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

Date of decision: 19th April, 2023

+ **W.P.(C) 15343/2022 & CM APPL. 47635/2022, 534/2023,
19162/2023, 19437/2023**

YOGENDRA KUMAR GUPTA & ORS.

..... Petitioner

Through: Mr. Pawanjit Singh Bindra, Sr. Adv.,
& Mr. Manish Kaushik & Mr. Mishal
Johari, Advocate. (M:9818218885)

versus

UNION OF INDIA, MINISTRY OF HOUSING AND URBAN

AFFAIRS & ORS.

..... Respondent

Through: Mr Sandeep Mahapatra CGSC, Mr
Vedansh Anand, Advocate. (M:
8076802450)

Mr. Sandeep Sethi, Sr. Advocate, Mr.
Rahul Malhotra, Mr. Manoranjan
Sharma and Mr. Deeptanshu Jain,
Advocate for R-2. (M: 9871189295)

Ms. Pooja M. Saigal, Mr. Simrat
Singh Pasay, Advocates. (M:
9810137113)

Mr. Ripudaman Bhardwaj SPP with
Mr. Kushagra Kumar, Advocate for
CBI. (M:9818030700)

Mr. Tarun Johri, Mr. Ankur Gupta &
Mr. Vishwajeet Tyagi, Advocates for
R-4/DMRC. (M:9810013352)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. This is a Petition filed by three Petitioners who are flat buyers in the project of Respondent no.2 Parsvnath Landmark Developers Pvt. Ltd. The present petition has been filed by the Petitioners seeking directions to the Respondent Nos.1 and 3 i.e., the Ministry of Housing and Urban Affairs and Real Estate Regulatory Authority ('RERA') respectively, to not allow Respondent No. 2-Parsvnath Landmark Developers Pvt. Ltd. ('Parsvnath') to sell additional flats in project II and III and to withdraw the sanctions for the project 'La Tropicana' situated at Khyber Pass, Civil Lines.

3. At the outset, it is submitted by the Id. Counsels for both the parties that insofar as the dispute between Petitioner No. 2-Smt. Sarita Aggarwal and Petitioner No. 3-Mr. Pawan Kumar Jindal with Parsvnath is concerned, the dispute stands resolved vide Memorandum of Understanding ('MOU') dated 18th April, 2023. Vide the said MOU, the possession of the flat is to be handed over to the Petitioners on 'as is where is' basis. In addition, the compensation amount of Rs.1.15 crores is to be paid to the Petitioner Nos. 2 & 3 by Parsvnath. The amount of Rs.50,00,000/- already stands deposited in this Court. Accordingly, Rs.65,00,000/- was agreed to be paid and the same has been received by the Petitioner Nos. 2 & 3. Petitioner No. 3-Mr. Jindal is present in Court and acknowledges the receipt of the said amount. The relevant portions of the settlement are set out below:

"1. That it has been agreed between the parties that the First Party shall continue with the booking of the said flat and take the physical possession of the said unit on "as is where is basis" for fit outs purposes as and when the possession of the flats for fit out shall be offered to other allottees in the Tower bearing no.15. The First Party has further agreed to complete the unfinished work or items in the said flat as per his own

choice and at his own cost. It is further agreed that the Booking of the said Flat stands continued and the Flat Buyer Agreement executed with respect to the said Flat stands retained.

*2. It is agreed between the parties that the Second Party would pay an amount of Rs. 1,15,00,000/- (Rupees One Crores and Fifteen Lacs Only) (hereinafter referred to as "**Compensation Amount**") as compensation towards the delay in handing over possession in full and final settlement of all the claims of the First Party qua the said Flat or in terms of the Order passed by the RERA Authority or any further orders passed or may be passed by RERA Authority or any other court/foras/tribunal etc.*

3. It is agreed between the parties that the Compensation Amount is inclusive of the amount of Rs. 50,00,000/- (Rupees Fifty Lacs) already deposited by the Second Party with the Registry of the Hon'ble High Court of Delhi and as such the Second Party is now only liable to pay an amount of Rs. 65,00,000/- (Rupees Sixty Five Lacs Only) (which is being paid by the Second Party by way of Demand Draft bearing no. 534828 for Rs. 35,00,000/- and Demand Draft bearing no. 534829 for Rs. 30,00,000/-, both dated 18.04.2023 drawn on Canara Bank, Delhi in favour of Mrs. Sarita Agarwal simultaneously at the time of signing of the present MOU and the said payment is accepted by the First party in full and final settlement of all the dispute pertaining to the said flat and in terms of the order dated 26.09.2018 passed by the Hon'ble RERA Authority.. It is agreed that on 19.04.2023, both the parties would request the Hon'ble High Court to release the said deposit amount of Rs. 50,00,000/- in favour of the First Party."

4. In view of the above settlement with Petitioner Nos. 2 and 3, let the possession of the flat be given in terms of clause 1 of the MOU which

records that physical possession shall be handed over when the possession of the flats to the other allottees of tower bearing no. 15 is handed over.

5. The parties shall be bound by the terms of the MOU. In view of the settlement, the amount of Rs. 2 crores which was directed to be deposited need not be deposited and the sum of Rs.50,00,000/- which is lying deposited with the Registrar General be released in favour of Petitioner No.2-Smt. Sarita Aggarwal. The bank account details be furnished to the Registry.

6. Insofar as Petitioner No. 1-Yogendra Kumar Gupta is concerned, the Petitioner was a flat buyer in *La Tropicana*. There was a massive delay in the completion of the said project due to which the Petitioner had approached the RERA in Delhi. A decree/order dated 6th October 2017 was passed in favour of the Petitioner No.1 by RERA for a sum of Rs. 3,33,93,745.68/- along with interest @10.15% within 45 days of passing of the order and compensation of Rs. 1,00,000/- with costs to meet expenses of Rs.10,000/-. The Petitioner is stated to have received a sum of Rs.75,00,000/- and the remaining amount is still outstanding. According to the Petitioner No.1, the total amount now stands at more than Rs.6.5 crores which has not been paid by Parsvnath. The Petitioner has filed an execution petition before the RERA which is stated to be pending. In the meantime, this writ petition has been filed.

7. Vide order dated 9th November, 2022, notice was issued in this matter. Replies were called for. On 31st January, 2023, this Court after hearing submissions has observed as under:

“1. This hearing has been done through hybrid mode.

2. Ld. counsel for the Respondent No.2- Parsvanath Landmark Developers Pvt. Ltd. submits that Respondent No. 2 is willing to settle the disputes with the Petitioners and in fact has entered into a negotiations with Petitioner No. 1- Yogendra Kumar Gupta.

3. Ld. counsel for the Petitioners submits that the total dues qua Petitioner No. 1 is of Rs.6.30 crores and qua Petitioner Nos. 2 and 3, jointly is Rs.5.32 crores.

4. It is made clear that considering the chronology of events in this case, where the Petitioners have already paid for the entire value of the flats which were allotted to them almost a decade ago, the matter needs to reach finality as soon as possible. Accordingly, it is directed that the amount due to or settled shall be paid to the Petitioners by 3rd February, 2023, failing which, this Court would proceed to pass further orders in accordance with law.

5. List on 3rd February, 2023.”

8. On 3rd February, 2023 Ms. Pooja Saigal, Id. Counsel had appeared for M/s Blue Star BuildProp Pvt. Ltd. and submitted that Petitioner No.1 is guilty of concealment of material facts. Further, she submits that Petitioner No.1 had agreed to sell the flat to her client for a sum of Rs.5 crores. In lieu of this transaction a sum of Rs.50,00,000/- has also been paid in advance to the Petitioner No.1. The case of the intervenor was that the Petitioner No.1 has not disclosed these facts before this Court.

9. Today, an application has been moved by the said intervenor, being **CM APPL. 19162/2023**. Along with this application, two cheques for a sum of Rs.25,00,000/- each drawn by M/s Blue Star BuildProp Pvt. Ltd. both dated 23rd January 2023, in favour of Mr. Yogendra Kumar Gupta, have

been placed on record. The bank statement from the HDFC bank showing payment of the cheque amounts in favour of Petitioner No.1 has also been placed on record. In addition, certain WhatsApp messages have been placed on record which give the impression to the Court that there was some arrangement between the Petitioner No.1 and M/s Blue Star BuildProp Pvt. Ltd. which the Petitioner No. 1 sought to resile from during the course of hearing on 3rd February 2023. None of these arrangements with M/s Blue Star BuildProp Pvt. Ltd. find any mention in the present petition. Ld. counsel for the Petitioner, however, disputes the same and submits that the amount was received as part of a friendly loan.

10. The entire issue insofar as M/s. Blue Star is concerned, would require analysis of facts which cannot be done in a writ petition.

11. Insofar as the dues from Parsvnath to Petitioner no.1 are concerned, the same being dues which are liable to be paid as per the decree passed by RERA, the present writ petition cannot be used for execution of the said decree. The Petitioner no.1 is free to avail of his remedy as per law to execute and obtain the decretal amounts. Accordingly, the present writ petition is dismissed leaving the Petitioner No. 1 to avail of his remedies in accordance with law.

12. It is made clear that none of the observations in this order shall affect the Petitioners, Intervenor or the Respondents on merits.

PRATHIBA M. SINGH
JUDGE

APRIL 19, 2023

dj/rp