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

% **Date of decision: 9th July, 2024**

+ **W.P.(C) 8994/2024, CM APPL. 36723/2024**

JAPNEET KAUR GHUMAN & ANR.Petitioners

**Through: Mr. Manish Verma & Mohd.
Faizan Chaudhary, Advs.**

versus

UNION OF INDIA & ORS.Respondents

**Through: Mr. Prasant Varma, SCGC,
UIO along with Ms. Pratiba
Rani Varma, Mr. Rakesh
Kumar P., Mr. Rajesh P., Advs.
with Mr. Kamaldeep, GP for
R1.
Ms. Sangeeta Sondhi, Adv. for
R3.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The petitioners are invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, seeking issuance of an appropriate writ, directions, or orders to the respondent No.3/IHFL¹ thereby seeking following reliefs:

- i. Allow the present Writ Petition;
- ii. Issue a Writ in the nature of the Mandamus/Certiorari or any other writ directing the Respondent No.3 and 4 not to charge the Pre-EMIs or full EMIs from the Petitioners;
- iii. Issue a writ in the nature of Mandamus/Certiorari or any

¹ Indiabulls Housing Finance Limited



other appropriate writ, directing the Respondent No.3-IHFL to cease the reduction of the Petitioners CIBIL Score's and to restore it to its state/stage prior to the demand for the Pre-EMI/EMI from the Petitioners.

iv. Issue a writ in the nature of Mandamus/Certiorari or any other appropriate writ, directing the Respondent No.4 ACRE to cease its operations and thereby staying the notices whatsoever under SARFAESI Act, 2002;

v. Pass an appropriate order or directions to Respondent No.1 to framed guidelines and monitoring system were the citizens/aggrieved people submitting their objections can be monitored transparent and time bound manner; and/or

vi. Pass order(s) as this Hon'ble Court may deem fit and proper in the present case."

2. Shorn off unnecessary details, the aforesaid reliefs are sought stating that the petitioners were allotted a residential unit bearing No. T5/1504 in the project "**Hill Town**" to be developed by the respondent No.2 situated at Sector -2, Sohna Road, Gurgaon, State of Haryana, for which they also availed of a housing loan from respondent No.2 for an amount of Rs. 50,00,000/-. Pursuant thereto, an MoU² dated 14.05.2015 was executed, whereby the respondent No.2/Builder³ undertook to pay the pre-EMI on the loan for a period of 36 months. In case of a delay in handing over of possession beyond 36 months, it was stipulated that respondent No.2 shall continue to pay the same.

3. It is stated that respondent No. 2 had breached Clause (b)⁴ of the MoU dated 14.05.2015; and that petitioners approached the

² Memorandum of Understanding

³ Supertech Township Project Limited

⁴ That the tenure of this subvention scheme, as approved by India Bulls Housing Finance Limited is **36th** months. The Developer expects to offer possession of the booked unit to the Buyer by that time. However if due to any reason, the possession offer of the booked unit gets delayed, then the Developer undertakes to pay the Pre EMI only to the Buyer even after 36th months. The payment of Pre EMI shall continue till offer of possession with regard to the booked flat is issued to the Buyer.



respondent No.3 and tried to explain the situation, asserting that they were rather the victims and the petitioners should not be required to make any further payments towards allotment. Later, they came to know that NCLT⁵ proceedings had been initiated against the builder.

4. Learned counsel for the respondent No.3 has vehemently urged that the present Writ Petition is not maintainable, for which reliance is placed on the decisions in *Sunil Kumar Pandey v. Union of India*⁶; *Phoenix ARC Private Limited v. Vishwa Bharti Vidya Mandir*⁷; *United Bank of India v. Satyawati Tondon*⁸; and *Supertech Urban Home Buyers Association (SUBA) Foundation v. UOI*⁹.

5. Learned counsel for the petitioners sought an accommodation requesting for some more time to address arguments. It is apparent that the learned counsel for the petitioners is just buying time. On the last day of hearing, he was specifically told to come prepared with arguments.

6. Having heard the learned counsels for the parties and upon perusal of the record, this Court finds that the present Writ Petition is not maintainable. The Co-ordinate Bench of this Court has passed a detailed order in a bunch of matters in *Supertech Urban Home Buyers Association (SUBA) Foundation (supra)* and several other writ petitions, wherein similar reliefs were claimed by the home buyers against the builders as well as banks from whom home loan had been obtained for buying and allotment of residential flats in

⁵ National Company Law Tribunal

⁶ LPA 576/2022 dated 01.11.2022

⁷ Civil Appeal Nos. 257-259 of 2022 dated 12.01.2022

⁸ MANU/SC/0541/2010



different projects. It would be relevant to re-produce some of the observations made by this Court, which go as under: -

“84. A perusal of various clauses of respective agreements, be it ‘buyer-developer agreement’, ‘loan agreement’ or ‘tripartite agreement’, the rights claimed by the petitioners are eventually flowing from the respective agreements only. It is also to be noted that the violation of RBI Circulars has been alleged by the petitioners homebuyers, which is disputed by the respondents.

85. In the instant case, not only the rights of the petitioners are flowing from private contract but the complex and disputed question of facts are involved and the parties are not remediless. Alternative forums are already in place. Any interference by the writ court under the facts of the present case would amount to usurpation of powers vested with the respective forums. Such an exercise is not permissible unless extraordinary circumstances exist which are apparently non-existent in the instant cases.

86. The cases in hand clearly indicate that the homebuyers are claiming their rights on the basis of terms of the contract or on the basis of RBI Circulars. Their rights are mainly governed by the terms of the contract which they have entered into and to enforce the terms of the contract, no writ or order can be issued under Article 226 of the Constitution so as to compel the authorities to remedy a breach of contract pure and simple. Reference can be made to the decision of the Hon’ble Supreme Court in the case of Bareilly Development Authority (supra).

87. The pleadings between the parties would further go on to indicate that the respondents-financial institutions are alleging breach on the part of the petitioners and are claiming full adherence of the RBI Circular. In any case, since the rights of the homebuyers are flowing from the terms of the contract and if, there is any breach of RBI Circulars at the instance of banks/ financial institutions, the same by itself cannot entitle the homebuyers for the relief, which they have claimed in the instant writ petitions. In any case, the breach of RBI Circular is again a question of fact that can still be gone into before the appropriate court.

88. The cases in hand are purely contractual in nature. As has been noted, the ‘builder-buyer agreement’ also categorically provides for an arbitration clause, whereby, any dispute pertaining to the said agreement was to be referred to arbitration. In some of the cases, the homebuyers have already approached the alternate forums and their cases are pending. In some cases where the banks

⁹ W.P.(C) 9491/2020 dated 14.03.2023



have initiated insolvency proceedings against them, the homebuyers can raise their claim before the concerned Tribunal. There are various statutes such as RERA Act, Consumer Protection Act, Insolvency and Bankruptcy Code, 2016, SARFAESI Act etc., where the petitioners can raise their grievances. It would not be advisable to entertain a writ petition under Article 226 of the Constitution under the facts of the present cases.

89. The Division Bench in the case of Vineet Gupta (*supra*) is seized with the matter where the order passed by the DRT is under challenge. No final opinion has been expressed in the same. However, the Division Bench in the case of Sunil Kumar Pandey (*supra*) has clearly declined to entertain the writ appeal involving almost similar issues. The nature of the relief, as has been quoted in the preceding paragraphs, which are multiple in nature, are apparently not capable of being decided in summary jurisdiction of the writ court.

90. So far as the decision of the learned Single Judge of the High Court of Karnataka in the case of Mudit Saxena (*supra*) is concerned, firstly the same is not binding on this court and secondly, it has already been stayed by the Division Bench of the Karnataka High Court and therefore, it would not be appropriate to take any view on the basis of the said decision. Nevertheless, this court has considered the submissions made by the respective parties and has taken a view not to entertain these petitions in exercise of power under Article 226 of the Constitution of India.

91. In view of the aforesaid, this court, in view of the availability of alternative remedies, does not find it appropriate to entertain these writ petitions and, therefore, the same are dismissed alongwith the pending application(s), if any.

92. This court has not expressed any opinion on the merits of the case and has consciously not given any finding with respect to the violations/non-violations on the part of the respective parties, as the same would prejudice their rights before different forum where multiple proceedings are going on. However, since the interests of large number of homebuyers are involved in these cases, if the homebuyers avail alternative remedies, as may be available to them, the same may be considered and decided expeditiously in accordance with law.”

7. It is also pertinent to mention here that a Division Bench of this Court, in the case of *Sunil Kumar Pandey (supra)*, also had an occasion to consider the said aspect of law in a similar factual and



circumstantial context, and the following observations were made:

“19. While this Court is dismissing the instant LPA, it recognises that several real estate projects across the country are facing a similar situation. The grievances of the Appellants are mirrored in other petitions filed by other innocent homebuyers as well. Such petitions too are pending before this Court, other High Courts, and also, the Hon^{ble} Supreme Court. It is a rather unfortunate trend that builders often resort to dilatory tactics, defraud homebuyers by selling units to multiple individuals, delay the execution of projects, and execute projects without requisite sanctions. Invariably most of such builders also undergo insolvency. The greatest loss is incurred by innocent homebuyers who are not only forced to embroil themselves in litigation but are also divested of their hard-earned savings.

20. However, it must be considered that the litigation arising out of such projects involve disputed questions of fact, ranging myriad issues. Although this Court sympathises with the Appellants, and similarly placed innocent homebuyers, Courts cannot possibly take account of all such real estate projects, and the gamut of issues arising from them.

21. With these observations, this Court is not inclined to interfere with the Impugned Order. However, Appellants are free to pursue other remedies available to them.

22. In light of the above, this Appeal is dismissed, and any pending application(s) stands disposed of.”

8. There is no gainsaying that the aforesaid observations on the point of law squarely apply to the facts and circumstances discussed in the instant Writ Petition. Even on a careful perusal of Section 17¹⁰ of

¹⁰ 17. [Application against measures to recover secured debts].—(1) Any person (including borrower), aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this Chapter, [may make an application along with such fee, as may be prescribed,] to the Debts Recovery Tribunal having jurisdiction in the matter within fortyfive days from the date on which such measure had been taken:

[Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.

[Explanation.—For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.]

[(1A) An application under sub-section (1) shall be filed before the Debts Recovery Tribunal within the local limits of whose jurisdiction—



(a) the cause of action, wholly or in part, arises;
(b) where the secured asset is located; or
(c) the branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.]

[(2) The Debts Recovery Tribunal shall consider whether any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.

[(3) If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in sub-section (4) of section 13, taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—

(a) declare the recourse to any one or more measures referred to in sub-section (4) of section 13 taken by the secured creditor as invalid; and

(b) restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub-section (1), as the case may be; and

(c) pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of section 13.]

(4) If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

[(4A) Where—

(i) any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—

(a) has expired or stood determined; or

(b) is contrary to section 65A of the Transfer of Property Act, 1882 (4 of 1882); or

(c) is contrary to terms of mortgage; or

(d) is created after the issuance of notice of default and demand by the Bank under subsection (2) of section 13 of the Act; and

(ii) the Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.]

(5) Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

(6) If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any part to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.



the SARFAESI Act¹¹ shows that once SARFAESI proceeding have been initiated by the bank/financial institution, the only remedy for the petitioners, who are homebuyers and without any *iota* of doubt, a borrower lies under Section 17 of the SARFAESI Act. There is no reason for this Court to deviate from the well-established legal norms already thrashed out and decided in the cases cited at the Bar.

9. In fact, the issue is no longer *res integra*, considering the decision by the Supreme Court in the case of ***K. Sreedhar v. Raus Constructions Private Limited***¹², wherein practices on the part of the litigants/ borrowers in directly approaching the High Court without recourse to the alternate remedy provided under Section 17 of the SARFAESI Act was deprecated.

10. In view of the abovesaid discussion, the present Writ Petition is dismissed. The petitioners shall be at liberty to seek an appropriate remedy in accordance with the law.

11. The pending application also stands disposed of.

DHARMESH SHARMA, J.

JULY 09, 2024

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(7) Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993) and the rules made thereunder.]

¹¹ Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

¹² (2023) 11 SCC 169

Signature Not Verified

Digitally Signed By: PRANAV KUMAR VATS
Signing Date: 11.07.2024
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