

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-31871 of 2023
Reserved on 29.08.2023
Date of Decision: 11.09.2023

Shiv Kumar Bagolia and others

.....Petitioners

Vs.

State of Punjab

.....Respondent

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Arnav Sood, Advocate for the petitioners.

Mr. M.S. Nagra, AAG, Punjab.

Mr. D.N. Ganeriwala, Advocate for the complainant.

DEEPAK GUPTA, J.

By way of this petition filed under Section 438 Cr.P.C., petitioners pray for grant of anticipatory bail in case FIR No.197 dated 07.06.2023 under Sections 406, 420, 477, 120-B IPC registered at Police Station Sohana, District SAS Nagar (Annexure P-6), lodged on the complaint of one Kanisth Ganeriwala.

2. (i) It is contended by learned counsel that petitioner No.1 is the Managing Director, petitioner No.2 is the Director and petitioner No.3 is the General Manager of 'Sandwood Infratech Pvt. Ltd', which had floated a residential housing project named as "Sandwoods Opulencia" in Sector 110, SAS Nagar in the year 2014. Complainant had purchased a 2+1 BHK apartment on 26.05.2014 by paying earnest money of ₹4,30,916/-. Apartment Buyer's Agreement/ Agreement to sell was executed between the parties on 27.10.2014 and complainant was allotted Unit No.169, 7th Floor in Tower D of the project against the basic sale price of ₹41,80,000/-.

According to petitioners, total amount of ₹42,90,666/- was disbursed to

their Company.

(ii) It is contended further that due to some unforeseen reasons, project could not be completed within the time-frame of three years nor the possession of the Unit could be delivered to the complainant, at which complainant filed an application under Section 18 of the Real Estate (Regulation and Development) Act, 2016. Vide its order dated 15.06.2020 (Annexure P-1), the Punjab RERA directed the Company of the petitioners to refund the entire amount of ₹42,90,666/- along with interest @9.25% per annum within 60 days to the complainant. It is contended by petitioners that they have already returned the amount of ₹33 lacs but due to financial constraints, could not pay the remaining dues. Complainant then filed execution before the Punjab RERA in 2021 and recovery warrants were issued vide Memo dated 15.07.2021(Annexure P-2) to Deputy Commissioner-cum-District Collector, SAS Nagar.

(iii) Learned counsel for petitioners submitted further that in the meantime, a company by the name of “Balaji Durobuild Private Ltd.” filed an application under Section 9 of the IBC, 2016 and Rule 6 of the Insolvency and Bankruptcy Rules, 2016 against the Company of the petitioners before National Company Law Tribunal, New Delhi Bench-III, wherein IRP was directed to take charge of the management of the petitioners' Company and the moratorium was declared having the effect of prohibiting institution of a suit or continuation of any proceedings or recovery of any amount etc., and so the proceedings against the Company of the petitioners came to stand still. Even the execution proceedings initiated by the complainant came to halt. Complainant filed his claim of ₹ 28,54,490.12/- before Resolution Professional as a creditor. The land of the Company of the petitioners was also attached for recovery of the refund

amount in the execution proceedings by RERA Punjab.

(iv) It is contended that on account of all the above factors, FIR lodged by the complainant under Sections 406, 420, 477, 120-B IPC is nothing but an arm-twisting method for refund of the money and thus, civil proceedings have been given the criminal colour. Learned counsel for the petitioners contends that no offence of cheating or misappropriation is made out; that complainant has already availed his remedy before RERA Punjab and pursuant to the order passed by the RERA, an amount of ₹33 lacs has already been returned; that the complainant has already filed execution petition for recovery of the remaining amount; that all proceedings have come to a halt due to the moratorium and that present proceedings are an arm-twisting method. It is further contended that as far as allegations of the complainant to have sold the unit to Manpreet Kaur is concerned, the property was transferred to Manpreet Kaur on 13.10.2020, whereas refund was directed by RERA vide order dated 15.06.2020 and so, the complainant was left with no right over the unit concerned. Even if petitioners failed to pay the ordered refund amount, the same can be recovered by way of attachment of the property. Learned counsel further submits that the petitioners are ready and willing to join the investigation and so, in all these circumstances, they be granted anticipatory bail.

3. Reply has been filed by way of affidavit of Shri Harsimran Singh Bal, Deputy Superintendent of Police, City 2, Mohali on behalf of the respondent- Sate.

4. (i) Learned State Counsel ably supported by learned counsel for the complainant has strongly opposed the bail petition. It is pointed out that the petitioners deliberately concealed the fact that property in question was mortgaged with the Axis Bank and a Tripartite Agreement had been

executed between the bank, complainant and the petitioners. The original documents of property such as title agreement, allotment letter, receipts, undertakings etc., were kept as security with the Axis Bank as equitable mortgage. The inquiry conducted by DSP, Command Centre, Mohali revealed that these original documents pertaining to the Flat are still lying in the custody of the Axis Bank and have never been released. The fraud played by the petitioners is apparent from the fact that without getting the original documents released from the Bank and without cancelling the previous agreement and without taking any NOC from the Bank, petitioners proceeded to allot the flat to Manpreet Kaur by fabricating a new/ fresh allotment.

(ii) Not only above, the inquiries revealed that petitioners destroyed all the data pertaining to the initial allotment to the complainant from their Company records, as if the flat had never been allotted to the complainant and depicted Manpreet Kaur as the first time allottee of the property. New allotment letter, sale agreement etc., have been fabricated by removing the name of the complainant and by representing to Manpreet Kaur that there was no prior litigation or encumbrance on the property. All this has been done by the petitioners notwithstanding the fact that original documents are still lying as security with the Axis Bank. Further, the unit earlier allotted to the complainant was sold for ₹68 lakhs against the market price of ₹75 lakhs.

(iii) It is alleged that petitioners had the fraudulent intention since very beginning, as they stopped paying interest owed to the Bank under the Tripartite Agreement under Subvention Scheme in 2017 only to cause monetary loss to the complainant. During the inquiry, the documents provided by the complainant also revealed that complainant was paying

instalment of ₹33,000/- per month to the Axis Bank till December, 2020 without knowing flat had already been sold.

(iv) Still further, it is contended that proceedings in NCLT have been carried out against the Company of the petitioners, which is a 'corporate debtor'. Company of the petitioners is not an accused in the present case and in these circumstances, proceedings in NCLT against corporate debtor will not have any bearing on the criminal case lodged by the present FIR. The stay by NCLT is operative only on the civil proceedings regarding the assets of the Company and that the petitioners cannot claim any immunity from the criminal prosecution for their misconduct while being in-charge of the Company under Section 32A of the Insolvency and Bankruptcy Code. Still further, it is submitted that the petitioners intentionally depicted the claim of the complainant as operational creditors of the Company despite the fact that no goods and services had ever been provided to the petitioners or their Company, instead of showing the claim of the complainant as a home buyer.

(v) Still further, it is contended that attachment of the land of the petitioners in itself show that the petitioners could not alienate any land much less the flat of the complainant, without complying with the orders of RERA. It is alleged that in the entire process, petitioners pocketed undue gains twice for themselves, firstly from the complainant and then from the subsequent buyer, by fraudulently transferring the flat without securing any consent/ permission/ NOC from the Bank exercising security over the flat.

(vi) It is also alleged that petitioners have not only cheated the complainant but have duped several others in the similar fashion. Custodial interrogations is stated to be necessary to recover the record of the initial allotment, the statement of accounts and utilization of proceeds etc., and

therefore, it is prayed that petitioners do not deserve to be granted the benefit of anticipatory bail.

5. I have considered the submission of both the sides and have appraised record carefully.

6. Admittedly, by way of order dated 15.06.2020 (Annexure P-1), RERA Punjab, directed the Company of the petitioners to refund the principal amount of ₹42,90,666/- along with simple interest at the SBI highest marginal cost of lending rate plus 2% on the principal amount and which as per the contentions, worked out on calculation to be ₹66 lakhs. It is also not in dispute that the petitioners have already paid an amount of ₹ 33 lakhs. Petitioners did not disclose as to whom this amount was refunded. It is disclosed during arguments that this amount was refunded by the petitioners to the Bank, from which loan had been taken, as a Tripartite Agreement had been executed between the complainant, Company of the petitioners and the Axis Bank.

7. In case, the matter was only between the Company of the petitioners and that of the complainant, the contention of learned counsel for the petitioners would have been correct to the extent that once the order for refund had been made by the RERA, Punjab, complainant was left with no right in the flat allotted to him. However, it is not so in this case. Petitioners deliberately appear to have concealed the fact from this Court that a Tripartite Agreement had been executed between the Company, the complainant and the Axis Bank and the original documents of the Flat in question, such as title agreement, allotment letter, receipts, undertakings etc., are lying with the Axis Bank as security as equitable mortgage. As long as loan stands with the Bank, complainant is liable for the same and as per the inquiry conducted by DSP concerned so far, the complainant was paying

instalment of ₹33,000/- per month till December, 2020 without knowing that flat had already been sold. Since the original documents were already lying with the Axis Bank as security, complainant could be sure of the fact that remaining amount outstanding against him may be cleared through the sale of the said flat.

8. However, without disclosing earlier allotment in favour of the complainant and without disclosing about litigation pending between the complainant and the Company of the petitioners and by concealing all these facts, the petitioners sold the flat to one Manpreet Kaur in October, 2020. No doubt that Manpreet Kaur has been cheated due to all these facts but at the same time, complainant has also been put to financial loss with dishonest intention on the part of the petitioners, who did the transaction of subsequent sale to Manpreet Kaur by concealing all the material facts pertaining to the previous litigation and the fact that the original documents of Flat were still lying with the Bank as security. So much so, as per police report, fresh documents were created by the petitioners and the entire data of the original allotment to the complainant, has been deleted from the records.

9. Having regard to all the afore-said facts and circumstances, but without commenting anything on the merits of the case, this Court is of the opinion that custodial interrogation of the petitioners may be necessary and that petitioners do not deserve to be granted the benefit of anticipatory bail, having regard to the roles attributed to them.

As such, present petition is hereby dismissed.

September 11, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No