

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.13772 of 2017

Date of Decision: 01.06.2017

Sumit Bharana

.....Petitioner

Vs

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. N.S. Shekhawat, Advocate and
Mr. Rajiv Sidhu, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, A.A.G., Haryana.

RAJ MOHAN SINGH, J.

[1]. Prayer made in this petition is for grant of regular bail in case bearing FIR No.601 dated 30.12.2015 registered under Sections 420/406, 120-B IPC at Police Station Bhupani Faridabad.

[2]. As per crux of the allegations in the FIR, construction of High Rise residential project known by the name of M/s ERA Divine Court at Sector 76, Faridabad started in the year 2010. The possession of the flats were to be delivered to the complainants in 36 months as per the builder buyer agreements. Allegations are that the builder could not construct

the project in time, rather refused to explain the deadlock in the construction of the project. Complainant further alleged that the builder had committed similar default in residential projects in Gurgaon in which he was arrested along with other Directors.

[3]. Learned counsel for the petitioner submitted that the petitioner has been awarded lawful licence to construct the project and the building plan has also been approved by the competent authority. The only allegation is of delay in completion of the project. As per clause 10 of the buyer's agreement with M/s Era Landmarks Ltd., the delay in offering possession would be suitably remedied in terms of clause 10.2 of the said agreement, wherein provision has been made to entitle the allottee to Rs.75 per sq. mt. per month for the delay in offering possession by the petitioner. The project has since been started with on uniform note. All the documentary proof has been collected by the Police that is why after the arrest of the petitioner, he was straightway sent to judicial custody and no police remand was sought. Two towers of the project have already been completed. 450 customers have come forward to contact the petitioner and they have been participating in terms of monetary process in the form of constitution of Committee of the customers. An amount of Rs.95 lacs has already been debited in Escrow account. As per agreement between M/s Adel

Landmarks Ltd., and the customers for smooth construction of flats in the High Rise towers by paying advance installments. Said account is being maintained by the joint signatures i.e. one signature from M/s Adel and second from the group of customers. The amount deposited in the Escrow account shall be utilized only for the construction of flats and M/s Adel would not be entitled to withdraw the said amount. The work is being supervised by the Company and periodic status reports are being prepared.

[4]. Learned counsel further submitted that Mrs. Deepti Dua and Mrs. Krishna Kumari filed the complaint on the same subject matter before the Judicial Magistrate, Ist Class, Faridabad for the offence under Sections 406, 420, 467, 468, 471, 506 IPC. Similar eight complaints were filed by the other customers. Petitioner and others were summoned by the trial Court, however they preferred criminal revision before the Additional Sessions Judge, Faridabad which was ultimately accepted by holding the controversy to be of civil wrong. The order of summoning was held to be illegal. It was observed that the dispute being purely of civil nature for which complainant could have sued the company for damages. The revision petition along with other eight revision petitions were accepted vide order dated 29.10.2014.

[5]. In order to show the progress on the spot, learned counsel referred to the photographs and the chart showing that excavation has already been completed in all the towers i.e. A11, A12, A21, A22, A3, B1, A4, B2, C, D1 and D2. Similarly raft has been completed in all the aforesaid towers and first floor slab has also been laid in all the aforesaid towers. Remaining work in terms of completion of roof slab on different floors, back work, internal plastering, internal flooring would be completed and possession would be given as per the schedule given in the revised offer.

[6]. Learned counsel further submitted that out of total five complainants, complainant S.S. Tanwar has already deposited dues with the Company even after expiry of date of possession in view of on going construction on the site. The remaining complainants can approach the petitioner at any time and their claim would be duly answered as per progress on the site. Petitioner is on bail in all other cases except the present one in which he was arrested on 21.11.2016. His custody may hamper the prospects of other projects in which he has been granted interim bail subject to fulfilment of certain condition. In case of complainant Sujata Goenka, the date of possession is 15.06.2020, therefore, complaint *qua* her is totally premature. In respect of other complaints, the delay in delivery of possession

can suitably be answered in terms of clause 10.2 of the agreement.

[7]. On the other hand, learned State counsel vehemently submitted that even though there is a clause in the buyer's agreement in respect of remedy for delay in delivery of possession, but the intention of the petitioner not to complete the project can be gathered from the attending circumstances.

[8]. I have heard learned counsel for the parties.

[9]. From the record, I find that the petitioner is in custody for the last six months. The offence is triable by the Magistrate. Lawful licence has already been issued to the petitioner Company with the approval of building plan. The delay in delivery of possession whether would attract culpable act would be debatable in terms of clause 10.2 of the buyer's agreement.

[10]. At this stage, without adverting to the merits of the case, I am of the view that the case of the petitioner can be considered for the grant of regular bail.

[11]. In view of above, petition is allowed. Petitioner is ordered to be enlarged on bail, subject to his furnishing adequate bail bonds/surety bonds to the satisfaction of the trial Court.

[12]. Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.

June 01, 2017

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes/No