

Gauri Gaekwad

company. The petition came to be accepted on 23rd June, 2015. The company entered appearance in March 2017. Although initially the company was represented since 19th June, 2016, Vakalatnama came to be filed in March 2017. An affidavit in reply of one Ravinder Chohan who states that he is a Director of the respondent company has been filed which is dated 2nd February, 2017.

2. The petitioner is an individual who has paid a sum of Rs.46,82,645/- in eight installments as set out in paragraph 7 of the petition towards consideration of two residential apartments bearing Unit no. WA1-T3 admeasuring about 1,133 sq. ft. super built up area and Unit no.WA1- T4 ameasuring about 1,126 sq. ft. super built up area situate at Amar Prem Complex, 3rd floor, Plot no.182/5, Village Quellossim, Cortalim, Goa.

3. Two agreements for sale, both dated 24th February, 2012 came to be executed pursuant to which the petitioner claims that the entire sale consideration has been paid over. Despite having received the payments, the respondent failed to complete the project and it is the case of the petitioners that she when visited the site in Goa and was shocked to find that apart from the boundary fencing put up there was no sign of other activity. As a result, she terminated the two agreements for breach vide letter dated 20th January, 2014. The letter was addressed to the company at its registered office and at other addresses in Goa. A copy of the notice of termination of the agreement appears at Exhibit D to this petition. In the notice of termination the petitioner has set out the facts leading upto execution of the agreements and its termination. She sought refund of the amounts paid in sum of Rs.24,49,609/- towards unit no.WA1-T3 and Rs.22,33,036/- for unit no.WA1-T4.

4. In response, the company through their Advocate's letter dated 3rd March, 2014 contended that the contractor engaged by the company had committed breach as a result of which project could not be completed and that apopos the demand for refund made prior to the notice being issued, the respondent company had informed the petitioner that they did not hold the funds in escrow and that the funds have been used and applied to the project. The allegations that the petitioner was induced to parting with funds was denied. A further notice of demand came to be issued on 25th July, 2014 (Exhibit F) to which there appears to be no reply.

5. Thereafter a statutory notice dated 5th January, 2015 is seen to be addressed to the company at its registered office wherein the said demand refund was repeated. There is no reply to this statutory notice from the company, however, the said Ravinder Chohan who claims to be the Managing Director of the company responded vide email dated 6th January, 2015 addressed to the petitioner informing him that it is impossible for him to refund anything in the near future and that he was engaged in the legal proceedings in respect of the said premises and that he had been advised to file criminal complaints and civil suits against one RPC whose land was apparently being developed.

6. He has further contended that he is attempting to get the land transferred to the company, failing which he will immediately file necessary cases against the RPC and one Ram Agarwal.

7. The said Ravinder Chohan has affirmed the affidavit-in-reply at Birmingham (U.K.) which has since been filed in this Court by the learned counsel for the respondent company in which he confirms that he is a Director of the respondent company and he has annexed copy of the passport. It reveals that he is a overseas citizen of India and has contended that the petitioner was at all time aware of the 'progress' of the project. He admits that the petitioner had paid the various amounts as per the dates mentioned in the agreement. In fact, he states that monies paid are in excess of what was necessary. He further contends that the respondent had informed the petitioner of a proposal to convert the transaction to a "Cashdown" payment plan and had offered a huge discount on one property. In the meantime, he was defrauded by the land owner RPC Builders and Developers who are also stated to be constructing the project.

8. It is the contention of the company that in their reply of Mr. Ravinder Chohan that the said RPC failed to transfer title of the property to the respondent and hence the company stopped all construction activity. RPC Ltd. allegedly resorted to blackmail and extortion. As a result, criminal proceedings have been initiated them. Mr. Chohan states that after having left India for the United Kingdom he has not returned.

9. The amounts paid over by the petitioner to the respondent are admitted. The petitioner has relied upon the receipts issued by the respondent company from time to time at Exhibit C-1 to C-8. The affidavit-in-reply initially admitting of the company's inability to repay the petitioner's dues. In the circumstances, this is a fit case for admission. However, in order to enable the respondent company to avail one opportunity to establish solvency, I pass the following order:-

(i) The respondent company shall deposit a sum of Rs.46,82,645/- within a period of four weeks from the date of this order.

(ii) If the aforesaid sum is deposited, it is open for the petitioner to file a Suit.

(iii) In the event deposit is made and if a Suit is filed by the Petitioner, the amounts so deposited will be transferred to the suit account and thereafter the company petition will stand dismissed.

(iv) If the company fails to deposit the amount on or before 5th September, 2017 the petition shall stand admitted, returnable within six weeks from the date of default and be advertised in two local newspapers i.e. Free Press Journal (in English) and Navshakti (in Marathi) and in the Maharashtra Government Gazette.

(v) The Petitioner shall deposit an amount of Rs.10,000/- with the Prothonotary and Senior Master of this Court towards publication

charges, within two weeks from the date of default, with intimation to the Company Registrar failing which the Petition shall stand dismissed for non prosecution.

(vi) Liberty to apply.

4 On 5th October, 2017 time to deposit the amount was extended upto that date. Respondent did not deposit. Even today, as noted earlier, respondent is not in a position to deposit the amount and seeks 40 years to repay the amount.

5 On record there is an affidavit of one Minakshi Nimbalkar affirmed on 13th October, 2017 confirming advertising the petition in Free Press Journal (in English) and Navshakti (in Marathi) and also in the Maharashtra Government Gazette. The counsel for respondent confirms having received notice under Rule 28 of the Companies (Court) Rules, 1959. Therefore, all procedural requirements have been complied with.

6 I have heard Ms. Nimbalkar and also considered the pleadings and the documents annexed to the petition. I am also satisfied that respondent is unable to discharge its debts, is commercially insolvent and requires to be wound up.

7 Company petition is, therefore, allowed in terms of prayer clauses – (a) and (b) which read as under :

(a) That the company M/s. Utopia Projects Pvt. Ltd. be wound up by and under the directions of this Hon'ble

Court under the provisions of the Companies Act, 1956;

(b) That the Official Liquidator or some other fit and proper person be appointed as Liquidator of M/s. Utopia Projects Pvt. Ltd. with all powers under the provisions of the Companies Act, 1956.

8 Official Liquidator to take steps immediately without waiting for notification.

9 Company petition accordingly stands disposed.

(K.R. SHRIRAM, J.)