

No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			<p>C528 No.1114 of 2026 <u>Hon'ble Alok Mahra, J.</u></p> <p>Mr. Sharang Dhulia, Advocate for the applicants.</p> <p>Mrs. Pushpa Bhatt, Additional Advocate General and Mr. S.C. Dumka, A.G.A. for the State of Uttarakhand.</p> <p>2. Learned counsel for the applicants submit that respondent no.2 lodged an F.I.R. on 31.10.2023 against the applicants, alleging therein that, upon seeing an advertisement published in a local newspaper by M/s Octagon Builders and Promoters Pvt. Ltd. regarding a housing scheme namely "Har Har Gange Phase-II Akhil Bhartiya Awaasiya Yojna, Haridwar", the complainant, after making inquiries, invested money for purchase of a plot. It has been alleged that neither the sale deed of the said plot has been executed till date nor has possession thereof been handed over to the complainant; that, upon completion of investigation, the Investigating Officer submitted the chargesheet, whereupon the learned trial Court took cognizance and summoned the applicant.</p> <p>3. Learned counsel for the applicants submits that the learned Magistrate, without proper application of judicial mind, has taken cognizance against the present applicant, despite the admitted position that at the time of booking of the plot, a detailed agreement was executed between the complainant and the company; that, attention of this Court has been drawn towards Clauses 12 and 49 of the said agreement, wherein it has been specifically</p>

stipulated that in the event the company fails to hand over possession of the allotted plot within the stipulated or extended period, the allottee would be entitled to issue a notice seeking termination of the agreement and, in such eventuality, the company would only be liable either to provide an alternative property or refund the deposited amount along with simple interest @ 8% per annum.

4. Learned counsel submits that Clause 49 of the agreement contains an arbitration clause, which provides that all disputes arising out of or relating to the agreement shall first be resolved amicably through mutual discussions and, in case of failure, shall be referred to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, including any statutory amendment or modification thereof. It is thus contended that the dispute between the parties is governed by contractual remedies and invocation of criminal jurisdiction is nothing but an abuse of the process of law.

5. Learned counsel for the applicants submits that M/s Octagon Builders and Promoters Pvt. Ltd. has already gone into liquidation pursuant to the judgment and order dated 27.08.2018 passed by the Hon'ble Delhi High Court in Company Petition No.147 of 2014, Uma Sharma Vs. Octagon Builders & Promoters and Another, wherein the Hon'ble High Court directed the Official Liquidator to take over the assets of the company, prepare an inventory thereof, seal the premises wherever necessary, and take all consequential steps in accordance with law. It is submitted that after passing of the winding-up order and appointment of the Official Liquidator, the affairs and assets of the company came under the control and supervision of the Official Liquidator and the

applicant ceased to have any independent control over the company or its assets, therefore, the criminal proceedings against the applicant is wholly unjustified.

6. Learned counsel further submits that even a bare perusal of the allegations made in the F.I.R. would reveal that the dispute essentially arises out of a commercial and contractual transaction; that, in such matters, a preliminary inquiry is required to be conducted prior to registration of the F.I.R., as mandated by the Hon'ble Supreme Court in Lalita Kumari Vs. Government of Uttar Pradesh and Others, reported in (2014) 2 SCC 1. It is submitted that in the present case, no such preliminary inquiry was conducted before lodging the F.I.R.

7. Issue notice to respondent no.2, returnable at an early date.

8. List this matter after service report is received alongwith C528 No.1052 of 2026. Counter affidavit, if any, be filed in the meantime.

9. Considering the submission advanced by learned counsel for the parties, it is directed that, till the next date of listing, further proceedings of Criminal Case No.621 of 2025 pending before the Court of learned Judicial Magistrate-First, Haridwar, shall remain stayed.

10. Stay application (I.A. No.1 of 2026) stands disposed of.

(Alok Mahra, J.)

01.06.2026

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