

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

Date of decision: February 07, 2020

+ **W.P.(CRL) 379/2020 & CrI.M.A. 2832-33/2020**

BELA BANERJEE & ORS. Petitioners

Through: Mr. Abhinav Sharma, Advocate

Versus

DEPUTY COMMISSIONER OF POLICE & ORS. ... Respondents

Through: Mr. Jamal Akhtar and Mr.
Amanpreet Singh, Advocates for
Mr. Rahul Mehra, Standing
Counsel (Criminal) for the
respondents No.1 to 3/State
Mr. Amit Mahajan, Mr. Olson Nair
& Ms. Mallika Hiremath,
Advocates for respondents No. 4 to
6/ Enforcement Department with
SI Ravinder
Mr. Mridul Jain, Special Public
Prosecutor for respondent No.
7/CBI

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

JUDGMENT

BRIJESH SETHI, J (Oral)

1. The petitioners herein represent the home buyers of the project “Shubhkamna Advert TechHomes” being developed by M/S Shubjkamna Buildtech Pvt. Ltd. in Sector 137, Noida, Uttar Pradesh, who claim to have been defrauded by the builder in collusion with the banks and were sold already mortgaged flats/project and allege that the entire money to

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the tune of Rs.1972 crores collected by the builder has not been used for construction of project/flats but has been diverted and siphoned off to other companies creating personal assets. At the behest of complainants, FIR No. 66/2017, under Sections 420/409/120B IPC, was got registered at Economic Offences Wing (EOW), Delhi against the accused persons.

2. Vide this petition, petitioners are seeking a direction for constitution of a special investigation team for expeditious investigation by the Enforcement Department under the Prevention of Money Laundering Act, 2002 or in the alternative to transfer the investigation to a specialized agency i.e. Central Bureau of Investigation (CBI).

3. Notice.

4. Mr. Jamal Akhtar, Advocate for respondents No. 1 to 3; Mr. Amit Mahajan, Advocate for respondents No.4 to 6 and Mr. Mridul Jain, Advocate for respondent No.7, accept notice.

5. Learned counsel appearing for petitioners submits that the present case involves complex financial transactions and the home buyers are being coerced by the banks, who are in possession of their cheques, to either pay the EMIs or to face proceedings under Section 138 of the Negotiable Instruments Act. It is submitted by learned counsel for the petitioners that the present case affects a large number of home buyers who have been defrauded by the fraudulent real estate transactions but the accused are still at large and have not been arrested and police has not given any reason for the same. The petitioners are said to be aggrieved with the manner in which investigation in this case has proceeded, as within a span of 6 to 7 months, three Investigating Officers have been changed/ transferred which is to the detriment of the petitioners.

6. Learned counsel for the petitioners further submits that at present the case is being investigated by the EOW, who has failed to ascertain the roles of banks, India bulls etc. and therefore lacks a comprehensive understanding of the present case and that the Hon'ble Supreme Court in a similarly situated case of home buyers in Amarapali case, had directed the Enforcement Directorate (ED) to investigate and fix the liability, therefore, investigation of this case be also transferred to Enforcement Directorate (ED).

7. On the other hand, learned counsel appearing on behalf of respondent/State submits that charge sheet in this case has already been filed and further investigation in this case is in progress. Learned counsel appearing for respondent/State further submits that petitioners have an alternate and efficacious remedy and therefore, this writ petition does not lie.

8. Heard.

9. After considering the rival submissions advanced on behalf of counsel representing both the sides, I find that an alternative efficacious remedy is available to the petitioners as they can approach the Magistrate. The Hon'ble Supreme Court in **Sakiri Vasu vs. State of Uttar Pradesh & Ors, (2008) 2 SCC 409** has categorically held as under:-

“10. It has been held by this Court in [CBI & another vs. Rajesh Gandhi and another](#) 1997 Cr.L.J 63 (vide para 8) that no one can insist that an offence be investigated by a particular agency. We fully agree with the view in the aforesaid decision. An aggrieved person can only claim that the offence he alleges be investigated properly, but he has no

right to claim that it be investigated by any particular agency of his choice.

11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under [Section 154](#) Cr.P.C., then he can approach the Superintendent of Police under [Section 154\(3\)](#) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under [Section 156 \(3\) Cr.P.C.](#) before the learned Magistrate concerned. If such an application under [Section 156 \(3\)](#) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.”

10. In view of the Hon’ble Supreme Court’s decision in **Sakiri Vasu (Supra)**, this Court finds that petitioners have an alternate and efficacious remedy of approaching the Magistrate under Section 156(3) Cr.P.C. seeking a direction to the Investigating Agency for effective and expeditious investigation.

11. With observations as aforesaid, this petition and applications stand disposed of.

(BRIJESH SETHI)
JUDGE

FEBRUARY 07, 2020

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