided, in exercise of the writ jurisdiction. Moreover, the association of the petitioners and the other persons, who have entered into an agreement with the builder/developer to purchase the properties, have already intervened in the proceedings filed by the builder/developer under Section 17 of the Act of 2002 before the Debts Recovery Tribunal.

In the circumstances of the case, we decline to entertain the writ petition. The writ petition is disposed of with no order as to costs. The points raised in the petition are however kept open.

JUDGE **JUDGE**

KHUNTE