IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 9th July, 2024

% *Pronounced on: 14th August , 2024*

+ **W.P.(CRL) 745/2023 & CRL.M.A. 6827/2023 (stay), CRL.M.A. 17783/2023 (seeking inquiry against the petitioner and its directors)**

EROS CITY DEVELOPERS PVT LTD

(A company governed by the provisions of Companies Act, 2013)
S-2 Level, American Plaza,
International Trade Tower,
Nehru Place New Delhi-110019
Through AR Mr. Virender Kaushal
Email id: virenderkaushal@theerosgroup.co.in
Mobile No.09899793339 .....Petitioner

Through: Mr. Mohit Mathur, Sr. Adv. with Mr. Tanveer Ahmed Mir, Mr. S. Singh, Mr. Vikas Mishra, Ms. Aditi Sharma, Ms. Krishna Dev Yadav, Mr. Yash Datt, Mr. Mohd. Imran Ahmad and Mr. Aakrsh Jha, Advs.

versus

1. **STATE GOVT. OF NCT DELHI**
Through SHO PS KALKAJI
Email id:- dhcprosecutiondelhipolice@gmail.com.
……Respondent No.1

2. **Smt. Viveka Khanna**
W/o Mr. Ranjiv Khanna
R/o 1899
1st Floor, Main Road,
Chandani Chowk,
Delhi-110006.

Mobile No. 09313863786 …..Respondent No. 2

Through: Mr. Amol Sinha, APP for State
Mr. Arhum Sayeed and Mr. Rahil Ahmed, Advs. for R-2.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

W.P.(CRL) 745/2023 (under Article 226 of the Constitution of India read with Section 482 of CrPC filed by the petitioner seeking quashing/setting aside the FIR No. 140/2023 dated 03.03.2023 registered at PS Kalkaji)

1. The present petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure *(hereinafter referred to as 'CrPC, 1973')*has been filed on behalf of the petitioner Company, challenging the Order dated 28.02.2023 *vide* which the learned Metropolitan Magistrate, New Delhi, has allowed Application under under Section 156(3) Cr.P.C.in Ct. Cases 1860/2022 resulting in registration of FIR No. 140/2023, dated 03.03.2023, at Police Station Kalkaji.

2. ***Briefly stated***, respondent No. 2/complainant is one of the allotteeshaving booked a commercial shop bearing No. 28, Upper Ground Floor,having tentative area of approximately 288 Sq. Ft. (26.75 Sq. Mt.) in the *'Indirapuram Project'*, launched by the petitioner in the year 2004, for construction of a Mall. The booking was done on 25.12.2004, by way of an Application wherein the basic sale consideration was Rs.14,51,520/- along with the other applicable charges.Subsequently, the parties had entered into 'Shop Buyers' Agreement

dated 05.08.2005 *(hereinafter referred to as 'Shop Buyers Agreement')*, in which the obligations of both the parties, were mentioned in detail. Out of the total 2,63,296 Sq. Ft. area of the Project, 2,54,552 Sq. Ft. area, has been sold while balance area of 8,744 Sq. Ft. is still in the possession of the petitioner.

3. The petitioner has explained that almost all the formalities had been completed and the petitioner applied for Completion Certificate on 10.08.2010, to the Ghaziabad Development Authority*(hereinafter referred to as 'GDA')*.Section 15-A of UP Urban Planning and Development Act, 1973 states that if the GDA fails to issue the Completion Certificate in 90 days of submitting the Application, it shall be deemed to have been issued, after the expiry of 90 days. The copy of the Completion Certificate was eventually issued on 05.04.2014.

4. The petitioner on completion of the Project, offered the possession of the allotted shop to the respondent No. 2, on 06.01.2010 and to pay the balance payment of Rs.5,38,185/- which remainedafter adjusting the payments already made by the petitioner, from the total amount of Rs.16,99,401/-.

5. The respondent No. 2 made payment of Rs.3,10,464/- on 12.02.2010, leaving a balance of Rs.2,27,721/-, as unpaid. Thereafter, no payments have been made by the respondent No. 2. On account of the failure of the respondent No. 2, to pay the balance amount, the petitioner issued a Letter dated 06.08.2010 and Reminder Letter dated 23.06.2010 for the balance payment but these letters were ignored by respondent No. 2 who did not come forth to accept the possession of the allotted shop, and thereby it became liable to pay the holding charges and interest @18% p.a., compounded from February, 2010, as per Clause 7A of 'Shop Buyers Agreement'. Further reminders dated

06.08.2010, 18.11.2010 and 21.02.2013, were sent to the respondent No. 2, but she still did not come forward to pay the balance amount and to take the possession.

6. The respondent No. 2 instead, sent a Legal Notice dated 02.12.2013 on false, fabricated and restless allegations that she has already made complete payment for the purchase of the shop. The petitioner Company replied *vide* Letter dated 18.12.2013, denying all the allegations. Another Legal Notice dated 07.09.2017 was served by the respondent No. 2 but since its contents were identical to the earlier Legal Notice, the petitioner did not give any formal reply; instead it issued the Letter dated 05.01.2019 again calling upon the respondent No. 2, for execution of the Sale Deed in respect of the allotted shop.

7. The respondent No. 2 instead of honouring the obligations under the *'Shop Buyers Agreement'* filed a belated Police Complaint dated 01.12.2019 under Section 420/406/408 IPC, against the petitioner Company at Police Station Kalkaji, New Delhi, which was registered as Complaint-55-GC dated 09.01.2020.

8. In response to the Notice under Section 91 Cr.P.C. dated 05.02.2020, the petitioner joined the enquiry and gave the Reply. In the meanwhile, the respondent No. 2 filed a Complaint before learned ACMM, New Delhi but withdrew the same on 26.04.2022. Thereafter, another Complaint bearing Ct. Cases 1329/2020 was filed in which the learned Metropolitan Magistrate directed the registration of FIR *vide* Order dated 26.04.2022. Aggrieved by the directions for registration of the FIR, the present Writ Petition has been filed for quashing it on the following grounds:-

(i) that the FIR has been registered contrary to the settled principles of law, as laid down by the Apex Court in *Rajeev Thapar &Ors. vs. Madan Lal Kapoor*, (2013) 3 SCC 313 and *State of Haryana vs. Bhajan Lal*, 1992 Supp (1) 1 SCC 335;

(ii) that the FIR does not disclose the commission of any cognizable offence under Section 406 and 420 IPC as there were neither any allegation of dishonest intention of the Petitioner nor was the complainant duped. Reliance has been placed on *Onkar Nath Mishra vs. State (NCT of Delhi)*, (2008) 2 SCC 561, *V.P. Srivastava vs. Indian Explosive Ltd. & Others*, (2010) 10 SCC 361;

(iii) that breach of contract cannot be a ground for setting the criminal machinery in motion for which reliance has been placed on *Hridaya Ranjan Prasad Verma vs. State of Bihar* (2000) 4 SCC 168; *Sarabjit Kaur vs. The State of Punjab &Anr.*, 2023 SCC OnLine SC 2010; *Mitesh Kumar J. Sha vs. State of Karnataka and Others,* 2021 SCC OnLine SC 976;*Mr. Srikanth vs. State of Telangana*, (2019)10 SCC; 373 and *G. Sagar Suri vs State of U.P*, (2000) 2 SCC 636.

(iv) that the impugned FIR is *mala fide* as it is being used to seek recovery of money;

(v) that there is an inordinate delay of ten years from the date of occurrence of alleged incident;

(vi) that the contents of the FIR are absolutely vague and do not contain any specific allegations against the unnamed directors of the petitioner Company. Reliance has been placed on *S.K. Alagh vs State of U.P. &Ors.*, (2008) 5 SCC 662;

(vii) that learned Metropolitan Magistrate failed to consider the Action Taken Report submitted by the Police anddirected registration of FIR without verification of the truth and veracity of the allegations levelled therein, for which reliance has been placed on *Priyanka Srivastavs & Another vs. State of Uttar Pradesh and Others,* (2015) 6 SCC 287.

9. It is, therefore, prayed that Order dated 28.02.2023 of learned Metropolitan Magistrate,may be set-asideand the consequent registration of FIR No. 140/2023 dated 03.03.2023, Police Station Kalkaji, be quashed.

10. The ***Respondent No. 2 in its Reply,*** has asserted that the petitioner has approached the Court with unclean hands. It has cheated innocent buyers of their hard-earned money and usurpedcrores of rupees by using the same *modus operandi*and playing fraud upon them by misusing it's powerful position.The petitioner has moulded the facts and documents, in order to procure a favourable Order from this Court. The contentions raised in the Petition, are false, frivolous and concocted.

11. The respondent No. 2 has highlighted that the Completion Certificatewas issued by the GDA only on 05.04.2014 and the alleged portrayalof the Completion Certificate, having been deemed to have been granted in 2010, is nothing but an act of deceit. The Partial &Conditional Letter dated 05.04.2014 has intentionally not been placed on record by the petitioner, for which it is liable for action under Section 340 CrPC. That the intention of the petitioner is to play fraud, is further evident from the fact that the Letter dated 05.04.2014 issued by GDA, is not a Completion Certificate as claimed by the petitioner but it is only a Partial Conditional Letter, which had already become infructuous for non-fulfilment of the pre-requisite conditions, before filing of the present

Petition. However, these material facts intentionally, deliberately, knowingly and with *mala fide* intention, have not been disclosed. These facts stand confirmed by the GDA in its Reply dated 17.02.2023,obtained by aggrieved buyers by moving an RTI Application. The GDA has withdrawn/cancelled/terminated the Letter dated 05.08.2014. Furthermore, this Reply has disclosed that Completion Certificate had never been issued for 'Eros Marketplace'.

12. The Government of Uttar Pradesh in *Writ C No. 20269/2023*, titled *Kiran Kohli & Anr. vs. State of UP and Anr*., had admitted before the High Court of Judicature at Allahabad that a conditional Completion Certificatewas issued in the year 2014 and again in 2016 but as the conditions were not met, the Certificate was cancelled on 17.02.2023.

13. It is contended that the impugned order of learned Metropolitan Magistrate, dated 28.02.2023, is legally and factually correct; it reflects due consideration of the facts and circumstances as detailed in the Application under Section 156(3) along with the relied upon Annexures, to pass a detailed and well-reasoned Order issuing directions for registration of FIR.

14. It is claimed that *prima facie*cognizable offences have been disclosed to have been committed by the petitioner and its Directors.Despite charging extra amount for PreferentialLocation Charges (PLC) for providing the corner shop, the location of the shopwas arbitrarily changed and an extra amount has been wrongfully usurped by the petitioner. The appropriate remedy for the petitioner, was to co-operate in the investigations and face the trial rather than to seek quashing of the FIR. The petitioner and its Directors are influential people and have tried to evade judicial process by taking an approach of getting the FIR

quashed. The petitioner had relied upon a Completion Certificate which it never possessed despite which it had been raising demands since 2010, in the name of having obtained the Completion Certificate.

15. It has further stated that as per the Schedule-A of the Shop Buyers' Agreement, the agreed price of the shop including the Preferential Location Charges, was Rs.14,51,520/- despite which illegal and unreasonable additional demands were made as per the FinalStatement of Account. As per the Agreement, additional amount of Rs.3,10,464/- had been deposited under protest as the demand so made was illegal and being without a Completion Certificate.

16. In the end, it is claimed that the Directors have intentionally not been arrayed as accused persons in the impugned FIR and no action has been initiated against them from 03.03.2023 to 16.03.202 in this Petition.It fairly indicates that the Police has been acting at the behest of the petitioner. It is therefore, submitted that the petitioner has been defrauding the innocent buyers of their hard-earned money and the FIR has been rightly registered against the petitioner.

17. The ***petitioner has filed a detailed Rejoinder*** wherein the averments made in the Reply are controverted and the averments made in the Petition, are reaffirmed.

18. Submissions heard and the record perused.

19. Admittedly, the petitioner had floated a project for construction of 'Eros Marketplace' in the year 2004 and had invited Applications from the prospective buyers. The respondent No. 2 also booked a shop bearing No. 28 admeasuring 26.75Sq. meters and initially paid Rs.1,45,000/-at the time of booking the said

shop. Thereafter,"Shop Buyers Agreement" dated 05.08.2005, was executed between the parties giving in detail the respective liabilities and obligations of the parties.

20. It is further not in dispute that the petitioner offered the possession of the shop *vide* its Letter dated 06.01.2010 and also gave a detailed Statement of Account with a balance of about Rs.5,38,185/-, to be paid by the respondent No. 2, who disputed the outstanding liability on the ground that the Preferential Location Charges were not payable as it had not been given the corner shop. However, the respondent No. 2 deposited a sum of Rs.3,10,464/- on 10.02.2010 under protest. However, the remaining balance amount was denied and not deposited.

21. It is evident from the various Letters that wereexchanged between the parties that essentially, the dispute was in respect of whether the balance amount of Rs.2,27,721/- were payable by the respondent No. 2, in regard to which various Letters as well as Legal Notices, got exchanged.

22. From this conspectus of facts, which are essentially not in dispute, it emerges that the petitioner not only constructed the *'Eros Marketplace'* but even constructed the shop as per the *"Shop Buyers Agreement*" and offered the same to the respondent No. 2. It is neither the case that despite there being a promise to make a shop available in the Mall to be constructed, no Mall got constructed or that the promised shop is not in existence. There is neither any dishonest intention reflected in the entire conduct of the petitioner nor is there any element of deceit practiced by the petitioner.

23. In the case of *Rajesh Bajaj vs. State of NCT of Delhi*, (1999) 3 SCC 259, it was observed that where the narration of facts reveal a commercial transaction

or money transaction, it cannot be a reason to hold that the offence of the cheating would elude from such a transaction. The transaction may be having its basis in a civil dispute but if the criminal offence is disclosed to have been committed, the investigation by the Investigating Agency, may be justified in extreme cases.

24. Similar observations have been made in the Case of *State of Haryana vs. Bhajan Lal,*1992 Supp (1) SCC 335, wherein the Hon'ble Supreme Court laid down the guidelines where the Courts may use its extraordinary power under Article 226 of the Constitution of India or inherent power under Section 482 Cr.P.C. wherein the allegations made in the FIR or the complaint even if taken on face value and acceptedin entirety do not *prima facie* constitute any offence, the same may be quashed.

25. As has been detailed, pursuant to the "*Shop Buyers Agreement"*, a shop has been offered to the petitioner but the dispute is only confined to whether the additional charges as claimed by the petitioner, are payable or not. This essentially is a civil dispute and even if accepted as true and correct,it does not disclose any element of deceit or fraud which are the necessary ingredients for an offence under Section 420 IPC. There is no fraudulent or dishonest intention disclosed on the part of the petitioner, which has always been willing to hand over the possession of the shop; whether the additional amount as claimed is payable or not, is a matter to be adjudicated by a Civil Court and has no component of criminality annexed to it.

26. The respondent No. 2 has desperately tried to impute fraudulent intention by asserting that the Letter offering possession in 2010, was *mala fide* in as much as the Completion Certificate had not been issued in favour of the

petitioner by the GDA. It has come on record that there were certain issues in regard to the grant of the Completion Certificate, which was given conditionally in 2014 and 2016; however there was subsequent litigation undertaken against the petitioner and eventually, in the *Writ (C) No. 20269/2023*, the Government of Uttar Pradesh had informed that the Completion Certificate has been cancelled on 17.02.2023. Even though there may have been issues in regard to the issue of Completion Certificate, which were being addressed by the petitioner from time to time, there is not an iota of evidence to show that despite there being disputes in regard to the Completion Certificate, the possession of the properties,was not handed over to the prospective buyers including the respondent No. 2. In case the respondent No. 2 had any hesitation in taking the possession on account of non-issue of Completion Certificate, it was at liberty to rescind/terminate the Shop Buyers' Agreement and seek the return of its money. This inability in not being able to get the Completion Certificate cannot be attributed as a *deceitful act* on the part of the petitioner, but is purely a commercial exigency. It is evident from the contents of the complaint, as well as, the documents annexed that it is only a commercial dispute having no element of fraud or deceit, which are necessary ingredients for an offence under Section 420 IPC. There is no claim ever made by the respondent No. 2 for return of its money or that the petitioner has dishonestly misappropriated the amounts paid by respondent No. 2 to the petitioner.

27. It is, therefore, concluded that the complaint along with the documents, discloses a dispute which is of civil nature and no ingredients of criminal offences under Section 420/406 IPC, have been made out. C*onsequently, the FIR No. 140/2023 dated 03.03.2023, registered at Police Station Kalkaji and all*

*the proceedings emanating therefrom, are hereby quashed.*The pending Applications also stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 14, 2024/RS