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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>W.P.(C) 3190/2019</u>**

PUNEET KOCHHAR ..... Petitioner

Through Mr Deepak Saini, Ms Arfan Kumari, Advocates.

versus

IITL, NIMBUS, (THROUGH IT'S DIRECTOR /CEO/CHAIRMAN) AND ANR. ..... Respondents

Through Mr Ajay Kumar Sejwal, Advocate for R1.
Mr Pradeep Kumar, Advocate for R2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **10.04.2019**

<u>CM APPL. 14620/2019</u>

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

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3. The petitioner has filed the present petition, *inter alia*, praying as under:-

> "Pass an appropriate order, direction or writ in the nature of Mandamus or any other appropriate writ by directing the Respondent no. 1 to release the amount of the Petitioner as per the percentage he paid to them along with earned interest immediately."

4. The petitioner and respondent no. 2 (Smt Swati Kochhar) herein had jointly purchased a residential flat – Flat No. G-1201, The Golden Palms, NOIDA Expressway, Sector-168, NOIDA, U.P., and had executed a Builder-Buyer Agreement. A perusal of the allotment letter indicates that the same was issued by M/s Capital Infraprojects Pvt. Ltd.

5. The petitioner claims that part of the sale consideration was paid by availing a loan of ₹14,21,260/- from Axis Bank. It is stated that the said loan was availed of by respondent no.2 as she was working with the said bank at the material time and consequently, was the prime purchaser of the flat in question. The petitioner claims that the balance consideration was paid by the petitioner for the flat.

6. It is apparent from the averments made in the present petition that there is a matrimonial dispute between the petitioner and respondent no.2 and respondent no.2 has also filed divorce proceedings. It is further averred that the petitioner and respondent no.2 had arrived at a consensus wherein it was agreed that the allotment of flat in question would be cancelled and the amount paid would be refunded. Admittedly, since the loan was taken from Axis Bank, the loan amount has been deposited directly with Axis Bank and the allotment of the flat has been cancelled.

7. The controversy in the present case relates to the refund of the balance amount. Whereas, respondent no.2 is claiming half of the said amount, the petitioner claims that the said proportion is not correct since the almost the entire consideration (other than the consideration funded by loan from axis bank) has been paid by the petitioner.

8. The learned counsel appearing for respondent no.1 states that respondent no. 1 has no role to play as the allotment letter has been issued by Capital Infraprojects Pvt. Ltd. and the same has also been cancelled by the said company and the amount has been refunded to Axis Bank by Capital Infraprojects Pvt. Ltd.

9. The learned counsel appearing for respondent no.2 disputes that the balance consideration had been paid by the petitioner. He states that apart from the funds realized from the loan from Axis Bank, respondent no.2 had also paid part consideration from other sources.

10. It is apparent from the above that there are several disputed questions of fact and it would not be apposite for this Court to entertain them in this petition. The petition is, accordingly, dismissed leaving it open for the petitioner to institute appropriate proceedings to avail of his alternate remedies.

VIBHU BAKHRU, J

APRIL 10, 2019
pkv