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

\+ W.P.(CRL) 794/2025 & CRL.M.A. 32481/2025 *(for release of amount)*

SMFG INDIA HOME FINANCE COMPANY LTD .....Petitioner

Through: Mr. Jagdeep Sharma, Senior Advocate with Mr. Kartikay Sharma and Mr. Shivam Kumar Jha, Advocates.

versus

STATE OF NCT OF DELHI & ANR. .....Respondents

Through: Mr. Anand V. Khatri, ASC (Crl.) with Mr. Adietya Khatri, ASC for State.
SI Vidyakar Pathak, P.S. Mohan Garden.
Mr. Sanjay Kumar Chhikara, Mr. Ujjwal Arora, Mr. Neeraj Kadyan and Mr. Ravikant Mahajan, Advocates for Respondents No. 2 to 4 with R-2 to 4.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **04.11.2025**

1. The Petitioner is an accused in FIR No. 63/2025 dated 28th January, 2025, registered at P.S. Mohan Garden, Dwarka, under Sections 318(4), 338, 336(3), 340(2) and 3(5) of the Bharatiya Nyaya Sanhita, 2023[1].

2. The Petitioner company, an entity duly authorised by the Central Government as a financial institution for the purposes of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest

[1] "BNS"

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Act, 2002[2], granted a loan of INR 25,00,000/- to borrowers, namely Mr. Nandeshwar Sukhlal Sah and Ms. Saraswati, secured by way of a mortgage over a property bearing Plot No. 60-A, admeasuring 180 sq. yds., out of Khasra No. 59/22, situated in the estate of Village Hastsal Colony, known as Mohan Garden, Peepal Wal Mor, Uttam Nagar, New Delhi. The subject property was described as bounded by: East – Other's Plot; West – Other's Plot; North – Gali 10 Feet; and South – Road 20 Feet.

3. The borrowers defaulted in repayment of the loan, leading their account being declared as a non-performing asset[3] on 5th October, 2023. The Petitioner company then initiated proceedings under the SARFAESI Act. Pursuant to the Court's directions, a Receiver took possession of the subject property on 7th May, 2024, which was thereafter auctioned on 3rd July, 2024. The auction purchaser, Mr. Jitender Kumar Sharma (the complainant/Respondent No. 2), purchased the subject property for INR 1,02,25,600/-, and possession was handed over to him on 8th August, 2024.

4. However, on 11th August, 2024, one Mr. Devender Kumar claimed ownership of the auctioned property, relying upon a prior order dated 3rd June, 2024 passed by the Court of the District Judge-01, South West, Dwarka Courts, New Delhi, directing *status quo* in respect of the possession of the property.

5. This Court, on 7th March, 2025, upon taking note of the statement of the Investigating Officer[4] that Plot No. 60-A did not physically exist at the site, made the following observations:

> *"5. Learned ASC, on instructions from the Investigating Officer ('IO'),*

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[2] "SARFAESI Act"
[3] "NPA"
[4] "IO"

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states that the subject property i.e., Plot No. 60-A, which is alleged to have been mortgaged with the Petitioner's company does not physically exist on the site.

5.1 He states that prima facie the preliminary investigation shows that the entire transaction of the mortgage between the borrower and the Petitioner company was with respect to an immovable property, which does not physically exist.

5.2 He states that at the site, only ***Plot No. 60, area measuring 180 Sq. Yds., Out of Khasra No. 59/22, situated in the area of Village Hastsal and the Colony known as Mohan Garden, in Block K-1, Uttam Nagar, New Delhi-110059; bounded as East-Plot No. 61, West-Plot No. 59, North-Lane 10ft, South-Road 20ft*** *('Plot No. 60'), exists.*

5.3 He states in these facts prima facie the complainant/Respondent No. 2 has been defrauded by the Petitioner company.

6. At the outset, learned senior counsel for the Petitioner, on instructions from Mr. Sunil Griwan (authorised representative of the Petitioner company), states that the Petitioner company is willing to return the entire amount paid over by the complainant/Respondent no. 2 towards the subject property.

6.1 He states that the Petitioner company engaged in bona fide transactions and had extended a loan to the borrower relying upon the documents produced by the borrower.

6.2 He states that, in fact, it is the Petitioner company who has been defrauded by the borrower, and it was never the intent of the Petitioner company to defraud the complainant/Respondent No. 2.

6.3 He states that the Petitioner company does not claim any rights in Plot No. 60. He states the mortgage property is Plot No. 60-A which is distinct.

6.4 He states that the Petitioner company is willing to deposit the sale consideration amount of Rs. 1,02,25,600/- and has no objection if the amount is paid over to the complainant.

7. This Court has perused the details of the ***Plot No. 60, area measuring 180 Sq. Yds., Out of Khasra No. 59/22, situated in the area of Village Hastsal and the Colony known as Mohan Garden, in Block K-1, Uttam Nagar, New Delhi-110059; bounded as East-Plot No. 61, West-Plot No. 59, North-Lane 10ft, South-Road 20ft ('Plot No. 60')****, on which one Ram Kishan Saklani and one Devender Kumar claim title rights and claims whereof are pending adjudication before the ld. District Judge-01, South West, Dwarka Courts, New Delhi.*

8. At this stage, this Court observes that the abovementioned Plot No. 60 to which Ram Kishan Saklani and Devender Kumar claim title rights, has been duly identified and has defined boundaries on the East, West, North, and South thereby accurately identifying the physical location of the land on the site.

9. In contrast, the title documents relied upon by the borrower and

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the Petitioner company with respect to Plot No. 60A fail to provide any details regarding the plots that abut the alleged subject property on the East and West. This omission is significant, as it makes it impossible to identify the Plot at site and lends credence to the submissions made by the ld. ASC that the Plot no. 60-A sold to Respondent No. 2 is non-existent at the site.

10. Notwithstanding the above observations of this Court, as the Petitioner company is willing and ready to return the monies to the complainant/Respondent No. 2, a notice is hereby issued in the present petition for this limited purpose."

11. Upon steps being taken by the Petitioner company, issue notice to Respondent No. 2 through all modes. In addition, the IO is directed to issue written intimation of the next date of hearing to complainant/Respondent No. 2.

12. The Petitioner shall deposit the entire amount of Rs. 1,02,25,600/- within two (2) weeks, before the Registrar General of this Court. The Complainant/Respondent No. 2 will be at liberty to collect the said payment from the Registrar General of this Court, upon filing of an appropriate application.

13. Let the status report be filed one week prior to the next date of hearing.

14. List on 25.04.2025."

6. On an application [CRL.M.A. 16434/2025] filed by Respondents No. 2 to 4 [Mr. Jitender Kumar Sharma, Mr. Manoj Kumar, and Mr. Gopal Sharma], the Court *vide* order dated 26th May, 2025, recorded no objection of the Petitioner to the release of the deposited amount, as follows:

"CRL.M.A. 16434/2025 (for release of the amount)

1. This application has been jointly filed by respondents no. 2 to 4 seeking release of the amount of Rs.1,02,25,600/- deposited by the petitioner with the Registry of this Court. Learned senior counsel for petitioner accepts notice and submits that till date the said amount has not been deposited because the petitioner filed an application CRL.M.A. 8828/2025 for modification of order dated 07.03.2025 to the extent that the petitioner be allowed to deposit only Rs.1,01,23,344/-.

2. CRL M.A. 8828/2025 is already listed for hearing on 03.07.2025. However, learned senior counsel for petitioner on instructions submits that the petitioner shall deposit the entire amount of Rs. 1,02,25,600/- and subsequently, the amount to be released to respondents no. 2-4 may be adjudicated upon and balance may be returned to the petitioner.

3. Accordingly, relist on 03.07.2025. The petitioner is granted

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another opportunity to deposit the entire amount of Rs. 1,02,25,600/- with the Registry of this Court within one week."

7. In compliance with the aforesaid order, the Petitioner deposited the entire amount of INR 1,02,25,600/-.

8. The Petitioner company has no objection to the release of the said amount in equal shares to Respondents No. 2 to 4.

9. At this juncture, Mr. Jagdeep Sharma, Senior Counsel for the Petitioner, submits that, with the refund of the said amount, the dispute between the parties stands amicably resolved, and accordingly, the impugned FIR may be quashed. He further submits that, as it has been found that Plot No. 60-A does not exist at the site, the Petitioner company has evidently been defrauded by the borrowers who had mortgaged the said non-existent property by depositing fabricated title documents. The continuation of the impugned FIR against the Petitioner would serve no purpose and would unjustly prejudice the Petitioner, particularly when the entire dispute now stands settled.

10. Although the FIR names Mr. Jitender Kumar Sharma as the complainant, both Senior Counsel for the Petitioner and counsel for Respondents No. 2 to 4 confirm that Mr. Sharma, along with Mr. Manoj Kumar and Mr. Gopal Sharma, were joint bidders for the subject property, against which the payment was made and is now to be refunded. The sale certificate is also jointly in their names, and they have been duly identified by the IO.

11. It must be noted that there is a minor discrepancy regarding deduction of TDS from the refund amount. According to the Petitioner company, a sum of INR 1,02,256/- is liable to be deducted as TDS. It is, however,

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agreed between the parties that the entire amount of INR 1,02,25,600/- shall presently be released in favour of Respondents No. 2 to 4 in equal shares. Later, upon the Petitioner furnishing TDS certificates, Respondents No. 2 to 4 shall refund the corresponding TDS amount to the Petitioner.

12. In view of the amicable settlement between the parties, and the facts and circumstances of the case, this Court is of the opinion that continuation of the present criminal proceedings would be entirely futile. It is well settled that, in the exercise of its inherent powers under Section 482 CrPC (corresponding to Section 528 BNS), the Court may, in appropriate cases, quash proceedings in respect of non-compoundable offences if the parties have genuinely settled their disputes and no overriding public interest is adversely affected. In this regard, the Supreme Court in ***Gian Singh v. State of Punjab & Anr.***[5] held:

> *"11. As discussed above, offence punishable under Section 186/332/353 of the IPC are non-compoundable being of serious nature,* ***however, if the Court feels that continuation of criminal proceedings will be an exercise in futility and justice in this case demands that the dispute between the parties is put to an end and peace is restored, it can order for quashing of the FIR or criminal proceedings as it is the duty of the Court to prevent continuation of unnecessary judicial process.***
> *12. In view of the law discussed above, considering the Settlement arrived at between the parties and the statements of respondent no.1 & 2, I am of the considered opinion that this matter deserves to be given a quietus as continuance of proceedings arising out of the FIR in question would be an an exercise in futility."*
>
> [Emphasis added]

13. Further, in ***Narinder Singh & Ors. v. State of Punjab & Anr.***,[6] the Supreme Court held as under:

> "*29.* ***In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in***

[5] (2012) 10 SCC 303
[6] (2014) 6 SCC 466

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giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:

29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. ***No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves****. However, this power is to be exercised sparingly and with caution.*

29.2. ***When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:***

(i) ends of justice, or

(ii) to prevent abuse of the process of any court.

While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives*.*

29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the offences alleged to have been committed under special statute like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.

29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.

29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases."

[Emphasis Supplied]

14. Accordingly, the present petition is allowed with the following directions:

(i) FIR No. 63/2025 and all consequential proceedings arising therefrom

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are hereby quashed.

(ii) The Registry is directed to release the amount of INR 1,02,25,600/- along with accrued interest, in equal proportions, to Respondents No. 2 to 4.

(iii) Upon the Petitioner furnishing TDS certificates, Respondents No. 2 to 4 shall refund the corresponding amount to the Petitioner.

15. The parties shall remain bound by the settlement.

16. Accordingly, the petition is disposed of along with pending application(s).

SANJEEV NARULA, J

NOVEMBER 4, 2025

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