

CRM-M-36422 of 2017

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

CRM-M-36422 of 2017
Date of Decision: 25.10.2017

Ram Kumar Aggarwal and another

....Petitioners

Versus

UT, Chandigarh

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Anmol Rattan Sidhu, Sr. Advocate,
with Mr. Vishal Aggarwal, Advocate, and
Mr. Manhar S. Saini, Advocate, for the petitioners.
Mr. Sukant Gupta, APP, UT, Chandigarh.
Mr. D.S. Patwalia, Sr. Advocate,
with Mr. Keshav Gupta, Advocate, for complainant V.K. Gupta.

RAMENDRA JAIN, J. (ORAL)

Prayer in the instant petition under Section 439 Cr.P.C. has been made for grant of regular bail to the petitioner in a case arising from FIR No.190 dated 07.11.2015 under Section 420 and 120-B IPC registered at Police Station North, Chandigarh.

In nutshell, M/s Shalimar Estates Private Limited (hereinafter referred to as 'the developer'), in which both the petitioners are directors, launched a commercial project in the year 2004 and invited applications for allotment of different shops and sites therein. The four complainants, namely, Veena Goyal, S.S. Pahawa, Sunita Goyal and Ajay Ghai got allotted some shops in their favour by moving their respective applications to the aforesaid developer, whereas complainant V.K. Gupta got transferred joint shop in his name and that of his wife from one Rakesh, the original allottee of the shop, in the year 2008.

Some of the complainants stopped paying their instalments due to

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the aforesaid developer and also the common area maintenance charges (CAM) on the ground that the developer did not complete the project in time. Contrary to it, the stand of the petitioners is that though the project was complete, but could not come into operation on account of non-payment of common area maintenance charges (CAM) and due instalments in time by some of the purchasers of different sites/shops, but finally it came into operation in 2009. Since dispute arose between the allottees and the developer, they started levelling allegations and counter-allegations against each other. Finally, various allottees, including the complainants, started filing complaints against the developer before different forums.

Learned counsel for the petitioners contends that matter in dispute is completely of civil nature. Allottee Harnam Singh having similar grouse as that of the complainants approached the District Consumer Disputes Redressal Forum, Panchkula, by moving complaint under Section 12 of the Consumer Protection Act, which was dismissed by the Forum by passing speaking order dated 18.11.2011. Thereafter, complainant Harnam Singh lost his battle upto the National Consumer Disputes Redressal Commission, New Delhi, where his revision petition was dismissed vide order dated 29.05.2012 (Annexure P-12 Colly). Similarly, some of the allottees, including the complainant, approached the State Consumer Disputes Redressal Commission, Union Territory, Chandigarh. However, they got withdrew their complaints in view of some settlement between them and the builder that they would approach this Court to take up all the matters in its Mediation and Conciliation Centre for settlement, but finally the mediation failed in between the parties. Simultaneously, some of the allottees filed a

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Colly) raising similar grouse, in which the allottees made a request to refer the complaint to the SHO concerned under Section 156(3) Cr.P.C. The said prayer of the allottees was declined vide order dated 03.02.2014 by learned Judicial Magistrate Ist Class, Panchkula. Likewise, some of the allottees filed complaint before the police on identical allegations, which were thoroughly investigated by the Assistant Commissioner of Police, District Panchkula and finally, rejected all the complaints with the following observations: -

“.....The matter is civil in nature. All the allottees may file appropriate proceedings before civil court in case they have grievance. The matter does not require any intervention of the police and therefore it is recommended that the application be consigned to record.”

The matter did not rest here. Being unsuccessful, the allottee Veeran Ahuja also approached the Deputy Commissioner of Police, Panchkula, who vide his letter dated 30.12.2013 (Annexure P-15) recommended to the Commissioner of Police that the dispute between the builder and the allottees does not require police indulgence as the matter is of civil nature. The allottees, if having any grievance, should approach the civil Court. One of the allottees, namely, Atul Gupta also approached the civil Court by way of civil suit against the builder, which was dismissed vide order dated 30.09.2015 (Annexure P-13). Lastly, he contended that the petitioners are in custody since 15.11.2016. The case is at the evidence stage. The conclusion of trial shall take a long time. Nothing has to be recovered from the petitioners. No useful purpose would be served by detaining the petitioners in jail.

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have not come present to contest this petition) vehemently opposed the prayer for grant of regular bail submitting that despite having made entire payment, the petitioners did not intentionally and deliberately execute the conveyance deed on account of which the complainant could not run his showroom, because of paucity of funds as he was not in a position to obtain loan from the bank to run his business. More so, re-allotment to complainant V.K. Gupta by the petitioners itself was a nullity as they have not complied with the entire terms and conditions of the allotment by not paying the statutory dues to the Haryana Urban Development Authority and other authorities. Petitioner No.1 who is an habitual defaulter and a proclaimed offender, does not deserve the concession of regular bail.

Considering over-all facts and circumstances, it can safely be inferred that the dispute between the parties has surfaced on account of devaluation of the prices of the immovable property in the recent past. The complainants had purchased the shops/showrooms in the project of the petitioners with sole motive to earn profit which may be due to escalation in the prices of their properties in due course of time, but when the prices of the property declined in the recent past, both the sides i.e. builder and the allottees started finding faults and levelling allegations against each other. Undisputedly, few of the allottees have lost battle on civil side and before the State or National Consumer Disputes Redressal Commissions and even on criminal side as their complaints and civil suits have been dismissed. The matter *prima facie* in between the parties, is of civil nature. The petitioners are already in custody for around one year. The trial is at the evidence stage, which may take sufficient long time in its conclusion.

Therefore, no useful purpose would be served by detaining the petitioners in jail.

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Consequently, petitioners are ordered to be released on bail, on their furnishing bail bonds and surety bonds, to the satisfaction of Trial Court/Duty Magistrate concerned.

However, anything observed hereinabove shall not be construed as an expression of opinion while deciding the case on merits.

October 25, 2017
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No