$~72

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

\+ CRL.M.C. 8503/2025, CRL.M.A. 35541/2025 & CRL.M.A. 35542/2025

ADITYA GUPTA & ANR. .....Petitioners

Through: Mr. Ankur Khandelwal, Mr. Kartikay Bhargava, Mr. Divyam Rathi, Advocates.

versus

STATE OF GNCT DELHI & ANR. .....Respondents

Through: Mr. Mukesh Kumar, APP for the State with SI Dipesh Malik, PS EOW, Delhi.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **01.12.2025**

1. This petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023[1] (corresponding to Section 482 of the erstwhile Code of Criminal Procedure, 1973[2]) seeks quashing of FIR No. 0287/2024 registered under Sections 420/467/468/471/120B of the Indian Penal Code, 1860[3] at P.S. Okhla Industrial Area.

2. The FIR emanates from a complaint dated 12th January, 2024, submitted by Respondent No. 2, authorised representative of Ellora Infratech Pvt. Ltd. The complainant alleges that Cloud 9 Projects Pvt. Ltd., through its promoters (including the Petitioners) and broker, marketed a premium real estate project "Lotus Boulevard Espacia / Lotus Peak" at Noida. It is alleged

[1] "BNSS"
[2] "Cr.P.C."

that, in October 2015, the broker and certain co-promoters visited the complainant's office, showed a brochure of Tower 31 described as a 43-storey tower, and proposed to sell Apartments 3701 and 3702 on the 37th floor. On the basis of those representations and after a telephonic conversation said to have taken place with Petitioner No. 1, the complainant issued cheque no. 766664 dated 29th October, 2015 for ₹1 crore in favour of Cloud 9 Projects Pvt. Ltd. towards "booking amount" for the two apartments.

3. The complainant further alleges that a photocopy of the sanctioned plan of the project, obtained from the accused, later revealed that no 37th floor existed in Tower 31 and that Apartments 3701 and 3702 did not figure in the sanctioned layout issued by the Noida Authority. It is also alleged that the same apartments were shown as sold to another entity, Task Infotech Pvt. Ltd., that the amounts collected towards GST were not deposited with the authorities, and that substantial land dues were outstanding against the company with the Noida Authority. On this basis, it is alleged that the promoters and broker acted in concert to use forged or misleading plans, dishonestly induced payments, and caused wrongful loss to the complainant.

4. The petitioners, on the other hand argue an elaborate commercial background. They state that Cloud 9 Projects Pvt. Ltd. was a special purpose vehicle for the project at Noida. The 3C Group controlled the day-to-day affairs of the company and the complainant, far from being a retail homebuyer, was a long-standing business associate of the 3C Group. They rely on a series of agreements (including a Master Agreement for an entire tower, a tripartite construction agreement, and a supplementary agreement),

---

[3] "IPC"

subsequent arbitral proceedings between Ellora and the company, and an earlier FIR lodged by the company against Ellora, to contend that the controversy is at its core a commercial fallout and not a case of cheating or forgery.

5. A substantial part of the petition is devoted to pointing out what are said to be irreconcilable inconsistencies in the complainant's own narrative about the purpose of the very cheque of ₹1 crore dated 29th October, 2015. It is pointed out that, while the FIR describes this cheque as "flat booking amount", the complainant has, in arbitral pleadings and a separate quashing petition relating to FIR No. 70/2022, described the same payment as consideration under the Master Agreement for purchase of an entire tower; and that in the complainant's audited balance sheet it is shown as a loan to the company. On this basis, the petitioners allege deliberate suppression of material facts and even perjury.

6. The petitioners also rely on the fact that they resigned as directors of the company on 31st March, 2017, emphasise that the FIR contains only two stray references to them (a "telephonic confirmation" by Petitioner No. 1 and a "meeting" attended by both petitioners), and urge that there is no specific allegation of any misrepresentation, inducement, or use of a forged document by either of them. They invoke the well-settled principle that criminal law does not recognise vicarious liability for company directors unless the statute expressly provides for it, and rely on Supreme Court decisions holding that directors cannot be proceeded against in the absence of specific allegations detailing their individual role. They submit that mere designation or status as a promoter or director is insufficient to attract criminal liability.

7. At this stage, when the matter is under investigation, it is not appropriate to record any concluded view on these rival positions. For present purposes, it is sufficient to note that the allegations in the FIR concern economic offences involving cheating, forgery of sanctioned plans, and use of forged documents in a large real estate project.

8. While, the Petitioners' contentions are also material, Mr. Mukesh Kumar, APP for the State, on instructions states that the investigation is still at a nascent stage. He submits that the investigating agency is presently examining the documentary trail, including company records, sanction plans, financial transactions, and proceedings before other fora, and that no coercive action is contemplated against the petitioners at this point.

9. The contours of the jurisdiction under Section 528 BNSS (earlier Section 482 CrPC) to quash an FIR at the stage of investigation are by now settled: the inherent power is wide but is to be exercised sparingly and with circumspection, in the rare categories illustrated in *State of Haryana v. Bhajan Lal,*[4] where the allegations even if taken at face value do not disclose any offence, or where continuation of the proceedings would amount to manifest abuse of process or oppression. The Supreme Court has reiterated in *M/s Neeharika Infrastructure Private Limited v. State of Maharashtra,*[5] that the High Court does not ordinarily undertake a mini-trial while an investigation is in progress, and should be slow to interdict a bona fide probe into cognisable offences, save in exceptional circumstances.

10. The submissions advanced on behalf of the petitioners are not brushed aside. They may well furnish arguable grounds at an appropriate stage, if the

[4] 1992 Supp (1) SCC 335
[5] 2021 SCC OnLine SC 315

investigation culminates in a report under Section 193 BNSS (corresponding to Section 173 CrPC) that is adverse to them. These aspects, including the petitioners' specific factual assertions and the material relied upon are for the investigating agency to examine in detail in the course of the probe, as Mr. Mukesh Kumar has stated shall be done.

11. In view of the above the statement and since no coercive action is presently contemplated against the petitioners, as stated by the APP, counsel for the petitioners seeks leave to withdraw the petition, with liberty to avail appropriate remedies in accordance with law in the event any coercive measure is taken or if they remain aggrieved after the investigation attains finality.

12. The petition is accordingly dismissed as withdrawn, with liberty as prayed for. It is clarified that, while completing the investigation, the investigating agency shall duly consider the documents and contentions brought on record by the petitioners, including their claim of having resigned from the company's management in 2017 and the existence of parallel civil and arbitral proceedings, and shall take an informed and independent view on their role, if any, on the basis of the material collected.

13. It is clarified that nothing in this order shall be construed as an expression of opinion on the merits of the allegations in the FIR or on the defences sought to be raised; all rights and contentions of the parties are left open.

SANJEEV NARULA, J

DECEMBER 1, 2025/ab