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

% *Date of Decision: 03.03.2025*

\+ **W.P.(C) 285/2025 & CM No. 1383/2025**

VIKAS KUMAR .....Petitioner

Through: Mr Sandeep Joshi, Advocate.

Versus

UNION OF INDIA AND ORS .....Respondents

Through: Ms Avshreya Pratap Singh Rudy with Ms Usha Jamnal, Ms Harshita Chaturvedi and Mr Siddhant Nagar, Advocates for UOI.
Ms Snigdha Singh with Mr Kumar Shashwat, Advocate for R3.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition*, inter alia,* praying as under:

> "a. Admit the present Petition and Pass a Writ of certiorari or prohibition or mandamus or a writ, order or direction in the nature of certiorari and/or prohibition and/or mandamus and/or any other appropriate writ, directing removal of the name of the petitioner from array of parties in recovery suit titled as "State Bank of India vs Vikas Kumar & Anr" bearing O.A. No. 535/2024 pending before the Hon'ble Debts Recovery Tribunal-II, New Delhi.
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> b. Stay the proceedings pending before the Hon'ble Debts Recovery Tribunal- II, New Delhi, being O.A. No. 535/2024 during pendency of the present writ petition.

c. Direct the Respondent No. 1 to conduct an independent inquiry against the irregularities conducted by the Respondent No.2/Bank, in regards to the approval, sanctioning and disbursal of loans; AND

d. Direct the Respondent No. 1 and 2 to improve the CIBIL Score of the Petitioners;"

2. The petitioner had applied for allotment of a residential flat in a project being developed by respondent no.3/M/s RPS Infrastructure Ltd. [hereafter **the Builder**]. The Builder allotted a flat bearing No.T-04-1503, 14th Floor, Tower No.4, RPS Auria Project at RPS City, Sector – 88, Faridabad, Haryana [hereafter **the Flat**] to the petitioner in terms of an Allotment Letter dated 18.03.2016. The Group Housing Project – RPS Auria [hereafter **the Project**] comprised of several high-rise buildings and independent floors with stipulated amenities and facilities.

3. The petitioner entered into a Builder Buyer Agreement (hereafter **BBA**] with the Builder for purchase of the flat. He paid earnest money of ₹7,00,000/- by cheque bearing no.154811 dated 12.03.2016 drawn on Corporation Bank Ltd., Ghaziabad. In addition, the petitioner also paid a sum of ₹8,50,000/- by cheque bearing No.154814 dated 22.03.2016 drawn on Corporation Bank Ltd. towards the booking amount. The petitioner claims that the balance consideration was required to be paid in installments linked to the construction of the building [**Construction Linked Plan**].

4. The petitioner claims that the Builder had arranged for financial facilities from respondent no.2/State Bank of India **[SBI]** and the parties entered into a Tripartite Agreement dated 19.03.2016 [**Tripartite Agreement**]. The petitioner claims that in terms of the Tripartite

Agreement, SBI agreed to sanction home loan for financing the petitioner to purchase the flat. It is stated that in terms of the sanction letter dated 22.03.2016, the SBI sanctioned housing loan of ₹61,50,000/- which was to be repaid in equal monthly installments [**EMI**] of ₹52,429/-.

5. The petitioner alleges that although respondent no.2/SBI was required to disburse the loan to the Builder in terms of the construction linked plan, it disbursed the entire amount in favour of the Builder in one go and in complete disregard of the payment schedule under the construction linked plan. The petitioner also claims that the same was contrary to the guidelines issued by the Reserve Bank of India [**RBI**].

6. The petitioner states that in terms of the Agreement, the Builder had agreed to pay the EMI to SBI till the possession of the developed flat was to be handed over to the petitioner within a period of forty-eight months from the date of signing of the BBA. The petitioner had agreed that on the flat being handed over, he would continue to pay the EMIs.

7. The construction of the project has been delayed and the petitioner has not been handed over the possession of the subject flat. The Builder also failed and neglected to pay the EMIs and consequently the respondent no.2/SBI classified the loan account as non-performing asset (**NPA**) on 29.07.2023 in terms of the guidelines issued by RBI. Thereafter, respondent no.2/SBI issued a notice dated 25.01.2024 informing the petitioner that it would be taking steps at the petitioner's costs to recover the dues from him which would include various steps including valuation of assets, repossession of assets and filing of legal cases against the petitioner and the guarantors. Respondent no.2/SBI also put the petitioner to notice that

various expenditure incurred by it on account of court fees, investigative agency fee, lawyer's fee, etc. would be deducted from the petitioner's bank account.

8. The SBI issued a notice dated 01.05.2024 seeking an amount of ₹64,33,040/- along with interest at the rate of 9% per annum plus 2% penal interest within a period of seven days failing which respondent no.2/SBI would initiate legal action for recovery of the amount due. The petitioner claims that he also sent communications to the SBI requesting for copies of the documents executed between the parties but the same were not provided to him.

9. In view of the above, the petitioner filed a writ petition [being W.P.(C) No.9455/2024 captioned Vikas Kumar v. State Bank of India & Ors.], *inter alia,* praying as under:

> "a. to provide copies of loan documents, 1) Sanction Letter, 2) Housing Loan Agreement etc. and documents pertaining to the said Unit i.e., copies of 1) Allotment Letter, 2). Tripartite Agreement, 3) Builder Buyer Agreement; 4) Payment Receipts etc., Original of which are in possession of Respondent no. l&2, and hence mandatory directions are required in the interest of justice and equity so that your petitioner can avail legal remedies against the respondents as are available to him to protect his right and interest; AND
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> b. not to proceed further in terms of legal notice dated 01.05.2024 until the documents as stated above are provided to the petitioner;"

10. The aforementioned petition [being W.P.(C) No.9455/2024] was disposed of by an order dated 12.07.2024 with the following directions:

> "7. The present writ petition is disposed of with directions to the Branch Manager, Stressed Asset Recovery Branch, 23, Najafgarh

Road, State Bank of India, New Delhi- 110015 to provide the petitioner the following documents within 15 days of this Order :

1) Sanction Letter, 2) Housing Loan Agreement etc. and documents pertaining to the said Unit i.e., copies of (i) Allotment Letter, (ii)Tripartite Agreement, (iii) Builder Buyer Agreement; (iv) Payment Receipts etc."

11. There is no dispute that the said order was complied with and the petitioner was provided all documents as sought for.

12. On 04.06.2024, SBI instituted an Original Application under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 [**RBD Act**] being OA No.535/2024 before the Delhi Recovery Tribunal-II, Delhi. The learned DRT issued notice of the said application. However, the petitioner claims that summons have been issued through e-mail dated 08.09.2024; however, the original application has not been served on other defendants.

13. It is the petitioner's case that there is no default on his part and the EMIs were required to be repaid by the Builder till the date of handing over of possession of the flat. Although, the Builder continued to pay EMIs till 2023. It had defaulted in paying the EMIs thereafter. It is in the aforesaid context, the petitioner claims that recovery of the amount, if any, is required to be made from the Builder and not from him. Thus, the petitioner prays that his name be deleted from the array of parties in the OA before the learned DRT.

14. In addition, the petitioner claims that respondent no.2/SBI is not entitled to recover the amount disbursed to the Builder as it had done so contrary to the RBI guidelines. He states that the Circular dated 03.09.2013[RBI/2013-14/217] issued by RBI requires respondent no/2SBI

to disburse loans linked to the stages of construction of the housing project. The RBI had also advised the banks not to make upfront disbursal in cases of incomplete / under construction / green field housing projects.

15. It is apparent from the above that the relief sought by the petitioner rests on two grounds. First, in terms of the Tripartite Agreement, the Builder was liable to repay the amount of loan in case it had defaulted in handing over possession of the flat. And, second that respondent no.2/SBI is not entitled to recover any amount from the petitioner as it had disbursed the entire amount to the Builder upfront in disregard of the construction linked plan.

16. As is apparent from the above, the said grounds are in the nature of a defense to the action for recovery instituted by respondent no.2/SBI before the learned DRT and the petitioner is not precluded from raising all issues to contest respondent no.2/SBI's claim before the learned DRT.

17. In view of the above, we do not find any ground to interfere with the proceedings instituted by respondent no.2/SBI before the learned DRT. The petition is, accordingly, dismissed. The pending application is also dismissed.

VIBHU BAKHRU, J

TEJAS KARIA, J

MARCH 03, 2025
'gsr'

Click here to check corrigendum, if any