

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-25345 of 2016
Date of Decision: 24.08.2017

Kamal Aggarwal

....Petitioner

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Ashish Chopra, Advocate
for the petitioner.

Mr. Ashish Yadav, Addl. AG, Haryana.

Mr. N.S. Shekhawat, Advocate
for the complainant.

SURINDER GUPTA, J.

The present petition has been filed under Section 438 Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case FIR No.133 dated 17.06.2016 registered for offences punishable under Sections 336, 406 and 420 of Indian Penal Code (for short, "IPC"), at Police Station Kasola, District Rewari. (Offences punishable under Sections 120-B, 201 and 506 IPC were added later on).

2. FIR was registered on the complaint of Pradeep Kumar Yadav. Learned Additional Sessions Judge, Rewari discussed detailed facts of complaint in order dated 19.07.2016 and the same are reproduced as follows:-

"It is complainant Pardeep Kumar Yadav, who booked a floor in Real Estate Company Gurutec Estate Private Limited (for short "company") situated in Gari Bolni Road, Rewari on 28.10.2014 for a total amount of ₹48,10,635/- with super area

of 1364 sq. feet and at the time of booking, the said company allured the complainant by showing tempting broacher with a promise to provide luxury houses but the building material in raising the construction of the house was of highly sub-standard quality and in this regard, the petitioner being one of the Directors of the said company was informed to redress the grievance. It is alleged that after taking the possession of the floor, at many places cracks have developed and the plastering started removing and the door frame was eaten by white-ants (termites) and now the house of the complainant has become ruinous and complainant suspected for his safety in the house and he sent samples of construction material used in the building to testing laboratory, Sonapat to assess the quality of building material used and the report confirmed the suspicion of the complainant, as regard sub-standard material used in the construction. It is stated that during 01.03.2015 to 13.05.2015, the company charged maintenance charges despite the fact that the possession to complainant could be delivered on 14.05.2015. It is further stated that other flat owners were also cheated by adopting the similar modus operandi by the company and the District Town Planner, Rewari with two members inspected 10-12 flats in the project of the company and Deputy Commissioner was also moved in the matter to vent the grievance of the flat owners. It is further stated that the company falsely submitted that it had removed the grievance of the flat owners. It is stated that intention of

the builder was fraudulent since beginning. Thus, action in the matter was sought to be taken under sections 420/406/336 IPC and further offences under section 120B IPC, 201 and 506 IPC were also added.”

3. The petitioner is Director of Gurutek Estate Private Limited. Allegation of complainant is that substandard material has been used for construction of flats.

4. Learned counsel for the petitioner has argued that company of petitioner has developed a licenced colony under the name of Sweet Homes, Gurutek City, Eshan Vatikka. In the said colony, company was to construct 81 row houses each having three independent floors/units. There are total 122 independent floors, which have been sold and out of those possession of 93 units has already been transferred to buyers. Complainant has purchased Unit No. B-135, Ground Floor in the colony and was handed over its possession vide letter dated 06.05.2015. Before taking possession he was allowed to inspect unit to his satisfaction. Not going into the plea of petitioner regarding condition of the flat allotted to complainant, learned counsel for the petitioner has given an open offer that if there is any defect of plaster, lintels or floor, the petitioner and his company is ready to rectify the same to his satisfaction. He has gone to the extent of giving offer to re-plaster the entire flat, repair the entire lintels etc. and repaint the house. He has argued that there are about 90 other flats where people are living in a peaceful manner and have no complaint regarding quality of construction.

5. Learned State counsel assisted by learned counsel for complainant has referred to inspection report given by Superintending Engineer, PWD (B&R), Rewari regarding the condition of flat, which reads

as follows:-

“The residential flats in Gurutech City, Rewari have been inspected by me on 20.04.2017 at 11.30 a.m. During the inspection, the petitioner and complainant have also been associated. The said flats were completed during April 2015 and occupied by the complainant during April 2015.

The flat no. 132 (G.F.), 134 (G.F.), 135 (G.F.), 129 (F.F.), 133 (F.F.) & 180 (F.F.) have been inspected. It is found that the plaster work done in all the flats is of very poor quality and the same has been damaged badly. The plaster in most of the rooms and boundary wall of all the flats is showing minor cracks which may further damage all the walls of the flats. It is also noticed that bricks used during construction is also sub-standard. The RCC work in toping of boundary wall and lintels is also in damaged condition.

However, the residential flats which are (Ground + 2nd storey) seem to be structurally safe. The flats require regular maintenance such as repair of damaged plaster, damaged RCC etc. by the Gurutech City i.e. petitioner.”

6. Learned counsel for complainant has also referred to FSL report to point out that cement plaster of outer wall of flat of petitioner was found in the ratio of 1 (cement) x 4.9 (sand), which shows the inferior quality of construction. Learned counsel for complainant, when asked about the offer given by learned counsel for the petitioner, submits that offer is not acceptable to complainant, who is ready to settle the matter only by surrendering the flat and return of his money with interest, to which the

petitioner has not agreed.

7. So far as report of FSL about composition of plaster as 1 (cement) x 4.9 (sand) is concerned, it cannot be said at this stage that representative sample was taken, which is a point to be ascertained as to whether this composition of ratio can be used for plastering the wall and will be stable.

8. As the matter was also referred to mediator for amicable solution and a report was received from District & Sessions Judge, Rewari, which reads as follows:-

“Report of the Mediator, Shri Rajiv Aggarwal, Advocate received. After going through the report, it is clear that basically the mediation proceedings have failed because both the parties are adamant as is clear from their statements, which are part of the report of the Mediator. It seems that the complainants, who have lodged this FIR, are adamant that the flats allotted to them should be reconstructed and the defects cannot be removed by repairs etc., whereas, the accused named in the FIR Mr. Kamal Aggarwal, Director of Gurutech Estate Pvt. Ltd. stated that he is ready to remove the defects by necessary repairs etc. as there is no structural defects in the construction of the flats. As such the mediation fails.”

9. Even before the mediator, complainant has made statement that his grievance will be removed, if the flat is demolished and reconstructed or he be paid the damages and compensation as per market value of his flat. The attempt has been made in this application for resolving the grievance of complainant but efforts could not be successful. Taking note of *bona fide* of

petitioner, who is ready to rectify all type of defects in the flat of complainant but refusal of the same by complainant, I am of the view that there is no reason to decline the anticipatory bail to petitioner in this case. Parties will be at liberty to again sit together. Even in the report of inspection of Superintending Engineer, PWD (B&R), Rewari, no structural defect in the flat was found. Taking note of all these facts and circumstances, the instant petition is allowed and order dated 26.07.2016, granting interim bail to petitioner, is made absolute.

10. It is, however, made clear that petitioner shall remain bound by the offer made by him in this case and complainant shall also respond to letter dated 14.07.2015. It is also made clear that nothing observed in this order shall be taken as opinion on merit on any aspect of this case.

August 24, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No