2022 INSC 1180

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 940 OF 2017

[I.A. Nos. 108696, 108703, 108670 and 108681 of 2020]

BIKRAM CHATTERJI & ORS. ...PETITIONER(S)

VERSUS

UNION OF INDIA & ORS. ...RESPONDENT(S)

J U D G M E N T

Uday Umesh Lalit, CJI.

1. IA No.108696 of 2020 (Vol.I-147) has been filed by Greater Noida Authority seeking recall of the orders dated 10.06.2020, 19.08.2020 and 25.08.2020 in so far as they related to interest charged by the Applicant on all projects other than the Amrapali Project.

To similar effect, I.A. No.108670 of 2020 (I-148) has been preferred on behalf of the Noida Authority seeking recall of the orders dated 10.06.2020, 19.08.2020 and 25.08.2020.

2. Before we deal with the rival contentions, certain facts which have led to the filing of the instant applications must be adverted to.

A. In Writ Petition (C) No.940 of 2017 which raises grievances on behalf of the purchasers of flats in projects promoted by the Amrapali Group of Companies, this Court has been passing various directions including appointment of Forensic Auditors. When the matter was listed on 22.05.2020, in response to a suggestion made by the learned Receiver in his Note, the applicants were called upon to obtain instructions with regard to interest to be charged and levied on the outstanding premium on account of defaults committed by Amrapali Group of Companies. The matter was then adjourned to 27.05.2020.

B. In response, a Note was filed on behalf of applicants regarding interest payable by the Amrapali Group of Companies.

C. Around this time I.A. No.4139 of 2020 was filed by another builder named Ace Group of Companies seeking certain reliefs on same lines as were prayed for on behalf

of the flat buyers of Amrapali Projects. It was claimed by Ace Group of Companies in this application for general reduction in the interest rates to be charged by the Authority. After having heard the matter on 27.5.2020, the matter which was reserved for orders.

D. Before the Order could be passed by this Court, considering the problems in cash flow related to Covid-19 pandemic situation and its aftermath, a general direction was issued on 09.06.2020 by the Uttar Pradesh State Government reducing the rate of interest charged by the Authorities.

E. On 10.06.2020 the order was passed by this Court in the matter which was heard on 27.5.2020. Paragraph 31 of the order dealt with the report of the learned Receiver while paragraph 32 of the order referred to the IA filed by the Ace Group of Companies and the facts pertaining to said Group were set out in Paragraphs 32 and 33. After noticing that the rate of interest had gone down, this Court issued directions that interest on the outstanding premium “to be realised in all such cases” be at the rate of

8% per annum. The relevant paragraphs of said order dated 10.06.2020 were as under:

"**In Re. I.A. No. 49139 of 2020 (Interest to be realized on the outstanding dues by Noida and Greater Noida Authorities)**

31. Learned Receiver has pointed out that there is a lack of clarity concerning dues of local authorities/banks/lenders. It has been submitted that proper relaxations and concessions are required to be given concerning such dues.

32. In the interlocutory application filed by Ace Group of Companies, precarious conditions in the entire Noida and Greater Noida region faced by the developers have been pointed out. It is submitted that following economic recession in the last decade, the entire real estate sector has gone downwards and facing acute financial crunch and is fighting for its survival. The projects are incomplete, there were various litigations which created a huge financial impact and non-delivery of projects, which reflects the pathetic condition of the real estate sector. Multiple issues are pointed out, which are adding to the woes of the developers. It is averred that the developers and the home buyers both are adversely affected due to non-delivery of booked flats in the regions of Noida and Greater Noida etc.

33. The Ace Group of Companies obtained the plots between the period 2010 and 2015 from the Authorities in the aforesaid areas. The Noida Authority is raising additional demand at the rate of Rs. 600 per square meter, whereas Greater Noida Authority is raising demand at the rate of Rs. 1700 per square meter. Due to recession, developers operating in the region were not able to receive the requisite amount on time from home buyers. For one reason or the other, development work of the projects was halted. The Authorities are levying excessive interest and penal interest, which continues to rise exponentially, culminating into huge dues, and in some cases, the cost of the allotted land has doubled than what it was originally fixed at the time of allotment over a period of time and that the premium of the land has enhanced manifold after adding the interest and penal interest thereon, and other liabilities are also fastened. There is also considerable delay in the completion of the projects as scheduled initially. The cost of completion of

the project has thus increased manifold due to delay in construction and has also resulted in price rise of important construction components, material, and labour. The burden of Service Tax and other cess and statutory charges have also increased manifold. Though various companies managed to raise the construction, however, the cost of land originally allotted has doubled. The real estate sector is facing financial distress due to the various intervening factors. The rate of interest has also gone down substantially. Due to delay, in may cases refund order has also been passed by Consumer Forums, which is adding financial constraints on the part of developers. They are on the verge of completely financially drained out. It is urged that interest rate and the delayed penalty being charged by the Authorities on the allotted plots of land is excessively higher than the prevailing financial market scenario whereas there has been gradual and consistent fall in the interest rates since 2010 itself. However, the interest rates of the Authorities have remained exorbitant contrary to the prevailing economic situation of the country. The rates of interest charged by the Authorities are extremely high. Apart from that, penal interest on delayed payment is also added. The rates have been increased from 11% to 14% - 15% to 18% - 23% per annum.

34. It is submitted by SBI MCLR (Marginal Cost of Funds based Lending Rate) rate of interest for three years is 7% to 8%, and in the last six months, it has further come down to 7.85%. If the base rate of SBI MCLR is compared with the interest rate charged by the Noida and Greater Noida Authorities, one can easily find out that it has drastically been reduced over the years and ranges between 7.5% to 8.15% over the last ten years. The rate and historical data on the base rate of SBI is filed.

35. It is further averred that over a period of time in the last five years, the Banks have also reduced the interest paid on Fixed Deposits and currently, it ranges between 6% to 7% only. However, Noida and Greater Noida Authorities, despite allotting encumbered and disputed land coupled with various other issues, failed to take any step to either reduce the exorbitant rate of interest or completely waive off the interest and other charges on account of delay and default in paying the land dues. The Developers and the applicants and home buyers have acquired valuable right in the land by paying the hefty amount. The developers have made numerous efforts by approaching the concerned authorities for redressal of

their grievances. Till date, there has been no resolution. Neither the Authorities nor the State Government has taken the issues seriously. The issue of the interest affects the public at large, particularly the home buyers and the interest of banks and financial institutions as well besides that of Authorities. It is not possible to pay their dues. Presently, in the wake of COVID 19 pandemic and its outbreak in India, there is a continuous nation-wide lockdown. There have been absolutely no business and commercial activities in this sector, and the entire real estate industry has come to a grinding halt causing further financial losses and damages to the real estate sector, which is generally in a precarious condition in the Delhi/NCR region. Therefore, prayer has been made that there should be a complete waiver of interest component in the repayment of land dues of Noida and Greater Noida Authorities, and payment schedule towards lease rent and premium may be extended. It is further submitted that various companies have stopped production of the construction/building material in the wake of lockdown. Most of the labourers have gone back to their home States resulting in shortage of labourers. In short, it is submitted that the real estate sector is facing a crisis, and due to various aforesaid reasons, the timeline for completion of projects may be deferred by one more year. Due to excessive lease rent, penalty and interest charged and levied, additional land costs demanded, and charged on the land allotted, various projects are stalled. Most of the projects have acquired the status of dormant projects.

36. We are considering prayer Nos. 1 and 2 of the I.A. with respect to interest to be realized on the outstanding dues by Noida and Greater Noida Authorities.

37. The rates of SBI MCLR is reduced to 7.45 % in the year 2020 from 8.95% in the year 2016. It is clear that the Noida and Greater Noida Authorities, on the outstanding dues, are realizing the dues from all such projects, interest at exorbitant rate such as 15% per annum with half-yearly compounding and in addition are also realizing penal interest on the amount as fixed from time to time.

38. We have noted in the judgment dated 23.7.2019 the figure given by the Noida and Greater Noida Authorities that after 2005, 114 plots had been allotted to various group housing societies. 81 plots were handed over the possession on payment of 10% of the total premium. 29 projects, out of 81 were completed. Out of the other 33 allotted earlier, 11 were completed, and 7 obtained part-completion certificates. Thus, it is apparent that more

than 60% of projects have not been able to come up so far. We have also noted that the Noida and Greater Noida Authorities did not take the step of termination of leases for various reasons. A large number of home buyers have been waiting now approximately for the last 8 to 10 years or more for completion of houses. It is not in dispute that the real estate sector has suffered a setback at present. It contributes to the GDP of the country. As a large number of projects have not come up, at the same time, Noida and Greater Noida Authorities have not been able to realize their dues from such projects which are being piled up for the last several years, at the same time interest of home buyers has intervened. Even on the plots where the land was allotted from 2005 onwards, the projects have not been completed so far, though the buyers have paid their money. The Noida and Greater Noida Authorities are not issuing completion certificates to such projects and they are not able to realize their outstanding dues. For various reasons, constructions have not been completed, including due to diversion of funds. There is a failure to comply with the obligation to the home buyers whose money has been invested in the partially constructed structure and partial dues have been paid to the Noida and Greater Noida Authorities.

39. It cannot be disputed that the rate of interest, on which agreements were entered into, has gone down by now. The present lending rate is much below and the RBI has taken several steps to revive the economy. In such a scenario, it would never be possible to make payment of interest at the rate fixed by authorities and also a penal interest to be realized by concerned authorities. The home buyers are not able to obtain fruits of the investment and are deprived of legal title of the flats.

40. We have heard the learned counsel appearing for Noida and Greater Noida Authorities. Learned senior counsel also drew our attention to the following observations made by this Court in the judgment dated 23.7.2019:

> "72. In our opinion, if the real estate business has to survive in India, it has to be answerable to the public and has necessarily to uphold the trust reposed in builders/promoters. They have been paid huge amounts not only by the home buyers but also, they have to pay a huge amount for the public land given to them on lease by Noida and Greater Noida Authorities for construction of houses. The land has been

given to them by the authorities on a concessional basis by making payment of 10% amount at the time of allotment. The builders have to be accountable to public/home buyers as well as the authorities and bankers. It is a matter relating to housing needs dealing with shelter place, such an activity is of the public importance as the real estate sector plays a pivotal role in the fulfillment of needs of housing infrastructure."

41. It was also argued by the learned senior counsel that even if the builder may have factored the valuation of price, including interest on the cost of the land, the lease deed and the authorities will remain unaffected. A prayer was made that the authorities may be given liberty to recover their amount of interest from the builder at the contractually agreed rate under the lease deed. It was lastly and rightly pointed out that the Court can fix a reasonable rate of interest. Considering the present scenario, we feel that the aforesaid submission is justified.

42. Considering the current state of real estate, the projects are standstill, and in order to give impetus to such housing projects and mainly considering plight of home buyers and as pointed out by Noida and Greater Noida Authorities that 114 plots were allotted from 2005 onwards, most of projects are incomplete; we direct that rate of interest on the outstanding premium and other dues to be realized in all such cases at the rate of 8% per annum and let the Noida and Greater Noida Authorities do a restructuring of the repayment schedule so that amount is paid and Noida and Greater Noida Authorities are able to realize the same. As to reasonable time frame, we would like to hear the parties. In case of failure to pay, the concession granted shall stand withdrawn. However, at the same time, the Noida and Greater Noida Authorities shall also ensure that not only instalments/money are deposited, but also all such projects are completed within the stipulated time."

F. An application for clarification was immediately moved on behalf of the Authorities on 15.6.2020. The principal

relief claimed in this application was that the order dated 10.06.2020 be declared to be operative only prospectively. The matter was heard on 19.08.2020 when following order was passed by this Court:

> "Vide order dated 10.07.2020, we have ordered the payment as per the MCLR Rate. It has been pointed out by the learned senior counsel appearing on behalf of NOIDA/Greater NOIDA that MCLR rate is applicable with effect from 01.04.2016, and not before that. It has also been pointed out that prior to that, SBAR rate was applicable from 01.01.2010 to 30.06.2010 and thereafter, the rate which was applicable was called the Base Rate (*w.e.f.* 01.07.2010 till 31.03.2016). The details of the rates have been given in Annexure I of the Affidavit.
>
> In the circumstances, since MCLR rate is not available for the entire period and the intention of our order was that the rate chargeable by the Bank has to be paid, we modify the order to the effect that the rate from 01.01.2010 to 30.06.2010 would be SBAR, as specified in Paragraph 1 of Annexure I and thereafter, the Base Rate as provided in that paragraph would be applicable with effect from 01.07.2010 till 31.03.2016 and thereafter, MCLR would be applicable with effect from 01.04.2016 onwards, as ordered by this Court.
>
> The order dated 10.07.2020 is modified/clarified to the aforesaid extent."

G. I.A. No. 80560 of 2020 was then filed by the Authorities with the submission that as a consequence of the orders passed by this Court the contractual rate stood completely overridden and the builders would now require to pay interest at the rate of 9.5%.

H. The order passed on 25.8.2020 by this Court shows that after referring to the aforestated two orders, it was observed as under:-

> "It is apparent that the order dated 10.06.2020 is not to realise 'penal rent' as well as it is to charge simple rate of interest, not on compounding basis. We have directed interest per annum. We clarify the same to be simple rate of interest as may be applicable from time to time even during year. The order to be complied with by the NOIDA/Greater NOIDA accordingly. The demand has to be monitored. Let the demand be revised and fresh demand be made in the true spirit of the order.
>
> In view of the above, the application is disposed of."

3. In these circumstances, the instant applications have been preferred on behalf of the Greater Noida Authority and NOIDA Authority seeking recall of the orders dated 10.06.2020, 19.08.2020 and 25.08.2020 passed by this Court. It is submitted in I.A. No.108696 of 2020 as under:

> "5.It is submitted that in the first instance, the orders provide no jurisprudential basis for overriding contractual interest and that too only in relation to the Applicant. 'There are multifarious contracts entered into by parties in relation to supplies of goods and services. All these contracts contain interest provisions. The levy of compound interest, on a contractual basis, is not just well established in India but is well established internationally. The charging of interest under a contract is a matter of negotiation between the parties and once a contract is entered into, the sanctity of the contract cannot be forsaken in this manner without there being any supervening illegality being established in relation to any term the contract.

7. The settled law, reiterated in a number of judgements of this Hon'ble Court is that when a person bids for a property or being put on the market by the Government on terms that are made public, the terms and conditions on which the property is bid for an acquired cannot be altered much less challenged after the contract was entered into.

8. Finally, if any term of a contract is found to be illegal, then the contract has to be unravelled in a manner so that there is restitution to both parties. A person who is acquired property belonging to the Government cannot renege on one element of the contract and walk away specially where the element is so important being a part of the consideration for the acquisition of the property.

9. Even in the matter of “unfairness” and its evaluation, the orders made by this Hon'ble Court , it is respectfully submitted, are based on a deeply flawed premise that institutions such as the Applicant are on par with banks and should charge interest rates comparable to the base rates charged by the banks. The rates on which interest has now been directed to be charged are far below the rates charged by nationalised banks even in the present times for giving loans to builders. For example the Bank of Baroda charges 13.2% interest and in certain transactions the Canara Bank has charged interest at 16.05 % even in relation to loans granted in 2020.

10.. The Applicant has been charging interest at 11% on the premium of the land and this is computed on 16 half yearly instalments. The notion of compound interest is based on an understanding that, for purposes of interest, the instalments will be paid in the duration. Thus an interest rate, which requires compounding quarterly, is charged on the premise that every quarter the sum in question could be paid and if it is not paid, it would be added to the principal for purposes of computing interest for the next quarter and so on. If the amount in which interest has been charged during a quarter is paid back within the quarter, there is no question of compounding.

11. In the case of the Applicant, if the premium is paid upfront, there is no question of any interest, the advantage of the long lead time for payment of the

premium of the land is on terms of payment of interest at 11%. Any person bidding for the property would take into account the interest chargeable while computing the commercial worth and value of the acquisition. It bears emphasis that the builders will acquire these lands for commercial projects and not for building their own homes.

12. A builder who acquires property from the Applicant does so on the commercial terms which are made public before the bids are awarded. The builder takes the commercial risk of the development of the property and gets to keep the entire profit made in the project. The Applicant has no upside if the builder earns greater returns than what were contemplated at the time when the property was sold. Equally, the purpose of selling these properties to private builders is to de-risk government and government agencies and allow the development by private capital and one very important aspect of that is that the risks of the project are taken by private promoters.

13. The result of the orders made by this Hon'ble Court, it is respectfully submitted, has fully passed on the downside to the Applicant without even examining the facts of individual cases."

4. Similar submissions are advanced in IA No.108670 of 2020.

5. In response to these applications Ace Group of Companies has submitted:-

"…
3. A perusal of the Order and Judgment dated 10.6.2020 by this Hon'ble Court establishes that the said Order was passed granting one time concession for the very survival of the real estate sector owing to the precarious condition prevailing in the entire region of Noida and Greater Noida area for last almost 12-15 years.
4. It is a matter of record that the overall dire precarious situation in the region was caused due to the fact the Government authorities breached rules by acquiring Land in violation of the established rules and

regulations leading to multifarious and prolonged litigations at the behest of the farmers. Various environmental issues cropped up during the construction period of the projects, leading to prolonged stay in construction activities. All these factors resulted in huge delays in completion of the projects within the scheduled construction period. This also caused huge monitory loss, loss of crucial development period and huge blocking of funds of the developers. All these reasons badly jolted the entire real estate sector in the region.

Further, despite supporting over 250 other industries, contributing almost 20% to GDP and being the largest employment generator after agriculture, the real estate sector never received any concession by the State authorities.

6. In this factual background, the Order and judgment dated 10.06.2020 was passed to serve the twin purposes i.e. to ensure timely construction of projects and to ensure that the Authorities also receive their dues in a timely manner, the Hon'ble Court granted a onetime concession by reducing the rate of interest of all the allottees of all types of land w.e.f. 01.01.2010 with the rider that in case of failure to pay the dues in time to the authorities, the concession granted shall stand withdrawn. The aforesaid one time concession has been granted by this Hon'ble Court uniformly to all types of allottees and all the leaseholders of the Noida and Greater Noida Authorities. It has specifically recorded in para 39 of the said order, that,

> *It cannot be disputed that the rate of interest, on which agreements were entered into, has gone down by now. The present lending rate is much below and the RBI has taken several steps to revive the economy. In such a scenario, it would never be possible to make payment of interest at the rate fixed by authorities and also a penal interest to be realized by concerned authorities. ……. "*

7. Therefore, the instant application seeking recall of the orders dated 10.6.2020, 19.08.2020 and 25.08.2020 is *ex facie* bad in law and devoid of merits. Moreover, the Order and judgment dated 10.06.2020 passed by this Hon'ble Court was duly modified/ clarified on an identical and similar application filed by the Noida and

Greater Noida Authorities vide an Order dated 10.07.2020.

6. The order dated 10.07.2020 which has been referred to, was to the following effect.

> "I.A. Nos. 59415 of 2020 and 59400 of 2020.
>
> Considered the prayer made by Mr. Tushar Mehta, learned Solicitor General of India, appearing for Greater Noida Authority and Mr. Mukul Rohtagi, learned senior counsel, appearing for the Noida Authority.
>
> It was submitted that the order dated 09.06.2020 passed with respect to 8% interest be made prospective. It was also pointed out that the Government has specified the rate at the SBI Lending Rate, to be paid. As per that, the dues to be paid comes to 8.5%.
>
> After hearing learned counsel for the parties, we are of the opinion that SBI MCLR Rates to be applied uniformly to all the lease holders. Their past dues as well as arrears to be worked out accordingly. In case any adjustment is to be made, let the adjustment be made accordingly and the current dues also to be worked out at the SBI MCLR Rates. Future dues be also worked out at the SBI MCLR Rates, which may be fixed. Remaining order is not modified. The only modification made is about the rate of interest.
>
> It is clarified that SBI MCLR rate to be applied with effect from 1.1.2010 and previous dues to be paid as per the rate, as provided in the agreement.
>
> The Noida and Greater Noida Authorities to work out the dues within one month. 25% of the amount of the dues shall be deposited within 3 months and the remaining amount within one year from 31 today, failing which concessional rate shall stand withdrawn. The applications are accordingly disposed of."

7. Similar assertions are made in the response filed on behalf of the Prateek Buildtech (India) Pvt. Ltd. According to said

company, it was entitled to have the outstanding amounts adjusted in terms of the orders issued by this Court. The details of the projects completed by the said company are referred to in the reply as under:

> "m. That the Applicant Company, through its group companies has been allotted the following plots for the development of group housing projects as well as the progress of the Applicant on the said projects:

Sl. No.	Plot No. & Location	Allottee Company	Project Name & Number of Flats Constructed	Date of Allotment & Lease Deed
1.	E-11 Sector-61, Noida	Prateek Buildtech (India) Pvt.Ltd.	Prateek Fedora 251	26.12.2008/ 31.12.2008
2.	GH-04/B Sector-45, Noida	Prateek Buildtech (India) Pvt. Ltd.	Prateek Stylome 545	08.03.2010/ 31.03.2010
3.	GH-01 Sector-120, Noida	Prateek Realtors India Pvt. Ltd.	Prateek Laurel 1530	10.12.2009/ 07.01.2010
4.	GH-01 Sector-77, Noida	Prateek Realtors India Pvt. Ltd.	Prateek Wisteria 1800	31.03.2010/ 26.05.2010
5.	GH-01/A (Beta-II) Sector-107, Noida	Prateek Infraprojects India Pvt. Ltd.	Prateek Edifice 423	02.02.2012/ 15.02.2012

Response has also been filed on behalf of Prateek Realtors (India) Private Limited, a company under the same management, giving following details with regard to its projects

> "m. That the Applicant Company, through its group companies has been allotted the following plots for the development of group housing projects as well as the progress of the Applicant on the said projects:

Sl. No.	Plot No. & Location	Allottee Company	Project Name & Number of Flats Constructed	Date of Allotment & Lease Deed
1.	E-11 Sector-61, Noida	Prateek Buildtech (India)Pvt.Ltd.	Prateek Fedora 251	26.12.2008/ 31.12.2008
2.	GH-04/B Sector-45, Noida	Prateek Buildtech (India)Pvt. Ltd.	Prateek Stylome 545	08.03.2010/ 31.03.2010
3.	GH-01 Sector-120, Noida	Prateek Realtors India Pvt. Ltd.	Prateek Laurel 1530	10.12.2009/ 07.01.2010
4.	GH-01 Sector-77, Noida	Prateek Realtors India Pvt. Ltd.	Prateek Wisteria 1800	31.03.2010/ 26.05.2010
5.	GH-01/A (Beta-II) Sector-107, Noida	Prateek Prateek Infraprojects India Pvt. Ltd.	Prateek Edifice 423	02.02.2012/ 15.02.2012"

An amount of Rs.23.78 crores being outstanding on behalf of these two group companies was tendered along with the representation dated 28.3.2020. However, there was no response on behalf of the Noida Authority.

8. In rejoinder, it is submitted on behalf of the Noida Authority as under:-

(A) Prior to the filing of the instant applications, the authorities were not able to fathom the extent of the financial loss that would accrue to them upon reduction of contractual rate of interest. In the plots allotted to the Ace Group of Companies by Greater Noida Authority alone, the financial loss would be to the tune of Rs.55.41 crores.

(B) The financial loss to Greater Noida Authority in relation to all the Group Housing Projects would exceed Rs.4,279/- crores, while that to the Noida Authority would be more than Rs.3,000 crores.

(C) The rate of interest for availing facility of deferred payment on instalment by the builders was in consonance with the rate of interest that was been charged by the banks. The rate of interest was disclosed in the brochure, in the allotment letter and in the consequential lease deed. Said rate was acted upon by the parties with open eyes.

(D) There was no material for reduction in the contractual rate of interest except what was stated by Ace Group of Companies when the application preferred by it came to be allowed by this Court.

(E) It was not disclosed by Ace Group of Companies that they were actually levying on their flat buyers interest at the rate of 18 %.

9. This rejoinder reflects the stand on behalf of both the Authorities.

10. Appearing for Noida and Greater Noida Authorities, Mr. Harish N. Salve, learned Senior Advocate has submitted *inter alia*:

(A) The point of initiation for order dated 10.06.2020 was a note of the learned Court Receiver dated 22.5.2020 and by very nature it was purely in the context of Amrapali Group of Companies and had nothing to do with flat buyers from projects undertaken by builders other than Amrapali Group of Companies.

(B) On 27.5.2020, an application preferred by Ace Group of Companies being IA No.49139 of 2020 was listed before the

Court for the first time when this Court was pleased to issue notice. The matter was adjourned to 3.6.2020 when following orders was passed by this Court:-

> "...We have considered the application (I.A. No. 49139/2020) with respect to the interest part. We have already heard the other matter relating to interest and this application is heard and reserved with respect to interest part."

(C) In these circumstances, I.A. No.49139 of 2020 was taken up along with the matter pertaining to Amrapali Group of Companies. There was hardly any discussion on the point nor was any reply submitted on behalf of the Authorities to the application preferred by Ace Group of Companies.

(D) An application preferred by Supertech Group of Companies being I.A. No.74824 of 2020 praying for similar relief was dealt with by this Court in its order dated 13.8.2020 as under:-

> "I.A. NO. 74824 of 2020
>
> This application is permitted to be withdrawn with liberty to avail appropriate remedy before the appropriate forum and not in this petition.
>
> The application not to be entertained in this petition.
>
> The application is, accordingly, dismissed as withdrawn."

(E) On 7.9.2020, Contempt Petition Nos.525, 526, and 527 of 2020 filed on behalf of one of the builders alleging non-compliance of the orders passed by this Court with regard to reduction of rate of interest were disposed of by this Court as under:-

> "Contempt Petitions (Civil) Nos. 525/2020, 526/2020 and 527/2020
>
> Heard.
>
> In our view, no contempt is made out as no specific directions were issued in the case of the contempt petitioners.
>
> The contempt petitions are, therefore, closed giving liberty to file appropriate proceedings available in law."

(F) Subsequently, similar application preferred by some of the interested builders were dealt with by this Court its order dated 21.9.2020 as under:

> "V. In Re: RATE OF INTEREST
>
> While dealing with the subject concerning rate of interest to be realised on outstanding dues by NOIDA and Greater NOIDA, this Court in its order dated 10.06.2020 had observed as under:
>
> > "39. It cannot be disputed that the rate of interest, on which agreements were entered into, has gone down by now. The present lending rate is much below and the RBI has taken several steps to revive the economy. In such a scenario, it would never be possible to make payment of interest at the rate fixed by authorities and also a penal interest to be realised by concerned authorities. The home buyers are not able to

obtain fruits of the investment and are deprived of legal title of the flats.

x x x

42. Considering the current state of real estate, the projects are standstill, and in order to give impetus to such housing projects and mainly considering plight of home buyers and as appointed out by NOIDA and Greater NOIDA Authorities that 114 plots were allotted from 2005 onwards, most of projects are incomplete; we direct that rate of interest on the understanding premium and other dues to be realized in all such cases at the rate of 8% per annum and let the NOIDA and Greater NOIDA Authorities do a restructuring of the repayment schedule so that amount is paid and NOIDA and Greater NOIDA Authorities are able to realize the same. As to reasonable time frame, we would like to hear the parties, in case of failure to pay, the concession granted shall stand withdrawn. However, at the same time, the NOIDA and Greater NOIDA Authorities shall also ensure that not only instalments/money are deposited, but also all such projects are completed within the stipulated time."

Later, said order dated 10.06.2020 on the aforesaid issues was clarified/modified by further orders dated 10.07.2020, 13.08.2020 and 25.08.2020.

It appears that large number of applications are getting preferred by builders/developers who are not connected with Amrapali projects, seeking *inter alia* implementation or clarification or praying for further benefits. Our experience on last few occasions has been that these applications take up considerable length of time, as a result of which the main matters or the issues touching upon the completion of Amrapali projects get sidelined. We, therefore, direct that hereafter the Registry shall not entertain and list before the Bench dealing with Amrapali projects, any application on the issue concerning rate of interest to be charged on the outstanding dues to NOIDA/Greater NOIDA and any other allied subjects from the Builders/Developers who are not connected with Amrapali projects. All the Interlocutory Applications by the Builders/Developers are therefore disposed of without any orders but reserving the remedy to the concerned applicants to take appropriate action as is open in law."

(G) The Rate of interest payable by the concerned builders to the Authority was one which had the genesis in the Allotment Letters, Lease Deed and was thus to the knowledge of everyone. Consequently, amount of interest went into inputs forming part of the price payable by the consumers. At no stage, any of the builders was aggrieved by the rate of interest.

(H) The well-established principle has been not to interfere with the terms of a commercial contract, to which there are certain exceptions like the case dealt with by this Court in ***Central Inland Water Transport Corporation Limited and Another v. Brojo Nath Ganguly and Anr.***[1] where the concerned Clause in the contract was found to be *per se* arbitrary. However, no such plea that the terms in the contract were unconscionable was ever taken by anyone nor was there any factual foundation in support of such plea.

(I) The effect of the burden as a result of the relaxation in the rate of interest was to the tune of Rs.4,279/- crores for Greater Noida Authority and Rs.3,266/- crores for Noida Authority. These figures were never in contemplation when

[1] (1986) S SCC 156.

the aforesaid orders dated 10.6.2020, 19.8.2020 and 25.8.2020 were passed by this Court.

11. Mr. Ranjit Kumar, learned Senior Advocate and Mr. Gaurav Mitra, Advocate appearing on behalf of Prateek Group of Companies, Mr. Navin R. Nath, learned Senior Advocate appearing for Ace Group of Companies, Mr. Kapil Sibal, learned Senior Advocate appearing for Paramount Group of Companies and Mr. Abhishek Manu Singhvi, learned Senior Advocate appearing for Ajnara Group of Companies have advanced following submissions in reply:

(A) These applications are nothing but repetition of what was argued on behalf of Authorities on 10.7.2020 and the prayers having been rejected, the only recourse possible was to file a review petition and not recall application.

(B) Paragraph 38 of the order dated 10.6.2020 had noted that large number of plots were allotted to various Group Housing Societies and large number of these projects had not come up as a result of which the Authorities were not able to realise their dues from such projects.

(C) Paragraph 40 of the said order referred to paragraph 71 of the order dated 17.1.2019 which was to the following effect.

> "72. In our opinion, if the real estate business has to survive in India, it has to be answerable to the public and has necessarily to uphold the trust reposed in 35 builders/promoters. They have been paid huge amounts not only by the home buyers but also, they have to pay a huge amount for the public land given to them on lease by Noida and Greater Noida Authorities for construction of houses. The land has been given to them by the authorities on a concessional basis by making payment of 10% amount at the time of allotment. The builders have to be accountable to public/home buyers as well as the authorities and bankers. It is a matter relating to housing needs dealing with shelter place, such an activity is of the public importance as the real estate sector plays a pivotal role in the fulfillment of needs of housing infrastructure."

(D) Thereafter the learned counsel had left it to this Court as is evident from paragraphs 41 and 42 of the order, which were to the following effect:

> "41. It was also argued by the learned senior counsel that even if the builder may have factored the valuation of price, including interest on the cost of the land, the lease deed and the authorities will remain unaffected. A prayer was made that the authorities may be given liberty to recover their amount of interest from the builder at the contractually agreed rate under the lease deed. It was lastly and rightly pointed out that the Court can fix a reasonable rate of interest. Considering the present scenario, we feel that the aforesaid submission is justified.
>
> 42. Considering the current state of real estate, the projects are standstill, and in order to give impetus to such housing projects and mainly considering plight of home buyers and as pointed out by Noida and Greater

Noida Authorities that 114 plots were allotted from 2005 onwards, most of projects are incomplete; we direct that rate of interest on the outstanding premium and other dues to be realized in all such cases at the rate of 8% per annum and let the Noida and Greater Noida Authorities do a restructuring of the repayment schedule so that amount is paid and Noida and Greater Noida Authorities are able to realize the same. As to reasonable time frame, we would like to hear the parties. In case of failure to pay, the concession granted shall stand withdrawn. However, at the same time, the Noida and Greater Noida Authorities shall also ensure that not only instalments/money are deposited, but also all such projects are completed within the stipulated time."

(E) The jurisprudential basis with which all these directions were issued, was right of shelter for every such similarly situated flat buyer whose interest needed protection.

(F) Soon after the order passed on 10.7.2020, Contempt Petition filed on behalf of the Ace Group of Companies was dealt with by this Court in its order dated 13.8.2020:

"Contempt Petition (C) Diary No.16757/2020

Issue notice.

Mr. Ravindra Kumar, learned counsel, appears and accepts notice on behalf of NOIDA and Greater NOIDA.

Let calculation mistakes be corrected and the order be worked out in pith and substance by the next date of hearing.

At the same time, it was pointed out by Mr. Keshav Mohan, learned counsel, that the dues have not been worked out and neither the correct notices issued. As such, the time which was fixed by this Court for payment is being consumed by the NOIDA itself.

We direct the NOIDA to implement the order in pith and substance and correct all such errors within seven days,

otherwise the same will be viewed seriously and the concerned officers/officials shall have to face the consequence of noncompliance.

Let NOIDA and Greater NOIDA file affidavit of compliance as well as the requisite documents, in the meantime."

(G) In the subsequent application being Volume R-117 all the submissions were advanced on behalf of the authorities but no prayer was made for recall of the order dated 10.7.2020

(H) Affidavits in compliance of directions dated 13.8.2020 being Volume Nos.R-76 and R-77 were filed on behalf of the Noida and Greater Noida Authorities on 18.8.2020. Said affidavit contained details of calculation for a large number of projects including the percentage of loss caused to the Authorities as well as the fact that in certain instances the Authorities would be required to make refunds.

(I) In substance, the Authorities were requesting for recall of orders after the matters were gone into by this Court at least on three occasions.

12. To a query whether the benefit resulting out of the orders passed by this Court was passed on to the consumers, some of

the learned counsel have submitted that they were ready to pass on the benefit and undertakings to that effect have been filed in this Court. Every learned counsel has presented individual facts as to how much had been paid by the concerned builders all through and what would be the notional impact as a result of the orders passed by this Court.

13. We have considered the rival submissions and have also gone through the written submissions filed on record.

14. In these proceedings we are principally concerned with the plight of flat holders of Amrapali Group of Companies. In order to see that the projects do not remain stalled and the investment made by all the flat buyers comes out of cloud of uncertainty, certain measures were adopted by this Court in its order dated 23.07.2019. Those measures contemplated restriction on the Noida and Greater Noida Authorities to resume the properties in question, as well as, cancellation of lease deed granted in favour of Amrapali Group of Companies and vesting all the rights in favour of the Court Receiver and NBCC was appointed to complete various projects. These directions were passed in the peculiar facts and circumstances in Amrapali Projects. It was in

light of these directions that one of the issues which came up for consideration before the Court related to reduction in rate of interest. The dues payable to Noida or Greater Noida in respect of projects of Amrapali Group of Companies would otherwise have been liable to pay along with interest at certain rates. Since that would have put additional burden on the entire project, it was deemed appropriate to consider reduction in rate of interest.

15. At that juncture, an application filed on behalf of ACE group of companies was listed for the first time on 27.05.2020 by which time the note prepared by the learned Court Receiver seeking reduction in rate of interest for Amrapali Group of Companies was taken up on 25.05.2020 and the order was reserved. The order dated 27.05.2020, as extracted hereinabove noted the fact that similar matter was under consideration and therefore reserved order in that matter. The record indicates, no reply was filed by the concerned authorities nor were they may aware of the impact of such application preferred by ACE Group of Companies.

16. The order dated 10.06.2020 did consider the case projected by ACE group of companies in its application dated 27.05.2020

but as indicated earlier, there was no response on behalf of the concerned authorities. It must be noted that this court in the present matter was not in any way concerned with the facts and circumstances pertaining to any of the flat buyers in projects of ACE Group of Companies. No grievance was raised by anybody that the individual flat buyers were put to prejudice as a result of rate of interest charged on the amounts due. What was under consideration before the court was the peculiar fact situation pertaining to Amrapali Group of Companies. Neither was there any general petition on behalf of any or all builders of Noida or Greater Noida in a manner known to law nor was the scope of the matter vide enough to consider any such plea advanced on behalf of ACE Group of Companies.

17. Around this time a decision was taken by the State Government on 09.06.2020 giving reduction in interest rates generally to all builders pertaining to all projects. However, this court was not aware of the order dated 09.06.2020 when the order was pronounced on 10.06.2020 in the matter reserved earlier. It is true that though it was completely beyond the scope of instant matters to consider the cases of other builders, this

Court did to consider the case of builders such as ACE group of companies and the matter was dealt with in its order dated 10.06.2020. However, at that juncture it was not known to this court that huge amount running into more than Rs. 3000 – 4000 crores for Noida and Greater Noida Authorities, would be in issue.

18. As a result of the orders passed by this court the builders are now asking for adjustment of whatever they had paid earlier and in certain cases they are even demanding refund of the amount paid in excess. In every case, the concerned builder had opted for allocation of plot on the basis of brochure which had clearly indicated the rate of interest. The allotment letter and consequential lease deed carried the same intent. Thus, every builder was well aware and had entered into transaction with Noida and Greater Noida Authorities with open eyes. Whatever was the impact on account of that rate of interest must have been subsumed in the price which was arrived at and had to be paid by every flat holder.

19. In cases where contractual terms were sought to be invalidated this court has repeatedly refrained from entering into

such issues. In ***Jagdish Mandal vs. State of Orissa***[2] the conclusions arrived at by this Court were as under:

> "**22.** Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:
>
> (*i*) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;
>
> OR
>
> Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

[2] (2007) 14 SCC 531

(*ii*) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

20. If even in normal circumstances, the interference with contractual terms is not easily to be taken resort to, it does not stand to reason that in a matter with which this court was not even concerned, the benefit could be extended to the entire body of builders of Noida and Greater Noida. Reference made to a number of stalled projects including some of the projects of the builders who are presently before us, cannot be taken as an indication that the benefits which were to be extended to the flat buyers from Amrapali Group of Companies must also be extended to the flat buyers to the other projects from Noida or Greater Noida.

21. Some of the orders, namely the order pertaining to IA No.74824 of 2020 allowing Supertech Group of Companies to withdraw their application as well as order dated 07.09.2020 in Contempt Petition Nos.52525, 52526, 52527 of 2020 stating that no contempt was made out, are an indication that this court was

not concerned that the matter pertaining to projects other than Amrapali Group of Companies.

22. The objections that the proper jurisdiction to be exercised would be jurisdiction in review, according to our considered view, is purely technical. The matter was dealt with by the Bench dealing with questions relating to Amrapali Group of Companies. The circumstances delineated also show that a completely different matter came to be dealt with by the Bench principally concerned with matters of Amrapali Group of Company. No adequate notice was given to the concerned Authorities and the exact impact of the decisions was also not made known to the Court when these orders were passed. We therefore have no hesitation in rejecting all these technical submissions.

23. In conclusion, we must say that this Court erred in granting relief to projects other than Amrapali Group of Companies vide its orders dated 10.06.2020, 19.08.2020 and 25.08.2020.

24. Consequently, the instant applications are allowed and the orders dated 10.6.2020, 19.8.2020 and 25.8.2020 are recalled, as prayed. The Noida and Greater Noida Authorities are directed

to calculate the amount due in respect of builders other than Amrapali Group of Companies after taking into consideration the effect of the order dated 09.06.2020 issued by the State Government.

.....CJI.
[Uday Umesh Lalit]

.....J.
[Ajay Rastogi]

New Delhi;
November 07, 2022.

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 940 OF 2017

[I.A. Nos. 8259 of 2019, 74385 of 2020, 90985 of 2020 and 90986 of 2020]

BIKRAM CHATTERJI & ORS. ...PETITIONER(S)

VERSUS

UNION OF INDIA & ORS. ...RESPONDENT(S)

J U D G M E N T

Uday Umesh Lalit, CJI

I.A. No. 8259 of 2019

1. This Interlocutory Application has been filed by Mr. Prem Mishra[1], challenging the proceedings/order dated 11.12.2018 passed by the Presiding Officer, Debt Recovery Tribunal (DRT)-III, New Delhi and for issuance of directions to the DRT to proceed strictly in terms of the order dated 12.9.2018 in respect of 12 lakh square feet offered in the affidavit of Mr. Anil Kumar Sharma, Chairman and Managing Director, Amrapali Group of Companies, without involving the area earmarked in 'yellow' in

[1] "the applicant"

terms of Memorandum of Understanding (MoU) and authorisations in favour of the applicant.

2. According to the applicant, Mr. Anil Kumar Sharma met the applicant some times in June, 2006 and a business plan was proposed for developing a colony on partnership basis as an Amrapali Group project with its brand name. The applicant was to invest his time, resources, experience and contacts apart from providing other services and expertise necessary for undertaking the development of the land. Essentially, the work to be undertaken by the applicant was in the nature of securing land from local farmers, getting titles searched, getting layout of the colony made, getting user changed from agricultural to residential, obtaining requisite information including No Objection Certificates from the concerned departments, making necessary advertisement(s) and in the nature of aggregating the land bank for the purposes of development by Amrapali Group of Companies. This was done primarily because Amrapali Group of Companies had no footprint in Indore and it was trying to expand its business in Indore. According to the applicant, in terms of agreement dated 18.1.2017, an entitlement of 40% share in favour of the applicant in the inventory was agreed.

3. According to the applicant, in terms of this understanding, he was able to aggregate an extent of about 160 acres of land though actual development in terms of construction was never undertaken. According to the applicant, in terms of the aforesaid agreement dated 18.1.2017, the land shown in 'yellow' colour would come to the share of the applicant while the land marked in orange colour was booked by the customers. It is asserted that after the matters pertaining to Amrapali Group of Companies were being considered by this Court in Writ Petitions (Civil) No. 940 of 2017 and other connected matters, attempts were made to locate and get the details of the projects undertaken by the Amrapali Group of Companies throughout the country. In that light, the applicant was informed by Mr. Anil Kumar Sharma, Chairman and Managing Director, Amrapali Group of Companies that his presence was required before the DRT-III, New Delhi to explain the details with regard to the project. In pursuance thereof, the applicant appeared before the DRT-III on 27.10.2018 and he became aware of orders dated 4.9.2018, 6.9.2018 and 12.9.2018 passed by this Court. After the applicant had presented his view point, the proceedings dated

11.12.2018 with regard to which the principal prayer has been made, took place before the DRT-III, New Delhi.

4. Said proceedings dated 11.12.2018 indicate as under: -

> "Heard. Record has thoroughly been perused. In the present matter, Shri Prem Mishra, Objector has relied upon the agreement of mutual consent and claiming that he has developed approximately 160 acres land which was purchased with the consent of the first party and entire dues of the Amrapali has been recovered and further it is now being consented that in case of profit of more than 100 crores then 30% of the profit will be given to him and the period of two years granted to Prem Mishra on 14.10.2009. Already 4-5 years have been elapsed, hence it is agreed that the 40% of the aforesaid colony project will be given to the second party i.e. Prem Mishra and rest of the 60% shall be kept by Amrapali builders.
>
> Apparently, the applicant i.e. Prem Mishra herein is relying upon the Memorandum of Understanding between the parties. It is well settled proposition of the law that there is a difference between Memorandum of Understanding as well as agreement, as the MOU is a written document which describe the terms as an agreement and the element of MOU as offer, acceptance and intention and consideration. Apparently, the present MOU was executed between Prem Mishra and Amrapali on 18.01.2017, whereas it is so mentioned that the Prem Mishra has been working with the project for the last 4-5 years and at that moment no such agreement was executed between the parties, which clearly indicates that the present agreement has been executed just to avoid the liability accrued against the Amrapali Homes Project Pvt. Ltd. there is nothing on the record exists. The agreement to sell placed on record executed by Prem Mishra and the private seller of the property, that no such services were continuously been provided by Prem Mishra in the project. Had there been such mutual understanding, he would be entitled to share the 30% of the profit then such like agreement has to be executed and entered into between the parties at the time of launching of the project. Apparently, the project was launched way back in year 2006. The past services rendered by Prem Mishra are not voluntarily rather he was specifically authorized and worked as attorney of

Amrapali. Hence, no substantive right, title and interest stand created in favour of Prem Mishra.

On behalf of Amrapali, it is clearly mentioned that Prem Mishra was merely authorized to purchase the agricultural land and make payment for purchase of the property, buy stamp papers and make negotiation with prospective sellers for and on behalf of the company. Further, Prem Mishra was authorized to execute sale deed for and on behalf of the company, therefore, he was merely authorized to do these types of work. Though a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do. No doubt for the thing voluntarily done by a person for their promisor, he can be compensated, but here in the present matter this is not a case as Shri Prem Mishra was merely authorized to do certain things on behalf of the company i.e. purchasing of land and executing the sale deed etc. and for the purpose the entire chunk of land consisting of 40% of 100 acres approx. cannot be deemed to be transferred in the favour of Prem Mishra. No doubt, the area which has been disclosed before the Hon'ble Supreme Court as 12 Lacs sq. mtrs. As shown in 'Green' colour in the map, but apart that, the area shown in 'Yellow' colour, which stated to come in the share of Prem Mishra, on the basis of things done by him in the previous, cannot be deemed to be transferred and apparently, there is active connivance between Prem Mishra as well as Amrapali Builders and this fact has also been suppressed from the Hon'ble Supreme Court of India. Thus, the objections of the Prem Mishra, merely on the basis of said MOU are not sustainable and he cannot be presumed become owner of the said property and no substantive right, title, and interest, in the said portion is created in his favour. Therefore, the said area shown in 'Yellow' colour i.e. measuring about 5,66,799sq. ft. still exists in the name of Amrapali.

In this regard, necessary permission has to be sought from the Hon'ble Supreme Court of India to sell the said area as well. Accordingly, a request letter be placed before the Hon'ble Supreme Court, for granting permission to sell the said area. Registry is directed to issue letters accordingly. Mere MOU does not create any substantive right in favour of Prem Mishra to be the owner with respect to the said property shown in 'Yellow' colour in the site map."

5. It is in pursuance of the concluding part of the above proceedings that the matter is before us.

I.A. No. 74385 of 2020

6. This Interlocutory Application has been filed by the same applicant seeking following directions: -

> a. "Kindly direct the Ld. Officer of DRT-III, Delhi to make necessary changes in the area of green color area which wrongly included area received for development of colony (i.e. 12.71 bigha of farmer land and 7125 sq.ft. of additional land)
> b. Provide all rights of ownership of the yellow color area i.e. 40% (6,10,649 sq.ft.) in favour of the applicant.
> c. Kindly direct the Ld. DRT-III to provide 40% of the profit share to the applicant."

7. According to the applicant, he holds 40% of the 'yellow' area in the concerned colony of Indore with all rights of selling, receiving amounts and right to execute the appropriate deeds of conveyance. The applicant adverts to certain transactions entered into with respect to said project at Indore and then submits as under: -

> "15. That in a case registered against the Amrapali Group i.e. Bikram Chatterji & Ors. vs. Union of India & Ors. This Hon'ble Court vide its order dated 12.09.2018 had directed the Debts Recovery Tribunal – III, Delhi to auction the properties of only Amrapali Groups and had marked 12,00,000 sq.ft. approximately belonging to Amrapali Homes Projects Pvt. Ltd. at Indore. This Hon'ble Court had also forwarded the map provided by the Amrapali to this Hon'ble Court to the Officer of DRT-III, Delhi wherein the property of Amrapali admeasuring

12,00,000 sq.ft. was shown in green color and property of the applicant admeasuring 6,10,649 sq.ft. area was shown in yellow color. A true copy of the order dated 12.09.2018 passed by this Hon'ble Court in Writ Petition (C)No.940/2017 is annexed herewith and marked as Annexure A/5 (page 33 to 45).

16. That thereafter the applicant moved I.A. No. 4/2018 dated 27.10.2018 before the DRT-III, Delhi to attach only the green area, measuring 12,00,000 sq.ft (including the M Red Area in the map measuring 3,34,455 sq.ft.) which the Amrapali owned as part of 60% profit sharing.

17. That the Officer of DRT-III, Delhi failed to comply with the directions passed by this Hon'ble Court vide order dated 12.09.2018 and erroneously included the property of the applicant admeasuring 6,10,649 sq.ft. for the purpose of selling out assets of the group.

18. That the tribunal vide its order dated 11.12.2018 dismissed the applicant's request to attach only the area in green, which was the property of Amrapali, as per the direction of this Hon'ble Court. The applicant's submission that the area shown in yellow rightfully belongs to the applicant as per MOU signed between the applicant and the Directors of M/s.. Amrapali Homes Pvt. Ltd. dated 14.10.2009 and 18.01.2017 was disregarded and the Tribunal on erroneous findings attached both the yellow area and green area. It is most respectfully submitted that the Tribunal in doing so clearly went beyond its jurisdiction adding the yellow area of the applicant measuring 6,10,649 sq.ft. to the green area measuring 12,00,000 sq.ft. whereas this Hon'ble Court in its order dated 12.09.2018 had mentioned only 12,00,000 sq.ft. as per the property of Amrapali Group. A true copy of the order dated 11.12.2018 made by Presiding Officer, DRT-III, Delhi is annexed herewith and marked as Annexure A/6.

19. That being aggrieved with the order dated 11.12.2018 applicant approached this Hon'ble Court and filed I.A. No. 8260/2019 dated 14.01.2019 and the same is still pending for the kind consideration of this Hon'ble Court. A true copy of the I.A. No. 8260/2019 dated 14.01.2019 made by the applicant before this Hon'ble Court is annexed herewith and marked as Annexure A/7.

20. That in furtherance after receiving the information or intimation about the auction of Amrapali part area of Indore colony by the Ld. DRT Officer some of the residents/buyers of Indore Colony filed I.A. No.3/2019 to I.A.No.41/2019 before Ld. DRT Tribunal. In fact, the

> residents and buyers were having interest and as they have purchased their residential units in Amrapali Project situated at Indore, they have taken huge sums of money in shape of home loan, they were also under dire financial stress, therefore, they have prayed before the Tribunal to allow the intervention application and further sought the relief to appoint a capable developer for completion of the entire remaining work of the project."

8. The applicant then submits that the DRT officer had put said property to auction having distress value of Rs.95 crores. According to the applicant, all rights of ownership in the area mentioned in 'yellow' admeasuring about 6,10,649 square feet constituting 40% must be provided in favour of the applicant.

9. Some of the developments which occurred during the pendency of these applications must now be adverted to.

A. On 23.7.2019, this Court delivered its judgment reported in ***Bikram Chatterji & Ors. v. Union of India & Ors.***[2] The matter pertaining to Indore project was considered by this Court at page 248 of SCC report and in paragraph 155 it was stated that in view of the findings rendered by the forensic auditors, the Enforcement Directorate (ED) and other authorities should investigate and fix liability on persons responsible for violation. Soon thereafter, a supplementary report dated

[2] (2019) 9 SCC 161

10.10.2019 was filed by the forensic auditors which summed up that Rs.10.26 crores were recoverable from Mr. Prem Mishra with respect to his concern in the Amrapali Colony project at Indore.

B. On 15.9.2020, Mr. Prem Mishra raised objections against the findings of this Court dated 23.7.2019.

C. Based on the forensic auditors' report, Mr. M.L. Lahoty, learned counsel representing the cause of homebuyers, in his note dated 29.10.2020, submitted as under: -

> "i. The Supplementary Report-II of the Forensic Audit (Pages 2961-2978) reveals misdeeds and misappropriation of Crores of Rupees by Prem Mishra who even during the pendency of proceedings before this Hon'ble Court has continued to sell the Plots and received huge payment. According to the Report, the Companies were created for diversion of funds from NOIDA Projects and therefore the unsold inventory as also the Bank accounts need to be attached by this Hon'ble Court and necessary recoveries be directed. The Projects indicated in the Report are as under:
>
> ii. Amrapali Homes Project Private Limited: The first Project namely, Amrapali House Modern City Projects in Mhow (District Indore) was launched by Anil Kumar Sharma and Shiv Priya in partnership with Prem Mishra with Mahendra Singh Dhoni as Brand Ambassador. According to the Report, a total area of 49,500 sq. ft. was allotted to the family members of Prem Mishra without receipt of any funds. Further, units admeasuring 1,295 sq. ft. units with Registry Value of Rs.84.55 Crores (approx.) were sold and 302 plots were mortgaged to the Government. That apart there are unsold units admeasuring total area of 15,77,870 sq. ft.
>
> iii. Nipunj Infrastructure Private Limited: The Project Maa Vindhyawasini Township is situated in Gram

> Bhaktkedi (District Indore) and was launched as Amrapali Group Project with Mahendra Singh Dhoni as brand Ambassador. There are total 138 plots out of which 97 plots are sold and 41 plots are unsold. This company has also mortgaged five residential cum commercial plots to the Government.
>
> iv. Vindhyawasini Developers (India) Pvt. Ltd.: The Project Maa Vindhyawasini Township at Manawar (District Indore) was launched as Amrapali Group Project with Mahendra Singh Dhoni as Brand Ambassador and out of a total of 266 plots, 131 plots were sold and 135 plots are unsold. Further the company has also mortgaged 102 plots to the Municipal Corporation Manawar.
>
> v. Maa Vindhyawasini Dream City: This Project was also launched as Amrapali Group Project with Mahendra Singh Dhoni as Brand Ambassador at Ratlam. There are a total of 1,192 plots out of which 263 plots are sold while 929 plots remain unsold. That apart 265 plots have been mortgaged to the Government.
>
> vi. Mishra & Mishra Realty Pvt. Ltd. - As per the Report, no details have been made available of this Project to the Forensic Auditors, though there are Two Directors and Promotor Shareholders having equal percentage of shares namely, (i) Prem Mishra, and (ii) Mayank Mishra.
>
> vii. So far as Prem Mishra is concerned, this Hon'ble Court has already recorded that an amount of Rs.10 Crores is recoverable from him. (Judgment pages 87 & 193 as also the Supplementary Forensic Audit Report page 2966)."

D. After perusal of the note and considering submissions made on behalf of Mr. Prem Mishra, this Court by its order dated 2.11.2020, directed the ED to file an appropriate response since by that time the investigation had commenced against Mr. Prem Mishra. Accordingly, status report dated 18.11.2020 was submitted by the ED

stating *inter alia*; that initial investment in the Indore project made by Mr. Prem Mishra was to the tune of Rs.3.5 crores while Rs.21 crores were invested by Amrapali Group of Companies for purchase of lands and that total money received from the homebuyers for Indore project was in the sum of Rs.18.95 crores.

E. Subsequently, a further status report was filed by the ED on 4.1.2021. The learned counsel appearing for Mr.Prem Mishra sought time to respond to said status report. In the meantime, the matter was adjourned for six weeks to enable the ED to complete the investigation with following directions vide order dated 11.1.2021 passed by this Court: -

> "a. The properties of all the aforesaid Corporate entities and those of Mr. Indra Bahadur Mishra sand Mr. Arvind Mishra and of Mr. prem Mishra, are kept under attachment and these Corporate entities as well as the individuals names hereinabove are restrained from dealing with or disposing of their properties, both movable and immovable.
>
> b. This ad-interim order shall not however preclude these Corporate entities and the individuals from defraying expenses for normal day to day affairs and necessary statutory dues."

F. On 22.2.2021, a provisional attachment order under Section 5(1) of the Prevention of Money Laundering Act,

2002[3] was passed by the ED holding that Mr. Prem Mishra and his brother had siphoned of an amount of Rs.4,79,76,180 out of which Rs.79,52,500 pertained to his brothers and Mr. Indra Bhushan Mishra and Mr. Arvind Mishra while remaining Rs.4,00,23,680 pertained to Mr. Prem Mishra. On or about 28.8.2021, cognizance was taken by the Special Judge in the matter.

G. In its order dated 13.9.2021, this Court recorded the submissions of the learned counsel appearing for Mr. Prem Mishra as under: -

> "Mr. Vikas Singh, learned Senior Advocate submits *inter alia*:
>
> a. Provisional Attachment Order No.01/2021 dated 22.02.2021 passed by the Enforcement Directorate has quantified the liability of Prem Mishra to the tune of Rs.4,79,76,180/-. This provisional order has now been confirmed by the Prescribed Authority. Therefore, the attachment effected in terms of the Order dated 11.01.2021 passed by this Court may suitably be modified.
> b. Considering the nature of circumstances, the entire exercise be undertaken in this Court rather than relegating Mr. Prem Mishra to the proceedings before the PMLA Authorities."

The Court also directed the forensic auditors to submit report on or before 20.9.2021. According to the

[3] "PML Act", for short

report submitted by the forensic auditors, apart from sum of Rs.10.26 crores, a further additional sum of Rs.2.31 crores was due on certain counts.

H. The note prepared by forensic auditors was directed to be circulated to all parties vide order dated 20.9.2021 passed by this Court. In its response pursuant to said order dated 20.9.2021, it was submitted on behalf of ED that permission be granted to the ED to have further attachment in respect of an amount of Rs.70,51,063 lakhs from the properties of Mr. Prem Mishra. The supplementary note was thereafter filed by the ED on 28.10.2021. The adjudicating authority passed final order on 28.12.2021 confirming the provisional attachment order dated 22.2.2021 and observed that the extent of funds siphoned of were to the tune of Rs.4,79,76,180.

10. In these circumstances, what is presently submitted on behalf of Mr. Prem Mishra is that his liability stands confirmed only to the extent of Rs.4.79 crores and as such, there would be no justification to continue with the attachment of all the assets of Mr. Prem Mishra and his brothers.

11. There are two divergent views which are emanating from the record. According to the forensic auditors, the liability of Mr. Prem Mishra is to the tune of Rs.10.26 crores and also in the additional sum of Rs.2.31 crores; whereas, according to the ED, the extent of funds siphoned off by Mr. Prem Mishra were to the tune of Rs.4,79,76,180 only. But at the root of the entire controversy is the question whether Mr. Prem Mishra has any claim or title with respect to the property which is subject matter of attachment. The documents on which reliance has been placed in I.A. Nos. 8259 of 2019 and 74385 of 2020 are not registered documents nor have these I.As. been finally disposed of. Going by the tenor of I.A. No. 8259 of 2019, it is directed against the proceedings dated 11.12.2018, where the matter was not gone into by the DRT-III, New Delhi because of pendency of proceedings in this Court. There is thus no concrete and final determination with regard to the rights of Mr. Prem Mishra to the property which was subject matter of arrangements between the parties. Even at this stage, going by the *prima facie* view, at least Rs.21 crores were invested by Amrapali Group of Companies for purchase of these lands. By any standard, even without expressing any opinion on merits of the matter, the bulk of the

investment has come from Amrapali Group of Companies towards purchase of these properties. Merely because the extent of money which was siphoned off has been put at the level of Rs.4.79 crores would not mean that lands beyond this value ought to be released in favour of Mr. Prem Mishra. His entitlement is yet to be pronounced upon.

12. In the circumstances, the prayer made by Mr. Prem Mishra for releasing attachment of all the assets in question, cannot be granted at this stage. In essence, the matter has to be considered along with I.A. Nos. 8259 of 2019 and 74385 of 2020. We, therefore, reject the prayer for release of attachment as mentioned above and direct that these two Interlocutory Applications be listed and considered at an early date.

.....CJI.
[Uday Umesh Lalit]

.....J.
[Bela M. Trivedi]

New Delhi;
November 07, 2022.