IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-27995-2021
Date of decision: 20.07.2021

Saroj Rani and others

...Petitioners

Versus

State of Haryana .....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Prateek Gupta, Advocate,
for the petitioners.

Mr. Ashok Singh Chaudhary, Addl. A. G. Haryana.

Mr. N.S.Shekhawat, Sr. Advocate with
Mr. T.S.Grewal, Advocate,
for the complainant-Aarcity Regency Park Apartment Buyers Welfare Association.

Mr. Ajit Sihag, Advocate,
for allottee-Jagbir Dalal.

Mr. Rose Gupta, Advocate for
allottee-R.D.Bansal.

Mr. Anurag Jain, Advocate,
for allottee-ParveenArya.

Mr. Sunil Saharan, Advocate,
for allottee-Narender.

Mr. Himanshu Raj, Advocate,
for allottee.

HARNARESH SINGH GILL, J.

Case was taken up for hearing through video conferencing.

Through this petition, the petitioners seek anticipatory bail in case bearing FIR No.133 dated 22.05.2019, registered at Police Station Urban Estate, Hisar, under Sections 406, 420, 468, 471, 477-A and 34 IPC.

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The facts of the case, as noticed in the impugned order dated 13.07.2021, are as under:

> *"2. Brief facts of the case are that on 22.05.2019, Daya Nand General Secretary, Aarcity Regency Park Apartment Buyers Welfare Association and others presented an application to the effect that in the year 2008, M/s Hisar Real Estate Private Ltd. came up with a project Hisar Heights. In the year 2011, the promoters of the company collaborated with M/s Aarcity Builders Private Ltd. and they falsely projected to the public to deliver possession of 639 flats and 35 villas within a period of 39 months from the date of booking of the apartment. The members of the association invested their hard earned money with a hope to get shelter in Hisar town and booked their apartments with the company. It is alleged that the accused company have forged their account books by showing false selling price of the flats and false expenditures. It was represented by the Directors of the company that the money collected from the proposed buyers shall be spent on the construction of the project and they will also not earn more than 15% profit and no third party rights would be created without approval of licencing authority. However, the accused companies had no intention to complete the construction and handover the possession of the flats to the buyers and in this manner, they committed cheating and breach of trust with the buyers besides forging its account books. They also started diverting the funds of the project as well as pocketed the funds for their personal use. Since the very first day, the construction of the project ran at a very slow pace because both the companies had a motive to extract money from the buyers without taking any steps to develop the project. M/s ABPL had siphoned major amounts from the project by forging its account books in conspiracy with the promoters/Directors of M/s.HREPL. The buyers also approached Haryana Real Estate Regulatory Authority, Panchkula for delivery of possession or alternatively for refund of their amounts. During the pendency*

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2021.07.22 22:22
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> *of the proceedings before HRERA, a forensic audit of the accounts of M/s ABPL was ordered. In the audit report, it was found that the company had embezzled crores of rupees belonging to the buyers and had forged the account books. As per HRERA order dated 10.04.2019, it has been stated that this is not only a case of failure in fulfilling their contractual and legal obligations towards the allottees but also amounts to criminal offence of cheating and breach of trust. With these allegations, a prayer for registration of the FIR was made. On this application, FIR was registered under Sections 406, 420, 468, 471, 477-A/34 IPC. Apprehending their arrest, the applicants/accused have filed the present application seeking anticipatory bail."*

Learned counsel for the petitioners contends that petitioners No.1 and 3, namely, Saroj Rani and Kushal Mittal, are not the Directors of M/s Aarcity Builders Private Limited (for short, 'ABPL'), as would decipher from the Master Data (Annexure P-18) and, therefore, no offence is made out against them, at the first instance, and the above-noted FIR is a pressure tactic adopted by a few of the allottees to get the outstanding dues waived off.

It is further contended that M/s Hisar Real Estate Pvt. Ltd. (HREPL) was a collaborator with Company-ABPL for the purpose of procuring land and clearances and, therefore, necessary permissions were granted in favour of HREPL, except for the RERA Registration in favour of the Company-ABPL. The present petitioners are not the Directors or the shareholders of HREPL and the same is not a sister concern of ABPL in which the petitioners are stated to be the Directors. It is further contended that the petitioners and their company had invested double the funds invested by the allottes or paid by them, as stands accounted for in

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2021.07.22 22:22
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the books of the company. In fact, the allottees are in the arrears of the payments to be made by them and, thus, when the Company has invested more than the amount paid by the allottees, there arises no scope of siphoning off funds. It is further submitted that the above-noted FIR is based on the order dated 10.04.2019 passed by HRERA, Panchkula, and the report of the auditor, appointed by the order of HRERA, on 23.01.2019. However, the audit report does not reflect correct position of the accounts. The entire funds received by the Company, as verified from the financial statements and record, would not reflect any misappropriation or embezzlement of the funds as alleged in the FIR. However, the order dated 27.02.2019 passed by the HRERA, would reflect certain rectifications of the order dated 23.01.2019. Moreover, the association of the flat holders has already filed a complaint before HRERA, which is seized of the entire matter and the proceedings before it, are pending adjudication for 22.07.2021.

Learned counsel further contends that the construction of the villas is complete and their possession has been handed over to the allottees and the construction of large number of flats also stands completed. Only a few of the candidates are pressurizing the petitioners so that the company could not insist them to pay their outstanding dues. It is also contended that the matter in dispute is civil in nature and the sole objective of the complainants is to compel the company to waive off the demand of outstanding dues. Moreover, the case is based on documentary evidence and thus, the petitioners are not required for any custodial interrogation.

Notice of motion.

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On the asking of this Court, Mr. Ashok Singh Chaudhary, Addl. A. G. Haryana, accepts notice on behalf of the respondent-State.

Conversely, zeroing in on the arguments of the learned counsel for the petitioner, learned State counsel and learned senior counsel for the Welfare Association assisted by the learned counsel for the allottees, submit that petitioners No.1 and 3 remained as Directors of the company-M/s AAR City Builders Pvt. Ltd. till the year 2017 and 2019, respectively, and, therefore, they were very much involved in the commission of the crime. It is further argued that the flats had not been delivered to the buyers within the stipulated period of 39 months in spite of the earnest money and installements paid by them. It is further contended that the amount received from the buyers had been misutilized by the petitioners, for example an amount of Rs.4 crore was paid to one Chitranjan Aggarwal through RTGS for purchase of some other land, an amount of Rs.1,06,00,000/- had been paid as rent by the company-ABPL in respect of head office of its company M/s Aarcity Infrastructure Private Limited; that out of sanctioned loan of Rs.33 crores, an amount of Rs.22,83,90,000/- was not used in the construction of the project and rather the same was transferred in the bank accounts of another company M/s Aarcity Infrastructure Private Limited.

It is also contended that at the time of floating the project in the year 2008, the Company had no requisite permissions, as would decipher from the contents of para No.3 of the petition, itself. It is further contended that the investigation is at the initial stage, and custodial interrogation of the petitioners is required and the petitioners are not

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2021.07.22 22:22
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entitled to the privilege of the anticipatory bail. It is further argued that any indulgence, at this stage, would teeth the petitioners with the modus of obstructing the fair investigation.

I have heard the learned counsel for the parties.

There are allegations against the petitioners that they are the Directors of the Company-ABPL which in collaboration with M/s Hisar Real Estate Private Limited had floated a project under the name and style of Hisar Heights, which was later on renamed as Regency Park comprising of 639 flats and 39 villas. There are also allegations that the company has failed to deliver the possession of the apartments and villas within the stipulated period of 39 months and the Directors of the company had diverted the money to their own use, which was collected from the buyers. The audit report got prepared by HRERA, also transpires that the company has misappropriated the money deposited by the buyers by diverting it to their other companies. There are also allegations of forgery in the account books.

There are serious allegations against the petitioners that the petitioners being the Directors of the Company, have duped of the gullible buyers by offering 639 flats and 39 villas, who later crowded around the court demanding that they be given the possession of their flats or villas, respectively. It is a double whammy for the innocent buyers because justice for such fraud like the present one, is a long drawn process and uncertain, due to the complex nature of the dispute. As per the prosecution version, the petitioners have committed the offence with a cool calculation and deliberate designs with an eye on personal profit regardless of the

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consequence to the buyers, who have invested their hard-earned money in the project.

Keeping in view the allegations levelled against the petitioners, this Court finds that in case, the petitioners are granted the benefit of anticipatory bail, the same would definitely hamper the effective and fair investigation. Considering the stage of the investigation and to unearth the fraud played upon the innocent buyers, the petitioners are required for custodial interrogation.

Therefore, finding no merit in the present petition, the same is dismissed.

20.07.2021 **(HARNARESH SINGH GILL)**
parveen kumar **JUDGE**

Whether reasoned/speaking? Yes/No
Whether reportable? Yes/No

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