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

% *Date of Decision:11th August, 2023*

\+ **W.P.(C) 10759/2021 & CM APPL. 33211/2021**

JAYANTA KUMAR MISHRA & ANR. ..... Petitioners

Through: Appearance not given

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Harish Vaidyanathan Shankar, CGSC, Srish Kumar Mishra, Sagar Mehlawat, Mr. Alexander Mathai Paikaday, M. Sriram, Mr. Krishanan V., Advs. for UoI.
Mr. O.P. Gaggar, with Mr. Sachindra Karn, Advs. for R-3.
Mr. Manu Beri, Mr. Prateek Kaliwal, Advs. for R-6.

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

VIBHU BAKHRU, J.

CM APPL. 33212/2021 *(for exemption)*

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

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3. The petitioner has filed the present petition seeking several

reliefs, including that the proceedings instituted by the respondent bank (Union Bank of India) against the petitioner being *OA No.985/2018* captioned *Corporation Bank v. Jayanta Kumar Mishra*, be stayed. The petitioner has also sought prayers to the effect that the respondents (Union of India & Reserve Bank of India), be directed to frame and issue strict guidelines to regulate transactions pertaining to the subvention scheme prevalent in the Real Estate Sector.

4. The petitioner had booked a residential flat in the project known as, 'Sampada Livia'. This project was being developed by Respondent No. 4 (PSA Impex Pvt. Ltd. - hereafter '**the builder**'). The petitioner had entered into a Separate Builder-Buyer Agreement in respect of the allotted residential unit booked by him. Thereafter, the petitioner approached the Corporation Bank (now merged with Union Bank of India), seeking financial assistance for purchasing the unit allotted to him. The petitioner entered into a separate tripartite agreement with the builder, and the lender.

5. In terms of the said tripartite agreement, the builder was required to service the loan availed by the petitioner for the period prior to handing over the possession of the residential unit to him. It is pointed out that the builder had also undertaken to handover the possession of the flat in question, within a stipulated period.

6. The petitioner is, essentially, aggrieved as the builder has since defaulted in servicing the loan availed by him; has failed to complete the construction of the residential flat in question; and has failed to handover the possession of the flat to the petitioner.

7. The petitioner claims that the loan was disbursed by the

respondent bank directly to the builder, and the same was in violation of the circulars issued by the Reserve Bank of India. The petitioner also claims that in the given circumstances, he has no liability to repay the loan as the said liability rests with the builder.

8. The question whether the petitioner is liable to repay the loan, is the subject matter of the proceedings pending before the learned Debts Recovery Tribunal, New Delhi (hereafter '**the DRT**') in OA 985/2018.

9. It is also apparent that the petitioner's claim that he is not liable to repay any amount to the respondent bank is premised on his contractual agreement with the builder and the respondent bank, namely, the tripartite agreement. It would not be apposite for this Court to adjudicate the said dispute in the first instance as the said issue is required to be adjudicated by the learned DRT.

10. Insofar as the petitioner's prayer that the Reserve Bank of India be directed to take action against the respondent bank is concerned, it is conceded that the petitioner has not made any complaint to the Reserve Bank of India, as yet. The learned counsel appearing for the Reserve Bank of India points out that there is an Ombudsman Scheme, and the petitioner is at liberty to make a complaint before the Ombudsman.

11. It is also relevant to note that a Public Interest Litigation, *inter alia*, praying that a law be framed to make the banks accountable in such cases was instituted before this Court (***Court on its own Motion v. Govt of NCT of Delhi And Ors.* : W.P.(C) 9550/2019**). The same was disposed of by the Division Bench of this Court with the

following observations:

> *"11. When the projects proponent defaults in completing a project, it is always open for the banks to approach the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 for getting a Insolvency and Resolution Professional appointed and to take measures to ensure that project is revived and the project is completed because the banks are also anxious to recover their money. The entire problem that has been projected by the Complainant has to be looked into to safeguard the interests of the home buyers and also the banks who deal with public money, and the banks cannot be converted into developers and builders or an authority on whom the responsibility is loaded to ensure that the project is completed. Other than the remedies in Insolvency and Bankruptcy Code, 2016, it is always open for the home buyers to approach the Real Estate Regulatory Authority (RERA) to ensure that the project is completed.*
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> *12. In view of the fact that there is a proper regimen available to redress the grievances of a home buyer and also in view of the Master Circular (Supra) issued by the Reserve Bank of India, no further Orders and directions are required to be passed in the instant petition."*

12. In view of the above, no further orders are required to be passed regarding the petitioner's prayer for directions to conduct an enquiry regarding disbursal of loan.

13. Since there are large number of cases where homebuyers complain of being lured by subvention schemes which are marketed with active participation of banks, the Reserve Bank of India may consider appropriate measures for protection of flat buyers.

14. Insofar as the petitioners' grievance regarding his credit score is concerned, no relief can be granted at this stage. If the petitioner prevails in his defence before the learned DRT, the respondent bank shall take the necessary steps for communicating the same to the

concerned credit agency for reflecting the petitioner's correct credit score rating.

15. The petition is disposed of in the aforesaid terms.

16. Pending application(s) also stands disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

AUGUST 11, 2023

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