2023:DHC:5845-DB

$~14, 16, 25, 26, 31, 33, 39, 41 & 73

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

% *Date of Decision: 10.08.2023*

\+ W.P.(C) 11254/2021 & CM APPL. 34657/2021 & CM APPL. 44326/2022

MANIK AHUJA & ANR. ..... Petitioners

versus

ICICI BANK LTD. ..... Respondent

\+ W.P.(C) 13629/2022 & CM APPL. 41536/2022 & CM APPL. 44353/2022

KAUSAR MURTAZA AND ORS ..... Petitioners

Through:

versus

RESERVE BANK OF INDIA AND ORS ..... Respondents

Through:

\+ W.P.(C) 14504/2022 & CM APPL. 44309/2022

NAVIN KUMAR ..... Petitioner

versus

RESERVE BANK OF INDIA & ORS. ..... Respondents

\+ W.P.(C) 14505/2022 & CM APPL. 44311/2022

ALOK KUMAR SRIVASTAVA ..... Petitioner

versus

RESERVE BANK OF INDIA AND ORS ..... Respondents

\+ W.P.(C) 15559/2022 & CM APPL. 48417/2022

RAKESH KUMAR ASTHANA ..... Petitioner

versus

RESERVE BANK OF INDIA & ORS. ..... Respondents

Through:

\+ W.P.(C) 15700/2022 & CM APPL. 48859/2022

ASHWANI GOSWAMI ..... Petitioner

versus

RESERVE BANK OF INDIA & ORS. ..... Respondents

\+ W.P.(C) 1620/2023 & CM APPL. 6163/2023 & CM APPL. 21794/2023

ANKIT AGARWAL ..... Petitioner

versus

UNION OF INDIA AND OTHERS .... Respondents

\+ W.P.(C) 3476/2023 & CM APPL. 13481/2023 & CM APPL. 13482/2023

PAWAN KUMAR ..... Petitioner

versus

RESERVE BANK OF INDIA & ORS. ..... Respondents

\+ W.P.(C) 12518/2021 & CM APPL. 39409/2021 & CM APPL. 43137/2021

T. ANANDRAJ & ANR. ..... Petitioners

versus

ICICI BANK LTD. & ANR. ..... Respondents

Present: Mr. Ashish Chauhan, Adv. for petitioner in Item No. 14, 16, 25, 26, 31 and 33.
Mr. Murari Kumar, Ms. Lisha Saha, Mr. Pranjal Azad and Mr. Achint Kumar, Advs. for petitioners in Item No. 73.

Mr. Kuber Dewan, Ms. Neeharika Aggarwal and Mr. Kaustubh Srivastava, Advs. for ICICI Bank in Item No. 14, 16, 25, 26, 31, 33, 39, 41 and 73.
Mr. Asheesh Jain, CGSC with Mr. Gaurav Kumar, Ms. Ankita Kedia and Ms. Ria Khanna, Advs. and Ms. Archana Shinde, GP. For R-2 – 3 in Item No. 14.
Ms. Mani Gupta, Mr. Aman Chowdhary, Ms. Sonali Jain, Ms. Sreemanrini Mukherjee and Ms. Saumya Upadhaya, Advs. for Resolution Professional of AVJ Developers (India) Pvt. Ltd. in Item No. 16, 25, 26, 31, 33, 41 & 73.
Mr. Niraj Kumar, Senior Central Govt. Counsel for R-1 in Item No. 39.
Mr. Mann Beri and Mr. Prateek Kasliwal, Advs. for R-5 in Item No. 39.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

CM APPL. 21794/2023 in W.P.(C) 1620/2023

1. The application is filed seeking that the appearance of Mr. Niraj Kumar be recorded in the order dated 19.04.2023.

2. For the reasons stated in the application, the same is allowed. The order dated 19.04.2023 is rectified to record the presence of Mr. Niraj Kumar, learned counsel as appearing for respondent No. 2 / UOI.

3. The application stands disposed of.

W.P.(C) 11254/2021 & CM APPL. 34657/2021, CM APPL. 44326/2022; W.P.(C) 13629/2022 & CM APPL. 41536/2022, CM APPL. 44353/2022; W.P.(C) 14504/2022 & CM APPL. 44309/2022; W.P.(C) 14505/2022 & CM APPL. 44311/2022; W.P.(C) 15559/2022 & CM APPL. 48417/2022; W.P.(C) 15700/2022 & CM APPL. 48859/2022; W.P.(C) 1620/2023 & CM APPL. 6163/2023; W.P.(C) 3476/2023 & CM APPL. 13481/2023, CM APPL. 13482/2023; W.P.(C) 12518/2021 & CM APPL. 39409/2021, CM APPL. 43137/2021

4. The petitioners are homebuyers and are, essentially, aggrieved by the action instituted by the respondent bank (M/s ICICI Bank Ltd.) for recovery of the debts on account of financial assistance extended to the petitioner for purchase of the respective residential units allotted to them. The petitioners pray that the proceedings initiated against them be stayed; their CIBIL Score be restored; and recovery proceedings be initiated, against M/s AVJ Developers (India) Pvt. Ltd. (hereafter '**the developer**').

5. The petitioners had entered into separate tripartite agreements with the respondent bank and the developer for financing purchase of residential flats in a project named 'AVJ Heights'.

6. The petitioners claim that they had booked residential flats some time in the year 2012-13 and had entered into separate Flat

Buyer Agreements for the units allotted to them.

7. They claim that the developer had introduced the petitioners to officials of the respondent bank for availing of finance facilities. Thereafter, the parties (the flat buyers, developer and the respondent bank) had entered into the tripartite agreements, as mentioned above. In terms of the agreements entered into with the respondent bank, the respondent bank had disbursed amounts to the developer. The petitioners are essentially aggrieved as the developer has neither handed over possession of the flats nor refunded any of the amounts paid by them or the respondent bank.

8. It is the case of respondent bank that it had not financed the developer but had granted loans to the petitioners. It is contended that the parties had not only entered into tripartite agreements but a separate loan facility agreement, as well. Thus, the petitioners are liable to repay the amounts advanced notwithstanding that the developer has failed to perform its obligation of delivering the possession of the residential units booked by the petitioners.

9. The petitioners rely on a term of the tripartite agreement whereby the developer had agreed to refund the total money received from the flat allotees (petitioners herein) and the bank, on its failure to hand over possession of the flat to the concerned flat buyers.

10. The petitioners also contend that the respondent bank has violated the circulars issued by the Reserve Bank of India. This is disputed by the respondent bank.

11. The first and foremost question to be addressed is whether the present petitions are required to be entertained by this Court. It is

apparent from the plain reading of the writ petitions that the petitioners have founded their claim on contractual arrangements entered into with respondent bank and the developer.

12. The present writ petitions have been filed, essentially, to pre-empt the respondent bank, from instituting / pursuing the proceedings before the learned Debts Recovery Tribunal under the Recovery of Debts and Bankruptcy Act, 1993.

13. We are not persuaded to accept that any interference by this Court is warranted at this stage. As noted above, the petitioners have based their case on contractual arrangements entered into with respondent bank and the developer.

14. The question whether the respondent bank is entitled to recover the amounts paid to the developer for purchase of the flats allotted to the petitioners and whether the funds so paid, were in fact, loans advanced to the petitioners, is a matter, which is required to be considered by the learned Debts Recovery Tribunal in any action that is instituted or may be instituted by respondent bank before the learned Debts Recovery Tribunal or any other court. The controversy whether the developer has failed to honour its obligations and, if so, the consequences thereof, are also matters of private dispute that are required to be agitated in an appropriate action.

15. It is earnestly contended on behalf of the petitioners that a petition in respect of the developer (M/s AVJ Developers (India) Pvt. Ltd.) under the provisions of the Insolvency and Bankruptcy Code, 2016, has been admitted by the learned National Company Law Tribunal (NCLT). It is asserted that currently a moratorium under

Section 14 of the said Code is operating. Thus, no proceeding can be instituted or continued against the developer.

16. The petitioners are also apprehensive that they may not have an effective recourse against the developer on account of the said proceedings. However, the same is no ground for this Court to entertain the controversies, which obviously entail disputed questions of facts and law.

17. Insofar as the petitioners' prayer for restoring the CIBIL score is concerned, no directions for the same are required to be issued by this Court at this stage. If the petitioners prevail in their defence before the learned DRT, the respondent Bank shall ensure that the same is duly communicated to the Credit Rating Agency (CIBIL) for appropriately reflecting the petitioners correct credit rating.

18. In view of the above, the present petitions are dismissed.

19. We clarify that we have not expressed any opinion on the merits of the contentions advanced by the parties. All rights and contentions of the parties are reserved.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

AUGUST 10, 2023
'KDK'