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

% *Date of Decision: 27.09.2023*

\+ **W.P.(C) 13021/2022**

MANURAG NANGIA & ANR. ..... Petitioner
Through: Ms. Aatrayi Das, Adv.
versus

AXIS BANK LIMITED & ORS. ..... Respondents
Through:

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

VIBHU BAKHRU, J.

CM APPL. 50553/2023

1. This is an application seeking restoration of the above captioned petition that was dismissed in default on 16.08.2023.

2. For the reasons stated in the application, the same is allowed. The petition is restored to the position as obtaining on 16.08.2023.

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3. The petitioners have filed the present petition, *inter alia,* praying that the proceedings in relation to the Original Application No.698/2021 captioned ***Axis Bank v. Manurag Nangip & Ors.*** pending before the learned Debts Recovery Tribunal-I (hereafter '**the DRT**') be set aside. The petitioners also pray that respondent no.1 bank be restrained from taking possession of the property described as Flat No.1405, Tower C-

1, 14th Floor, Casa Royal Sanskriti Plot No. GH 10, Sector 01, Greater Noida, admeasuring 793 sq. ft. (hereafter '**the subject property**').

4. It is the petitioners' case that they had booked the subject property at a real estate project known as "Sanskriti" which, at the material time, was being developed by respondent no.2 (hereafter '**the builder**'). The petitioners claim that respondent no.1 bank had also sanctioned a sum of ₹24,83,840/- as a loan for purchasing the subject property.

5. The petitioners claim that the parties entered into a Tripartite Agreement dated 08.05.2015. Thereafter, on 31.03.2016, respondent no.1 bank released a sum of ₹18,79,512/- directly to the builder. It released a further sum of ₹5,78,255/- to the builder on 06.12.2018. In addition, the petitioners also paid certain amounts to the builder.

6. The petitioners' grievance arises from the fact that the builder has failed to deliver the possession of the subject property as agreed. Further, a petition under the Insolvency and Bankruptcy Code, 2016, in respect of the builder has been admitted by the National Company Law Tribunal (NCLT). And, on 08.01.2020, Corporate Insolvency Resolution Proceedings have commenced in respect of the builder. The petitioners, thus, apprehend that the they would not be able to recover any amount from the builder.

7. It is also the petitioners' case that respondent no.1 bank had been negligent and disbursed the amount directly to the builder without ascertaining the stage of construction. Accordig to the petitioners, the

same falls foul of the guidelines issued by the Reserve Bank of India (RBI) as well as the Tripartite Agreement.

8. In addition, the petitioners claim that they are not liable to pay any amount to respondent no.1 bank as the builder is required to pay the said amount. They state that respondent no.1 bank's recourse is against the builder only and not against them.

9. We do not consider it apposite to entertain the present petition considering that respondent no.1 has already instituted the proceedings for recovery of the debts due. The issue whether the petitioners are liable to pay the same is a subject matter of the proceedings before the learned DRT. It would be open for the petitioners to raise the contentions as advanced in the petition in those proceedings to assert that they have no liability to repay the amount as claimed by respondent no.1 bank. The petition is, accordingly, disposed of.

10. It is clarified that the present petition would not preclude the petitioners from raising such contention as advised before the learned DRT in O.A. No.698/2021 or any other proceeding that may be initiated by respondent no.1 bank.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

SEPTEMBER 27, 2023
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