IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-5323-2022

Piramal Capital and Housing Finance Limited

....Petitioner

VS

State of Haryana and others

....Respondents

CWP-16862-2020 (O&M)

Elite Villas Limited and another

....Petitioners

VS

State of Haryana and others

....Respondents

CWP-19174-2022

Kalpana Jain and others

....Petitioners

VS

State of Haryana and others

....Respondents

Reserved on : 29.08.2022 and 07.09.2022
Pronounced on : 26.09.2022

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Akshay Bhan, Sr. Advocate with
Mr. Sushant Kareer, Advocate and
Ms. Kritika Sharma, Advocate for the petitioner in CWP-5323-2022

Mr. Sanjay Kaushal, Sr. Advocate with
Mr. M.K. Garg, Advocate and
Mr. Indresh Goel, Advocate
for the petitioners in CWP-16862-2020 and
for respondents No. 7 and 8 in CWP-5323-2022 & CWP-19174-2022

Mr. R.S. Khosla, Sr. Advocate with
Mr. Akshay Jain, Advocate for the petitioners in CWP-19174-2022

Mr. Samarth Sagar, Addl. A.G. Haryana

Mr. Mayank Wadhwa, Advocate
for respondent No. 6 in CWP-5323-2022 and CWP-16862-2020 and
CWP-19174-2022

Mr. Dhruv Gautam, Advocate
for respondents No. 7 to 17 in CWP-16862-2020 & CWP-19174-2022
for respondents No. 9 to 35 in CWP-5323-2022

Mr. Prashant Kumar, Advocate
for respondent No. 19 in CWP-16862-2020 & CWP-19174-2022

Mr. Rajat Chopra, Advocate
for respondent No. 20 in CWP-16862-2020

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SUDHIR MITTAL, J.

M/s Vinman Constructions Limited and Elite Villas Limited purchased two parcels of land total *ad measuring* 14.843 acres vide different sale deeds of the year 2011. Vide collaboration/development agreement dated 19.07.012, M/s Kashish Developers Limited was appointed as the developer/builder of a project known as MANOR ONE. The entire land was transferred to the builder on payment of Rs. 25 crores as refundable advance. It was also granted rights in respect of 60% of the built up area and parking space whereas 40% share was to be given to the land owners. Consequently, builder buyer agreements were executed in 2013. As the project could not be completed in time a total of 35 consumer complaints were filed before the National Consumer Disputes Redressal Commission (NCDRC) in the year 2017. The same were allowed vide judgment dated 12.12.2018 and M/s Kashish Developers Limited was directed to refund the principal amount deposited by the complainants alongwith simple interest @ 10% p.a. from the date of each payment till date of refund. Costs of litigation of Rs. 25,000/- was also imposed and payment was required to be made within three months from the date of the order. A few months prior to the passing of this order the aforementioned three entities executed a registered memorandum of deposit of title deeds dated 27.03.2018 in favour of Dewan Housing Finance Corporation Limited (DHFL) for a loan of Rs. 725 crores. The entire land viz. 14.843 acres was mortgaged alongwith the unsold units by virtue of this memorandum. The judgment dated 12.12.2018 having not been complied with, execution petitions were filed and recovery certificates dated 06.09.2019 were issued. Warrants of attachment dated 15.09.2020 attaching the land *ad measuring* 14.843 acres were consequently issued resulting in filing of these writ petitions.

CWP-5323-2022 has been filed by Piramal Capital and Housing Finance Limited (successor-in-interest of DHFL). CWP-16862-2020 has been filed by M/s Elite Villas Limited and Vinman Constructions Limited and CWP-19174 of 2022 has been filed by some of the buyers. All three petitions challenge the warrants of attachment dated 15.09.2020.

The aforementioned three writ petitions are being decided by a common judgment as all of them challenge the legality and validity of the order of attachment.

CWP-5323-2022 (Piramal Capital and Housing Finance Limited vs. State of Haryana and others)

The case of the petitioner herein is that it is a secured creditor being the mortgagee of the land upon which MANOR ONE is being developed being the successor in interest of DHFL. Mortgage was created vide memorandum dated 27.03.2002 and the same specifically provides for exclusive charge on the mortgaged property. Thus, attachment in favour of the decree holders is illegal.

CWP-16862-2020 (Elite Villas Limited and another vs. State of Haryana and others)

This writ petition has been filed by Elite Villas Limited and Vinman Constructions Limited i.e. the entities who had purchased the land for developing the project. Their basic argument is that the *lis* has ceased to be adversarial in nature. A fund known as the Special Window for Completion of Construction of Affordable and Mid Income Housing Project (SWAMIH) Fund wholly owned subsidiary of SBI Capital Markets Limited has agreed to invest a sum of Rs. 260 crores for completion of the project. Additional amount of Rs. 40.6 crores based on incremental internal approvals of the said fund after a review of the progress has also been promised. Piramal Capital and Housing Finance Limited has agreed to release its first charge/mortgage in favour of the said fund vide its communication dated 15.11.2021. A pre condition of the SWAMIH Fund is that the attachment order be got removed. The completion of the project would benefit all the buyers as cost of the dwelling unit would not be increased and compensation will be paid to the buyers in accordance with the terms of the supplementary builder buyer agreement to be executed. The project would be completed in two years and no further development charges would be imposed. All the buyers are satisfied with this development and only seven persons have refused to settle, thus, for general good of all parties concerned the order of attachment may be set aside.

The aforementioned submission has been adopted by learned counsel for the petitioners in CWP-19174-2022.

Objections on behalf of buyers who have not settled with the builder/developer.

The argument raised is that the loan transaction of Rs. 725 crores is fraudulent and it has been so flagged in a forensic audit conducted after conclusion of insolvency proceedings of DHFL. Fraudulent nature is evident from the terms and conditions of the collaboration agreement dated 19.07.2012. For a paltry, sum of Rs. 25 crores possession of the entire land has been handed over to the builder/buyer and it has been granted 60% rights in the project. Only 40% has been retained by the owners of the land. The fraudulent nature is further evident from the fact that the promoters of all three entities are the same persons and the corporate veil can be lifted to determine this fact. Being decree holders, these buyers have some kind of security available. If they settle with the land owners/builder/developer, that security would be lost. The attachment orders have been issued pursuant to recovery certificates issued by the NCDRC and there is no illegality in the transaction. Thus, the property deserves to be sold for recovery of dues of these buyers.

At this point in time it may be noticed that during the course of arguments on 30.08.2022 counsel for the Kashish Developers Limited had made an offer to the decree holders that their principal amount would be paid within 120 days of the disbursal of the first installment by the SWAMIH Investment Fund(I). Interest as awarded by the NCDRC would be paid at the end of the following 11 months. This offer had been accepted by the learned counsel representing the decree-holders after consultation with a representative and the matter was adjourned to 02.09.2022 to enable the parties to execute agreements. On 02.09.2022, the matter was adjourned to 07.09.2022 as allegedly draft agreements had been received by the buyers only the previous evening. On 07.09.2022, the learned counsel informed the Court that his party had backed out from the settlement proposed by the builder/developer.

The argument that loan transaction of Rs. 725 crores being fraudulent, the orders of attachment are not liable to be set aside, is being taken up for consideration first. Learned counsel for the objectors wishes the Court to infer fraud from the terms and conditions of the collaboration agreement as well as the promoters of the three entities being the same. In law, such an inference is not possible to be drawn unless and until something more is established. Assuming that the loan transaction is fraudulent, it does not automatically result in upholding of the orders of attachment because there is no intimate relationship between the two transactions. Thus, the argument is rejected.

There can be no dispute with the proposition of law that a secured creditor having exclusive charge on the security has a better right than a decree holder. Learned counsel representing the decree holders who have not settled with the builder, has not been able to raise any argument to the contrary. Thus, the orders of attachment are liable to be set aside on this sole ground.

Subsequent events have intervened. As noticed earlier, SWAMIH fund has offered to revive the project by infusion of funds. This is evident not only from the communications placed on record by the petitioners in CWP-16862-2020 but also from the confirmation given by the counsel representing the said fund. The submission that the project is likely to be completed in the following two years has also not been controverted. Factum of execution of supplementary builder buyer agreements providing for payment of compensation and promising no increase in the cost of dwelling units/charging of additional developmental cost has also not been denied. It is also clear that barring a few, the remaining home buyers (including decree holders) are in support of revival of the project. According to learned senior counsel representing the petitioners in CWP-19174-2022 there are a total number of 280 home buyers. The record of CWP-16862-2020 shows that the objectors are only 12 in number. Thus, the majority is in favour of revival of the project. Hence, the refusal of the objectors to settle with the builder appears to be ill advised. The law also leans in favour of revival of the project as the same would be in the larger interest of the economy. It would generate employment, result in recovery of public money and provide returns for the money invested by the home buyers. The adamant attitude of a few can not be permitted to stand in the way of larger good. Thus, the writ petitions are allowed and warrants of attachment dated 15.09.2020 are quashed.

The petitioners in CWP-16862-2020 are, however, directed to make payment to the objectors in accordance with the settlement offered in Court and referred to hereinabove.

A photocopy of this order be placed on the files of other connected cases.

(SUDHIR MITTAL)
JUDGE

26.09.2022
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Whether speaking/reasoned Yes/No
Whether Reportable : Yes/No