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

+ **BAIL APPLN. 1980/2020**

SANJAY CHOUDHARY

..... Petitioner

Through Mr Pramod Kumar Dubey, Advocate.
Mr Raunak Satpathy, Advocate M Yashwardhan
Rahore, Advocate.

versus

STATE OF NCT

..... Respondent

Through Mr Ravi Nayak, APP for State with
SI Pawan PS EOW
Mr Biswajit Das, Advocate with
Ms Anamika Sharma, Ms Nayanika Patnaik,
Advocates for complainants, namely, Piyush
Handa, Mr Avinash Sharma, Ms Meenakshi
Aggarwal, Mr Pawan Dubey, Mr Ashok Arora,
Mr Surender Chopra.
Mr Sudhanshu Hajela, President Green Avenue
Social Welfare Society, Homebuyers Association.

AND

\$~16

+ **BAIL APPLN. 1369/2020**

MANOJ KUMAR CHOUDHARY

..... Petitioner

Through Mr Pramod Kumar Dubey, Advocate.
Mr Raunak Satpathy, Advocate Mr Ram Aditya
Tiwari, Mr Anurag Andley, Mr Yashwardhan
Rahor,

versus

STATE & ORS

..... Respondents

Through Mr Biswajit Das, Advocate with
Ms Anamika Sharma, Ms Nayanika Patnaik,

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Advocates for complainants, namely, Piyush Handa, Mr Avinash Sharma, Ms Meenakshi Aggarwal, Mr Pawan Dubey, Mr Ashok Arora, Mr Surender Chopra.
Mr Sudhanshu Hajela, President Green Avenue Social Welfare Society, Homebuyers Association.
Mr Amarjit S. Chandhiok, Senior Advocate for complainants.
Mr Hitesh Kumar Saini, Advocate for complainants.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
ORDER
% **10.08.2020**

1. The petitioners have filed their respective petitions, *inter alia*, praying that they be rereleased on bail in FIR No. 0047/2018 under Sections 420/409/120-B of the IPC registered with PS Economic Offence Wing.
2. The said FIR was lodged on a complaint filed by one Mr Amit Singh against a company, 'JBK Developers Limited'. The petitioners are the promoters and directors of the said company and were at all material times in control of its affairs.
3. The said company was involved in developing a real estate project in the name of Grand Ashiyana. The name of the said project was subsequently changed to 'Green Avenue'. It is alleged that the petitioners have cheated various flat buyers and other persons who had booked units in the said project.
4. It is stated that the said project was to be completed in three phases comprising of more than 900 flats. This Court is informed that the first two

phases comprised of 335 flats each. It is alleged that the petitioners collected a large sum of money from various flat buyers on the assurance of delivering the possession of the units in the said Project within the stipulated time. However, the petitioners did not complete the project and it is alleged that after collecting substantial amounts from various flat buyers, they siphoned off the funds and other assets of the company in question (JBK Developers Pvt. Ltd.).

5. It is further alleged that the said monies were collected from various flat buyers by misrepresenting that all requisite permissions to execute the project, were available with JKB Developers Pvt. Ltd whereas, at the material time, none of the permissions were available.

6. There is also some controversy regarding the lease of the said land on which the project was to be developed by JBK Developers Pvt. Ltd. Mr Chandihoke, learned Senior Counsel appearing for some of the flat buyers contended that New Okhla Industrial Development Authority (NOIDA) has re-entered the property in question and therefore, it would be difficult, if not impossible for the petitioners to complete the project.

7. Mr Das, learned counsel appearing for some of the flat buyers submitted that the petitioners have made repeated assurances to the flat buyers including before the U.P. Real Estate Regulatory Authority (RERA) but have failed to fulfil any of their commitments. According to him, the buildings have remained in the same incomplete state for more than past three years. He states that several flat buyers also have orders in their favour for specified amounts but the same have not been paid.

8. Mr Saini, learned counsel appearing for some of the complainants submits that the name of JBK Developers Private Limited have been struck off from the Registrar of Companies due to the default committed by its directors/promoters in filing the requisite returns. He submits that the audited accounts of the said company have not been furnished either to the Registrar of Companies (ROC) or to the investigating agency. He contends that an examination of the said accounts would clearly indicate the extent of funds siphoned off by the petitioners. However, they have not been cooperating with any of the agencies.

9. Mr Dubey, learned counsel appearing for the petitioner in Bail Appl 1369/2020, contends that some of the towers are 90% complete and few flats are almost finished. He states that the petitioners require some relief to comply with the directions of the regulatory authorities and to finish the project. He further stated that the petitioners undertake that if they are released from prison, they would complete the first phase of the project (that is, 325 flats) by 31.03.2021 and the second phase by 31.08.2021. He submits that the arrangements have already been made with certain contractors for ensuring that the work proceeds at a fast pace.

10. Mr Dubey states that although the petitioners are committed to resolve the issues of various flat buyers and fulfil the commitments made to them, they have been unable to fulfil the same on account of various complaints filed by them. The petitioners have been in custody for over ten months and therefore, have been unable to take any action to resolve the controversies. He states that insofar as striking off the name of the company 'JBK Developers Pvt. Ltd.' from the Register of Companies is concerned, an

appeal against the said order has been filed before the National Company Law Tribunal (NCLT) and the same is being pursued.

11. He states that notwithstanding the outcome of the said appeal, the petitioners would furnish their complete audited financial accounts to the investigating agency along with all supporting books of accounts including ledgers, etc., within a period of three months from the date of their release.

12. Mr Das, Mr Saini and Mr Chandihoke, (all appearing for the complainants/flat buyers) have expressed serious apprehensions as to the capability of the petitioners to fulfil the said obligations. They also contend that the petitioners have siphoned off a large sum of money from the company and there is little possibility of their complying with the obligations until the said funds are disgorged by them.

13. It is also contended that completion of the project would require a further sum of approximately ₹70 crores. Thus a substantial sum ought to be readily available with the petitioners to complete the first two phases of the project. There is also controversy as to whether JBK Developers has to collect the funds from various flat buyers. Whereas, the petitioners claim that a large sum of money – over ₹120 crores – is to be collected from various flat buyers, the same is disputed by the counsel appearing for the flat buyers.

14. At this stage, it is not necessary for this Court to evaluate rival contentions in regard to the disputes. However, it is clear that the allegations made against the petitioners are serious. It is also apparent that the petitioners have failed to fulfil their obligations as contracted. The

petitioners have also defaulted in filing the annual accounts of JBK Developers Pvt. Ltd. and thus, there are no audited accounts currently available, which would disclose the current affairs of the said company or how the funds collected from the flat buyers were utilised.

15. Notwithstanding the above, this Court is of the view that if there is a possibility for the petitioners to address the issues of the flat buyers, the same should not be impeded on account of the petitioners being in custody. This Court is also persuaded to take the view as Mr Dubey states that the petitioners would arrange a sum of ₹7 crores within a period of twelve weeks for resumption of works to complete the project in question.

16. In view of the above, this Court considers it apposite to allow the present petitions and release the petitioners on bail on their furnishing personal bond in the sum of ₹1 lakh with one surety, each, of the equivalent amount to the satisfaction of the concerned Jail Superintendent/Duty Magistrate/Trial Court. This is also subject to the following further conditions:-

- (a) that the petitioners would file their respective undertakings to this Court to the effect that they shall complete the first phase of the project prior to 31.03.2021 and the second phase of the project in question by 30.08.2021;
- (b) that the petitioners shall open an escrow account with a scheduled bank and undertake to deposit a sum of ₹7 crores in the said account (first ₹3 crores out of the aforesaid amount within a period of four weeks from the date of their release and ₹2 crores within the next four weeks and the remaining ₹2 crores shall be

deposited within the following four weeks);

- (d) that the said amount would be used solely for the purposes of completing the project and not for any other purposes; No sums would be withdrawn from the said escrow account without the due information to the Trial Court and the Investigating Agency;
- (e) that the petitioners shall ensure that Mr Sudhanshu Hajela, President Green Avenue Social Welfare Society, Homebuyers Association is also included as a counter signatory to the said account;
- (f) that the information regarding the sources of funds and its disbursal would be provided to the investigating officer on a weekly basis;
- (g) that the petitioners shall surrender their passports to the concerned IO;
- (h) that the petitioners shall not transfer, encumber, part with or alienate any of their assets or that of JBK Developers Pvt. Ltd.; and
- (i) that the petitioners shall furnish a statement of their personal assets as well as of entities and firms in which petitioners have any interest (either as a shareholder or otherwise) to the IO within period of eight weeks of their release.

17. It is understood that all the aforesaid undertakings shall be furnished by the petitioners within a period of two weeks from today. The learned counsel for the petitioners state, on instructions, that if the undertakings are not strictly performed, the bail granted to the petitioners shall stand revoked and the petitioners consent to the same. It is also understood and clarified that no extension of time would be granted.

18. It is clarified that nothing stated in this order shall be construed as an expression of opinion on the merits of the allegations. It is further clarified that the observations made in this order are in the limited context of examining whether the petitioners should be released on bail and nothing stated herein shall be read so as influence any other proceedings pending against the petitioners and /or JBK Developers Private Limited.

19. The petitions are disposed of in the aforesaid terms.

VIBHU BAKHRU, J

AUGUST 10, 2020

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