



2020 INSC 422

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A.NOS. 49238 OF 2020, 49239 OF 2020, I.A.NO.29350 OF 2020,
I.A.NOS. 166987 OF 2019, I.A.NO. 29699 OF 2020,
I.A.NOS.155624 OF 2019, I.A.NO.141062 OF 2019 AND
I.A.NO.49139 OF 2020

IN

WRIT PETITION [C] NO.940 OF 2017

BIKRAM CHATTERJI & ORS.

... PETITIONERS

VERSUS

UNION OF INDIA & ORS.

... RESPONDENTS

O R D E R

In Re I.A.No.49238 of 2020 seeking directions filed by NBCC (I) Ltd.

1. By way of I.A. No.49238 of 2020, NBCC has submitted that it has established the work on the following conditions:

- i. "NBCC will not be held responsible for any existing disputes involving and in relation to the Projects;
- ii. NBCC will not be held responsible for any disputes arising from the contracts entered into by Amrapali in relation to the Projects;
- iii. NBCC will not be held responsible for any past or present liabilities in relation to the Projects, including on account of dues of homebuyers, vendors, contractors, government authorities, etc.;
- iv. NBCC will not be liable in relation to any disputes, including before any Court or Arbitrator, existing or arising at a later date, with the existing vendors, contractors, co-developers, landowners, homebuyers, banks, financial institutions, other lenders

and creditors and any government authority.”

2. As NBCC is appointed as a Project Management Consultant to complete various projects, it was permitted to float the tenders and prepare DPRs. It is submitted that NBCC has completed two projects and floated tenders for other projects, barring three projects. However, various home buyers are approaching different courts in different jurisdictions across the country, making NBCC a party. The complaints/petitions are filed against NBCC seeking reliefs, such as refund of amounts that home buyers have paid to the Amrapali Group or to grant possession of flats, etc. The NBCC is forced to defend itself in different Courts being a party to the said petitions. For instance, a summon has been received from the State Consumer Redressal Commission, Lucknow against the CMD. The NBCC has been arrayed as respondent No.3. A complaint has also been preferred by one of the home buyers of the Amrapali Golf Homes, Greater Noida. They are receiving various letters, emails, messages, calls seeking updates regarding the progress of work being undertaken by the NBCC for their respective projects. Reply to every home buyer is a herculean task, and much time is being consumed in the process. The NBCC is ready and willing to submit monthly project reports with all relevant information and photographs in respect of each project to the learned Receiver, which can be made available on the blog/website for the information of home buyers, for that the NBCC has already made a request to the learned

Receiver as such various directions have been sought.

3. NBCC is asked by this Court to complete the incomplete projects. It is not liable for any legal action. In view of the order that has been passed by this Court, the NBCC is immune from any such actions, and we request the Courts/ Consumer Redressal Commission and other authorities not to permit impleadment of NBCC as respondent and not to issue summons to NBCC as they are doing the work under the supervision of this Court and are not answerable to any other court, tribunal, authorities. They are granted immunity to be sued in any other court or commission, and they are answerable to this Court only in the pending proceedings. Thus, they cannot be dragged in the litigation filed by existing home buyers, previous contractors, co-developers, landowners, banks, financial institutions, other lenders and creditors, and any Government authorities before any other Court/ Commission or Authority.

4. It is also made clear that NBCC is not responsible for attending to queries made by the home buyers. They have to report the progress to the learned Receiver, and we request the learned Receiver to put progress reports of projects on the blog/website.

With the said directions and observations, we dispose of I.A. No.49238 of 2020.

In Re I.A. No.29350 of 2020 in I.A. No.13175 of 2019 filed by Royalgolf Link City Projects Private Limited

5. I.A. No.29350 of 2020 has been filed by Royalgolf Link City Projects Private Limited for modification of order dated 11.9.2019, by which this Court directed that a sum of Rs.48.52 crores, which was the principal amount received by Royalgolf Link City Projects Private Limited from the Amrapali Group to be repaid along with 12% interest by 10.1.2020 and the attachment of 30 villas was to continue unless otherwise ordered. An undertaking was also to be furnished by the Chief Finance Officer as well as by all the Directors to deposit the amount as ordered. This Court directed that 25% of the amount be paid by 30.10.2019, 30% by 30.11.2019, and the remaining amount on or before 10.1.2020. The interest was to be calculated until the date of the payment.

6. The Royalgolf Link City Projects Private Limited, after construction, was to give 30 villas to the Amrapali Ultra Homes as per the Agreement entered into between them. A sum of Rs.48.52 crores was received as the principal amount by Royalgolf Link City Projects Private Limited. The present application has been filed to modify the order passed by this Court because it deposited a sum of Rs.48.52 crores, but it has extreme hardship in depositing 12% of interest on the amount mentioned above. It is averred that due to litigation, the goodwill of the project has been severely affected, and construction work is considerably slowed down due

to lack of funds. The vendors have stopped offering credit. The existing buyers are not making payments. The average yearly collections had also dropped from Rs.61.86 crores in the year 2018-19 to Rs.17.85 crores in 2019-2020. Despite part injunction lifted by this Court, the project could register new sales of only 15 units, and only Rs.1.42 crores could be recovered. The banks have also stopped making further disbursement of the retail loans to individual home buyers. Fourteen buyers have cancelled their units. The RERA has ordered a refund of 6 units along with interest upon the complaints filed before it. A loan was taken at a very high rate of 21% in order to deposit the amount. It will be difficult to repay the loan in case interest is not waived. Home buyers' interest is at stake as the project has been delayed for more than three years due to the injunction of this Court. This Court vide judgment dated 23.7.2019 directed various entities to deposit the amount with the Registry and did not direct payment of any interest, but in the case of the applicant, interest has been ordered to be paid.

7. Having heard Shri Shyam Divan, learned senior counsel at length, we are of the opinion that value of money increased at the hands of Royalgolf Link City Projects Private Limited and the value of houses and villas which were to be handed over to Ultra Homes, has also been appreciated. Considering over all facts and circumstances of the case, we have ordered a reasonable interest rate of 12%. As it was the money

of home buyers, which was diverted, they must have a refund of their money with a reasonable rate of interest. We find the hardships, which are pointed out, are all commercial one and the Royalgolf Link City Projects Private Limited is bound to disgorge the advantage it received out of huge money of Rs.48.52 crores, which remained with it for a substantial period; otherwise, it would tantamount to unjust enrichment. It cannot be taken as a ground that in the judgment/ order dated 23.7.2019, the interest was not imposed on other entities. It has been imposed on the facts and circumstances of the case on the Royalgolf Link City Projects Private Limited. It is open to imposing interest and on other persons/ entities. The question is quite open as interest was not dealt with in the judgment dated 23.7.2019, and only the aspect of findings of Forensic Auditors was dealt with. Thus, we find no merit in the application, and the same is dismissed. Let interest be deposited within six weeks, failing which appropriate action would be taken for violation of undertaking furnished by the Chief Financial Officer and the Directors and for violation of the order passed by this Court.

In Re. IA No.141062 of 2019 and IA No.155624 of 2019
(Release of FAR to the Noida and Greater Noida Authorities)

8. I.A. Nos.141062 of 2019 and 155624 of 2019 have been filed by the Noida and Greater Noida Authorities respectively for issuance of direction for return of unused FAR. The Noida Authority has prayed for the release

of FAR of 98,445.77 sq. mtrs. as detailed in para 7 of the application. Several other prayers have also been made. The Greater Noida Authority also made similar prayer in the application. We are presently dealing with the part of prayers with respect to the release of FAR.

9. It is submitted in the application that as per judgment dated 23.7.2019, directions were issued by this Court to execute tripartite Agreement concerning projects, where flat buyers are residing within a period of one month. The concerned authorities are duty-bound to implement the judgment. As the Registry did not accept the review petition, applications have been filed. The Noida Authority had allotted a total of nine Group Housing Plots in favour of the Amrapali Group of Companies. This Court ordered the cancellation of the lease of Amrapali Group of Companies and the property vest in Receiver. The outstanding dues of Rs.2,191.38 crores existed against the allotment of nine Group Housing Plots as only partial payment has been made. This Court also directed that the land dues can be recovered from other properties of Amrapali Group, which have been attached. The Noida and Greater Noida Authorities are entrusted with the task of holistic development of the industrial area, which includes the construction of various infrastructural projects and carrying out of municipal works, catering to more than 15 lakhs population. The recovery of dues is necessary as it is public money. It is submitted that as per the terms of allotment and

lease deed, the builder was entitled to FAR at 2.75. Based on the layout plan sanctioned by the Noida Authority, it was permissible to construct a specified number of flats in each of the group housing plots. However, all the flats that can be constructed within the permitted FAR are neither under construction work nor sold. There remains unused FAR, as vacant land, to which builder was entitled. Considering the flats that can be constructed within the permitted FAR @ 2.75, and there are no flats constructed on the available FAR, the unused FAR of 98,445.77 sq. mtrs. which translates into 35,798.19 sq. mtrs. of land may be ordered to be returned to Noida Authority. If FAR is ordered to be returned to the Noida Authority, to some extent, the outstanding land dues can be recovered.

10. In I.A. No.155624 of 2019 filed by Greater Noida Authority, it is submitted that there is a vacant area in square meter plot-wise within the sanctioned FAR @ 2.75. It has also been prayed that NBCC may be directed to complete the construction of 10,556 nos. of flats and not 11,469 nos. of flats on Plot No.GH 09, Sector Tech. Zone 4, Greater Noida. Because of the availability of FAR @ 2.75, prayer made is to return it to realize the dues, Rs.3,234.71 crores as on 15.1.2019, inclusive of interest, 15% per annum with half-yearly compounding and penal interest.

11. Learned Receiver has prayed to permit him and the Committee assisting in proceeding to sell or otherwise transfer of unused sanctioned

FAR, permissible FAR, and purchasable FAR, as well as additional FAR due to existing or proposed metro line. The sale and transfer can be on such terms as may be found profitable and expeditiously executable. Learned Receiver shall be at liberty to invite applications from intending purchasers by issuing public notices. Learned Receiver and the Committee be authorized to require Noida and Greater Noida Authorities to act in the facilitation of sale or transfer, and the authorities may be directed to abide by instructions or compliances that may be sought by the learned Receiver and the Committee. Learned Receiver has pointed out that FAR's sale is necessary to complete the projects and fetch money for incomplete projects left by the builders.

12. Our attention was drawn to a finding recorded by this Court in judgment and order delivered on 23.7.2019 to the effect that basic obligation was not complied with by promoter as such it was not entitled to sell FAR. Learned Receiver pointed out that in Dream Valley Project in Greater Noida, the authorities had sanctioned FAR @ 3.5, which include up to 2.75 permissible FAR and 0.75 purchasable FAR. In Silicon City, Noida, the Authority had sanctioned up to 2.75 FAR and an additional 15% FAR over and above 2.75 FAR. As this Court cancelled the leases granted in favor of the Amrapali Group of Companies by the Noida and Greater Noida Authorities, the rights have vested in the Receiver. The Receiver has also attracted our attention to the findings recorded in the

judgment to the effect that buyers have paid the dues of Noida and Greater Noida Authorities as a component of the price for flats. Thus, the premium and other dues payable under the lease deeds to the Noida and Greater Noida Authorities cannot be recovered from the home buyers or the projects in question. The directions have been issued to the effect that Noida and Greater Noida Authorities could not sell the buildings or demolish them nor could enforce the charge against home buyers/leased land/projects, in the facts of the case and ultimately various directions were issued by this Court. Relevant findings and directions are extracted hereunder:

“122. As the basic obligations have not been complied with by the promoters, they cannot also be entitled to FAR. It was pointed out on behalf of Authorities that permissible FAR is 2.75, whereas it has been wrongly mentioned and worked out at 3.50 by the Amrapali Group. In the instant case, we find that there is serious kind of fraud by the promoters as such they cannot be said to be entitled to avail the FAR to utilise it or to alienate and more so when they have failed to complete the projects and pay the dues.

149. Because of the gross violations of the conditions of lease deeds executed by the Noida and Greater Noida Authorities in favour of Amrapali group of companies with respect to various projects, are liable to be cancelled and the rights thereupon shall vest in the Court Receiver.

150. There was no valid mortgage created in favour of Banks and there was a huge diversion of money paid by homebuyers which were more than required for payment of dues of the Noida/ Greater Noida Authorities and banks. The buyers have paid the dues of Noida and Greater Noida authorities as a component of the price for flats. Thus, the premium and other dues payable under the lease deeds to the Noida and Greater Noida Authorities, cannot be recovered from the home buyers or the projects in question. The dues as may be ordered shall be recovered by sale of other properties which have been created by the diversion

of funds and have been attached by this Court. The banks have also failed to ensure that the money was used in the projects. As found in the forensic audit, there was no necessity of obtaining loans from the banks and it has not been used for the purpose it was obtained. The Authorities and Bankers have violated the doctrine of public trust and their officials, unfortunately, acted in collusion with builders. The dues of the banks are also to be recovered from the other attached properties as observed by us.

153. We have also found that non-payment of dues of the Noida and Greater Noida Authorities and the banks cannot come in the way of occupation of flats by home buyers as money of home buyers has been diverted due to the inaction of Officials of Noida/ Greater Noida Authorities. They cannot sell the buildings or demolish them nor can enforce the charge against homebuyers/ leased land/ projects in the facts of the case. Similarly, the banks cannot recover money from projects as it has not been invested in projects. Homebuyers money has been diverted fraudulently, thus, fraud cannot be perpetuated against them by selling the flats and depriving them of hard-earned money and savings of entire life. They cannot be cheated once over again by sale of the projects raised by their funds. The Noida and Greater Noida Authorities have to issue the Completion/ Part Completion Certificate, as the case may be, to execute tripartite agreement and registered deeds in favour of the buyers on part-completion or completion of the buildings, as the case may be or where the inhabitants are residing, within a period of one month.

154. Resultantly, we order as follows:

- (i) The registration of Amrapali Group of Companies under RERA shall stand cancelled;
- (ii) The various lease deeds granted in favour of Amrapali Group of Companies by Noida and Greater Noida Authorities for projects in question stand cancelled and rights henceforth, to vest in Court Receiver;
- (iii) We hold that Noida and Greater Noida Authorities shall have no right to sell the flats of the home buyers or the land leased out for the realization of their dues. Their dues shall have to be recovered from the sale of other properties which have been attached. The direction holds good for the recovery of the dues of the various Banks also.

- (iv) We have appointed the NBCC to complete the various projects and hand over the possession to the buyers. The percentage of commission of NBCC is fixed at 8 percent.
- (v) The home buyers are directed to deposit the outstanding amount under the Agreement entered with the promoters within 3 months from today in the Bank account opened in UCO Bank in the Branch of this Court. The amount deposited by them shall be invested in the fixed deposit to be disbursed under the order of this Court on phase-wise completion of the projects/work by the NBCC.
- (vi) In view of the finding recorded by the Forensic Auditors and fraud unearthed, indicating *prima facie* violation of the FEMA and other fraudulent activities, money laundering, we direct Enforcement Directorate and concerned authorities to investigate and fix liability on persons responsible for such violation and submit the progress report in the Court and let the police also submit the report of the investigation made by them so far.
- (vii) We direct the Institute of Chartered Accountants of India to initiate the appropriate disciplinary action against Mr. Anil Mittal, CA for his conduct as reflected in various transactions and the findings recorded in the order and his overall conduct as found on Forensic Audit. Let appropriate proceedings are initiated and concluded as early as possible within 6 months and a report of action taken to be submitted to this Court.
- (viii) We direct various Companies/ Directors and other incumbents in whose hands money of the home buyers is available as per the report of Forensic Auditors, to deposit the same in the Court within one month from today and to do the needful in the manner as observed. The last opportunity of one month is granted to deposit the amount and to do the needful failing which appropriate action shall be taken against them.
- (ix) Concerned Ministry of Central Government, as well as the State Government and the Secretary of Housing and Urban Development, are directed to ensure that appropriate action is taken as against leaseholders concerning such similar projects at Noida and Greater Noida and other places in various States, where projects have not been completed. They are further directed to ensure that projects are completed in a time-bound manner as contemplated in RERA and home buyers are not defrauded.

- (x) We appoint Shri R. Venkataramani, learned Senior Advocate, as the Court Receiver. The right of the lessee shall vest in the Court Receiver and he shall execute through authorized person on his behalf, the tripartite agreement and do all other acts as may be necessary and also to ensure that title is passed on to home buyers and possession is handed over to them.
- (xi) We also direct Noida and Greater Noida Authorities to execute the tripartite agreement within one month concerning the projects where homebuyers are residing and issue completion certificate notwithstanding that the dues are to be recovered under this order by the sale of the other attached properties. Registered conveyance deed shall also be executed in favour of homebuyers, they are to be placed in the possession and they shall continue to do so in future on completion of projects or in part as the case may be. We direct the Noida and Greater Noida Authorities to take appropriate action to do the needful in the matter. The Water Works Department of the concerned area and the Electricity Supplier are directed to provide the connections for water and electricity to home buyers forthwith.”

13. Learned Receiver prayed for directions in respect of the sale of balance FAR available within the sanctioned plan, unused FAR up to the permissible limit of 2.75 or more and FAR beyond 2.75 up to 3.5 under the purchasable scheme and other FAR which may be available due to metro projects, etc.

14. A prayer has also been made to direct Noida and Greater Noida Authorities/Other Authorities/Govt. Departments/Bodies to sanction necessary plans. Concerning water and power, Electricity Department/Authorities be directed to provide water, electricity & sewage connection to the prospective Institution/Builders/Developers, who will purchase the balance FAR as also to various Executing

Agencies/Contractor who may be appointed by NBCC during (i) execution of work, and (ii) after completion of work till handing over of possession is also done.

15. We have heard the learned senior counsel appearing on behalf of Noida and Greater Noida Authorities as well as the learned Receiver.

16. It was argued by the learned senior counsel appearing on behalf of Noida and Greater Noida Authorities that FAR is available at 2.75, and in some projects, FAR at 3.50 was sanctioned by the Noida and Greater Noida Authorities. The purchasable FAR can be 0.75, as the case may be. Considering the facts and circumstances of the case and the huge dues recoverable by Noida and Greater Noida Authorities, the FAR deserve to be returned in favor of Noida and Greater Noida Authorities so that they may sell it for the realisation of their dues as the recovery of public money is to be made and authorities require money for various development works.

17. While passing the judgment, we have noted that the Amrapali Group of Companies worked out the price considering the premium payable to the Noida and Greater Noida Authorities and have realized the money from the buyers on that basis. It was also noted that diversion of money was permitted not only by Noida and Greater Noida Authorities but also by the bankers and other financial institutions. The concerned

authorities did not take timely action, and the financial institutions resulted in projects being stalled, and now it has become tough to complete the projects. Financial institutions/ Banks are not coming forward to fund the incomplete projects, and the buyers who borrowed the money from the banks have not been able to obtain possession of the flats booked by them due to the non-completion of the projects. On the other hand, the liability to pay the interest on the amount of loan, which they had taken, is fastened upon them, and they have been duped by diverting money by the builders.

18. In view of the finding recorded in the judgment delivered by this Court on 27.3.2019, the FAR is made available only because of the investment made by the home buyers, but for that, the FAR would not have been available. Thus, they should have the first charge on it as they have deposited the money which had been diverted. Thus, we find no justification in the prayer made by the Noida and Greater Noida Authorities to release the FAR, which was available to the erstwhile Amrapali Group of Companies, and all the rights of the builders are now vesting in the Receiver. A finding was recorded earlier that builders were not entitled to release of FAR as they did not fulfil the obligation, does not come in the way of availability of FAR to the Receiver, it can be permitted to be sold by the Receiver and the Committee formed by this Court for this purpose. A substantial amount has to be fetched out of the sale of

permissible FAR, which is 2.75. Purchasable FAR, which is 0.75, as the case may be, and due to other developments, if any other FAR is made available, it is permitted to be sold by the Receiver and the Committee to utilize the money to complete various projects. In case any surplus amount of money remains after completion of the projects, appropriate orders can be passed to release the amount to Noida and Greater Noida Authorities after completion of projects, if the dues are not satisfied by the sale of the property of Amrapali Group of Companies, which has been attached pursuant to the orders of this Court. We do not find any justification in the prayers made in I.A. Nos.141062 of 2019 and 155624 of 2019 concerning the release of FAR in favour of Noida and Greater Noida Authorities. The prayer is resultantly rejected, and we issue the following directions concerning the sale of FAR as prayed by the learned Receiver:

- (i) The sale of balance FAR shall be available within the Sanctioned Plan;
- (ii) The sale of unused FAR shall be up to permissible limit @ 2.75 or more as available;
- (iii) The sale of FAR beyond 2.75 up to 3.5 under the purchasable scheme or otherwise granted in Dream Valley Project, Plot No. GH-09, Tech Zone IV, Greater Noida, and other projects or any increase in FAR beyond permissible/purchasable due to

whatever reasons such as the coming up of Metro project are to be sold & transferred under the Authority of Receiver and Committee appointed by this Court.

- (iv) The above direction will be notwithstanding any previous dues of the Amrapali Group, their associate companies/ developers/ other contractors deployed by them, or any other previous/present outstanding.
- (v) The Noida / Greater Noida Authorities or any other Development Authorities, where these projects are situated, will not take into account any cost consideration and will provide additional FAR as may be available due to existing/proposed metro line and sanction their plans accordingly within a fixed time frame of 30 days after submission of the details and designs.
- (vi) The Noida / Greater Noida Authorities / Public Authorities / Various Service Departments / Authorities like Water/Power/Sewage/Pollution etc. shall adhere to the advice/request of the Receiver appointed by this Court and will consider the same as a direction issued by this Court.
- (vii) With respect to purchasable FAR, if any amount is payable to Noida and Greater Noida Authorities it shall be paid after the sale of the FAR.

19. Thus, I.A. Nos.141062 of 2019 and 155624 of 2019 relating to the release of FAR are rejected. It is made clear that while passing this order,

we have not commented on the other prayers made in the applications. They are to be decided later on.

In Re. I.A. No.166987 of 2019 and I.A. No.29699 of 2020 in I.A. No.166987 of 2019 filed by Vansh Consultants Private Limited.

20. I.A. No.166987 of 2019 has been filed by Vansh Consultants Private Limited, seeking deletion of its name from the summary of Report of Forensic Auditors contained in paragraph 60(17) of the judgment dated 23.7.2019. It is submitted that the applicant had invested Rs.10 crores in the Amrapali Leisure Valley Private Limited. It has been mentioned in the judgment that an amount of Rs.9.75 crores is recoverable from the applicant. Due to some inadvertent error, the name of the applicant has been mentioned as a debtor. Following is the summary of the report of Forensic Audit in paragraph 60(17) :

“SUMMARY OF REPORT OF FORENSIC AUDIT

60. The summary of report submitted by Forensic Auditors in the Court is as under:

17. Summary of amounts recoverable standing as debit balances in books of accounts

Amrapali group of companies had several amounts lying in debit balances in the form of advances recoverable on account of long term loans to third parties, short term loans given to third parties, advances given for purchase of plots, advances given to creditors for materials/others etc.

Amrapali group of companies were mostly diverting loan funds as well as home buyers funds to directors, key managerial personnel, relatives, group companies and third parties. They did construction activity only in part and created a circle for movements of funds vide bogus expenses or hollow transactions. Funds were given to several parties in the garb of advances against purchase of land or for

purchasing material for construction and booked as sundry creditors with debit balances. However, in effect such amounts were neither returned nor any expense was booked against them. Such amounts are as old as 2006-07, which have not been returned or no expense has been booked till date. Total of such recoverable amounts to **Rs.582 crore.**

Top 20 of such parties with their balances are stated hereunder:

Name of the Company/Entity	Total
Jaura Infratech Private Limited	34,55,00,000
Mauria Udyog Limited	22,24,34,199
Anil Kumar Sharma	16,34,69,224
Shiv Priya	11,53,30,097
Prem Mishra	10,26,03,947
Vansh Consultants Private Limited	9,75,00,000
Apex Infraventure Private Limited	7,95,05,000
Rinku Computech Private Limited	6,69,59,467
Sapphire Digital Printers	4,46,83,088
Heart Beat City Developers Pvt Ltd	4,29,32,000
Rubi Creations Private Limited	4,26,27,790
Ajay Kumar	4,05,40,931
Star Land Craft Private Limited	4,01,85,888
Heartland City Developers Private Limited	4,01,22,762
Vidhya Shree Buildcon Private Limited	4,00,00,000
Sky Tech Buildcon Private Limited	3,88,53,775
Skyline Tele Media Services Limited	3,48,02,771

Shantinath Enterprises	3,24,71,100
Red Star Tradex P Ltd.	3,00,00,000
Mohabbat S/o Abbas	2,66,99,000
Total of top 20 companies/parties	1,64,72,21,039

It can be seen from records that the recoverable are due since long and there are mostly no movements subsequently either in the form of booking of expenses or receipts. Out of the amounts recoverable from parties in case of Ultra Home Construction Pvt Ltd, 20 parties having huge balances recoverable were called for personal interviews. 7 parties appeared and no satisfactory explanation was provided

(Refer Annexure X.1, Volume IV page no 1015-1019).”

21. The applicant submitted that opening balances were not correctly entered into Amrapali Leisure Valley Private Limited's accounting software. The correctness of accounts of the Amrapali Group of Companies escaped the attention of Forensic Auditors. It is submitted that the applicant was incorporated and registered with the Registrar of Companies, Delhi. The Amrapali Group needed infusion of money; as such, it invested Rs.10 crores with Amrapali Leisure Valley Private Limited in March/April 2014 and invested the amount bonafide. To secure the return on the investment of Rs.10 crores, Amrapali Leisure Valley Private Limited also offered allotment of flats to the applicant with a condition of assured buy-back of flats. An agreement dated 28.3.2014 was entered into between Amrapali Leisure Valley Private Limited and the applicant to secure investment of Rs.10 crores. The buy-back process

was to commence within 12 months from the date of the Agreement and to be completed within 24 months. Amrapali Leisure Valley Private Limited initially honoured its commitment of buy-back, and later on, it started defaulting. Amrapali Leisure Valley Private Limited requested for replacement of some cheques from time to time. Some cheques were dishonoured. Proceedings under Section 138 of the Negotiable Instruments Act are pending before the Trial Court. A statement about the receipt of Rs.8 crores has been filed.

22. Vide email dated 21.11.2018, the Forensic Auditors sought the statement of accounts of inter-corporate deposits of the applicant with the Amrapali Group of Companies. A reply to which was submitted on 29.11.2018 by the applicant. The Forensic Auditors made certain queries on 30.11.2018. A reply to which was sent on 2.12.2018 by the applicant. Thereafter, on 3.12.2018, the Forensic Auditors requested the presence of the Directors of the company. On 6.12.2018, the Directors of the company, along with their Chartered Accountant, visited the Forensic Auditor's office. The Enforcement Directorate issued a letter dated 18.10.2019 to the applicant based on the judgment and facts mentioned in the report of the Forensic Auditors. The applicant was not a party to the petition. The applicant submitted that Rs.10 crores' investment was not reflected in the opening balance of the Amrapali Leisure Valley Private Limited. An amount of Rs.8 crores received by the applicant from

Amrapali Leisure Valley Private Limited has not been reconciled against the payment of Rs.10 crores paid by the applicant. The applicant company does not owe any loan to the Amrapali Group of Companies or the home buyers. The applicant is entitled to receive money from Amrapali Leisure Valley Private Limited. The incomplete entries in the books of accounts of the Amrapali Group of Companies have resulted in an incorrect appreciation of entries about the applicant company. Thus, the prayer has been made to delete the applicant's name from the table contained in paragraph 60(17) of the judgment dated 23.7.2019.

23. In continuation of I.A. No.166987 of 2019, I.A. No.29699 of 2020 has been filed for directions. It is submitted that the Forensic Auditor's report violates the principles of natural justice. The Forensic Auditors have shown the applicant as an inter-corporate depositor. The Forensic Auditors sent an email dated 6.2.2020 to Mr. Raj Kumar Jain, Mr. Balbir Singh Malhotra, and Mr. Sandeep, requesting them to present for examination on 11.2.2020 and a reminder was received on 10.2.2020. The applicant's counsel sent an email on 10.2.2020, requesting for books of accounts of Amrapali Leisure Valley Private Limited to be kept ready. The Forensic Auditors called each of the Directors of the company separately one by one. The Forensic Auditors made a fishing and roving inquiry. The applicant submitted that the imposition of liability of Rs.9.75 crores is an error.

24. We have heard Mr. Anoop G. Chaudhari, learned senior counsel and Mr. Pawan Kumar Aggarwal, the Forensic Auditor at length. Learned senior counsel on behalf of applicant argued that the applicant invested Rs.10 crores in Amrapali Leisure Valley Private Limited's project between 28.3.2014 to 4.4.2014. The amount of Rs.10 crores was invested in Vansh Consultants by M/s. Harsh International, a partnership firm of two brothers Yogesh Jain and R.K. Jain, located in Noida SEZ, a part of Mahak Group. To safeguard the investment and funds, Mr. R.K. Jain was inducted as a Director in Vansh Consultants on 9.8.2014. By way of post-dated cheques, the applicant received only Rs.8 crores so far. The post-dated cheques of Rs.11.25 crores were dishonored; as such, five complaints under Section 138 of the Negotiable Instruments Act were filed. The Forensic Auditors had asked the applicant to submit the statement of accounts of inter-corporate deposits between 1.4.2008 and 30.9.2018. The Forensic Auditors, before submission of the report to this Court, asked the applicant for certain information, which were given on 6.12.2018. This Court asked the Forensic Auditors to clarify the position vide order dated 13.1.2020. This is a case of an obvious error on the part of the Forensic Auditors. The applicant cannot be an inter-corporate depositor of Rs.10 crores as well as a debtor of Rs.9.75 crores to Amrapali Leisure Valley Private Limited. The Forensic Auditors have failed to take note of the credit entries, bank transfers, the return of Rs.8 crores received by the applicant by post-dated cheques, cheque bouncing cases

pending before the Trial Court and debit and credit entries have not been reconciled. It is submitted that the applicant has received notice from the Enforcement Directorate based on the incorrect report of the Forensic Auditors. Thus, prayer for deletion of the applicant's name from the judgment and the report of Forensic Auditor has been made.

25. The Forensic Auditor, Shri Pawan Agrawal, pointed out in detail the various facts in the documents submitted by the applicant itself. It was pointed out that there was nothing to dispute the debit entries made in the accounts of Amrapali Leisure Valley Private Limited, and on interrogation, the facts could not be explained. Several shell companies were created or used to divert the money of home buyers. Forensic Auditor further pointed out that the agreement entered into between Vansh Consultants Private Limited and Amrapali Leisure Valley Private Limited is dubious and designed to hide actual transactions behind this agreement. Forensic Auditor also pointed out that the tower number given in the agreement is F2, having total 34 floors (G+33) and 102 flats. Amrapali Leisure Valley Pvt. Ltd. has no sanction plan of constructing any building of 34 floors. Further, there is no tower, namely, F2. The tower and flats mentioned in the agreement were not in existence at any point of time.

26. Forensic Auditor further pointed out that it was mentioned in the agreement that an amount of Rs 10 crores would be returned in a year

and Rs. 10 crores would be paid over and above the principal of Rs.10 crores in the next two years. This has resulted into an interest of Rs.10 crores on an amount of Rs.10 crores used for a year and after refund interest of Rs.10 crores was payable. The agreement is beyond any financial prudence, and only an insane businessman will agree to borrow funds at such a high interest rate of 100 percent. Forensic Auditor pointed out that it is a case of money laundering and the agreement was dubious. Vansh Consultants Private Limited was not having the money, it came in bank account in order to route it to Amrapali Leisure Valley Pvt. Ltd. The learned Auditor also pointed out from the bank statement filed by the applicant along with the application that it did not have the money for transaction. It was routed for the purpose. The transactions were only a conduit to move the money. The bank account shows no other activity. Thus, no case is made out by the applicant.

27. Considering the material on record, deficiencies pointed out by Forensic Auditor and the books of accounts of Amrapali Leisure Valley Private Limited, the entries made therein, there is nothing to doubt the correctness of the report of the Forensic Auditors, who made detailed enquiries. The Directors were heard during Forensic Audit, and we find that no case is made out to delete the name of the applicant from the report of Forensic Audit as reflected in the judgment and order passed by this Court, and we find no ground to doubt the correctness of the report

of the Forensic Auditors. No doubt about it that queries were made with respect to inter-corporate deposit. Merely mentioning in the letter or query to furnish details of the inter-corporate deposit made to be submitted by the applicant, is not decisive of the fact as to what is the ultimate transaction of the applicant with Amrapali Leisure Valley Private Limited. The transactions do not inspire confidence, the towers and flats were never sanctioned. The Agreement, which has been filed concerning the investment of Rs.10 crores, shows that it wanted to purchase the flats. It cannot be said to be the case of simplicitor of investment made. The rate of interest fixed was also a method to take out buyer's money in a dubious manner. The documents of applicant are contradicted by the accounts maintained by Amrapali Leisure Valley Private Limited. In the facts and circumstances of the case, we find that no case is made out to allow the prayers made in the applications. The applications are bereft of any merits and are hereby dismissed.

In Re. Financing of Home Buyers by Banks

28. Learned Receiver submitted that the RBI may be directed to advise all banks and financial institutions such as insurance companies, and employers of the establishments which have sanctioned home loans to home buyers to disburse all balance loan amounts to the home buyers whose accounts are regular and they will abide by instructions issued by the Receiver in this regard. It is further pointed out that banks have

certain reservations regarding the funding of NPA accounts. In view of current social and economic conditions, the Court may direct the RBI to keep its circulars/guidelines relating to NPA in abeyance and permit all banking and financial institutions, etc. to disburse loans to home buyers notwithstanding the status of accounts as NPA. Banks and financial institutions be directed to work out a long-term restructuring of all home buyers' loans about Amrapali Projects as well as any charges on the Amrapali project held by banks and financial institutions.

29. On the previous date of hearing, i.e., 27.5.2020, we requested Mr. Vikramjit Banerjee, learned ASG to obtain instructions from the RBI concerning the release of loans by the banks and other financial institutions to the home buyers. It was clearly stated that RBI instructions do not come in the way of releasing home buyers' loans whose accounts are NPAs. It would be for the banks and other financial institutions to release the loan. In the facts and circumstances, appropriate directions can be issued by this Court, and the RBI guidelines would not come in the way in the facts of the case. Learned counsel appearing for the banks pointed out that they are ready to release the loan to the home buyers. However, it would be in a phased manner and as per the stage of construction, they would be releasing the loan to the particular home buyer.

30. Considering the aforesaid and in the facts and circumstances of the case, as projects have been stalled for the last several years, the home buyers have obtained loans but cannot enjoy the fruits of their investment. At the same time, if projects are not completed and home buyers are not sure of handing over of flats, it would be difficult for them to pay bank dues till eternity and it is in the interest of home buyers as well as banks and financial institutions as they can recover money when projects are completed in an effective manner. We direct the banks and financial institutions to release loans to home buyers, whose loans have been sanctioned, notwithstanding the fact that their accounts are declared as NPAs. Let there be restructuring of the loan amount. It may be released under the current norms of the RBI for releasing loans and the rates fixed by the RBI therefor. The disbursement of further loans may be based on the present rate of interest fixed by the RBI; this we order in the peculiar facts of the case. It may be released stage-wise and long-term restructuring of the loans may be done so that construction is completed and buyers are able to repay the loan. Ordered accordingly.

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 many 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.

.....J.
(Arun Mishra)

.....J.
(Uday Umesh Lalit)

**New Delhi;
June 10, 2020.**