

W.P. (C) No. 502/2019 (X)
W.P. (C) No. 226/2018 (X)
W.P. (C) No. 267/2018 (X)
W.P. (C) No. 199/2018 (X)
W.P. (C) No. 246/2018 (X)
W.P. (C) No. 353/2018 (X)
W.P. (C) No. 829/2018 (X)
W.P. (C) No. 742/2018 (X)
W.P. (C) No. 460/2018 (X)
W.P. (C) No. 1018/2017 (X)
W.P. (C) No. 134/2018 (X)
W.P. (C) No. 131/2018 (X)
W.P. (C) No. 164/2018 (X)
W.P. (C) No. 1206/2017 (X)
W.P. (C) No. 281/2018 (X)
W.P. (C) No. 1116/2017 (X)
W.P. (C) No. 1156/2017 (X)
W.P. (C) No. 1144/2017 (X)
W.P. (C) No. 1041/2017 (X)
W.P. (C) No. 971/2017 (X)
W.P. (C) No. 947/2017 (X)
W.P. (C) No. 74/2018 (X)
W.P. (C) No. 56/2018 (X)
W.P. (C) No. 182/2018 (X)
W.P. (C) No. 8/2018 (X)
W.P. (C) No. 91/2018 (X)
W.P. (C) No. 160/2018 (X)

W.P.(C) No. 21/2018 (X)

W.P.(C) No. 58/2018 (X)

W.P.(C) No. 942/2017 (PIL-W)

W.P.(C) No. 1242/2017 (X)

W.P.(C) No. 52/2018 (X)

W.P.(C) No. 57/2018 (X)

Date : 01-12-2020 These matters were called on for hearing today.

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HON'BLE MR. JUSTICE UDAY UMESH LALIT

HON'BLE MR. JUSTICE ASHOK BHUSHAN

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UPON hearing the counsel the Court made the following
 O R D E R

PART - I

NOTE OF THE RECEIVER (30th NOVEMBER, 2020)

A) Funding by Banks

Learned Receiver has had meetings with the representatives of Indian Banks Association (IBA) and State Bank of India (merged), Bank of India, Bank of Maharashtra, Punjab National Bank (merged), Bank of Baroda (merged), Canara Bank (merged), Central Bank of India, Union Bank (merged), UCO Bank, Indian Overseas Bank, Axis Bank & HDFC Bank Ltd.

Learned Receiver submits that despite several communications to the Banks to expedite the funding, no responses have yet been received. In his Note, it is submitted:-

"5. However, since fund generation is of utmost and urgent importance, while the Banks however may be in the process of submitting their responses and the proposals, they may be directed to submit their proposals entirely in terms of the lending norms and without reference to any stand taken by them or reasons given regarding funding for Amrapali projects in any of the previous exchange of views with the Receiver."

We therefore request the IBA and all the aforementioned Banks to present their views on 14.12.2020. The communication in this regard be addressed to the IBA and the Banks. The Receiver is also at liberty to convey to the IBA and the Banks that the matter will be taken up on 14.12.2020.

B. Concerning problems relating to Adarsh Awas Yojna Phases IV-V-Greater Noida.

Learned Receiver submits that out of 5 Phases of Adarsh Awas Yojana launched by Amrapali Group, there was no sanctioned layout nor any location was earmarked for phases 4 and 5. Yet Amrapali Group had received deposits from some of the prospective Home Buyers.

Since as against the outlay of Rs.407.17 Crores required to

complete the constructions, the contribution from the Home Buyers upto now has been Rs.62.78 Crores only (Rs.62.24 Crores received by Amrapali Group and Rs.0.54 Crores received after the matter was taken up by this Court), according to learned Receiver, it would be better to refund the money to the concerned Home Buyers.

We, therefore, permit learned Receiver to take the following steps indicated in his note:

"1. As far as Phases IV & V are concerned, the respective towers exist only as project launch. There is no sanctioned layout or the location where such phases IV-V could be raised and constructed. As such the documents are only paper allotments.

2. On the analysis of relevant data, a note has been prepared, indicating courses of action that can be taken for dealing with such Allottees. (Note enclosed as Annexure-A)

3. Since as many as 1116 Allottees are involved in this, before any decision is taken, it is felt appropriate that the Court may permit the office of the Receiver to publish through various means including public notices the brief content of the annexure along with suggested course of action. This publication will facilitate the said Allottees to respond to the suggestions.

4. After receipt of responses from the Allottees, the Receiver will put up a report seeking further directions. These directions are solicited since dealing with this huge number of allottees has several implications, touching upon the number of unsold inventories, their adjustment, cost of shifting etc."

After hearing responses from the concerned depositors, learned Receiver may present his view.

C. Concerning Re-employment / Extension of Services of Mr. R.K. Aggarwal:

Learned Receiver submits that Mr. R.K. Aggarwal, Senior Executive Director (Engg.) has been associated and interacting with learned Receiver on behalf of NBCC and his services are absolutely necessary for the purpose of timely completion of the projects. It is submitted that since Mr. Aggarwal has superannuated on 30.11.2020, learned Receiver and the Committee are now handicapped in their day-to-day task of supervising and monitoring the execution of the projects. It is therefore suggested:-

“2. In view of the overall interest of such a prestigious project, this Hon'ble Court is requested to direct the CMD/Functional Directors, NBCC (India) Ltd., to take immediate action for continuation/re-employment of Mr. R.K. Aggarwal, with the same Administrative Powers being enjoyed by him prior to superannuation to aid the smooth execution with his zeal to complete these projects and keeping in mind the overall interest of more than 35,000 Home Buyers of Amrapali.”

Mr. Sidhartha Dave, learned Senior Advocate for NBCC seeks time to take instructions in the matter.

List on 07.12.2020.

PART - II

Note submitted by Mr. M.L. Lahoty, Advocate

A) Regarding recovery from Surekha Family

On the earlier occasion, at the request of the learned counsel appearing for Surekha Family, the matter was adjourned to 01.12.2020. It was generally expressed by all the Counsel that it would be better to have the assistance of Mr. Pavan Aggarwal, Forensic Auditor on this issue. Learned Receiver submits that Mr. Pavan Aggarwal is indisposed and is unable to participate in the proceedings. We, therefore, adjourn this issue to 14.12.2020.

B) Recovery of Rs.7.23 Crores from Ace Infracity Developers Pvt. Ltd.

This matter was dealt with in Part-II of our order dated 02.11.2020 and after hearing Mr. Keshav Mohan, learned advocate, Ace Infracity Developers Pvt. Ltd. ('the Company' for short) was allowed to deposit a sum of Rs. 7,21,21,097/- in instalments in the Registry of this Court as referred to in the order.

Subsequently, it was emphasized by Mr. Lahoty learned Counsel that interest at the rate of 12% p.a. be recovered from the Company, on which issue we have heard the learned counsel.

After considering the rival submissions, the consideration of objections raised by Mr. Keshav Mohan as noted in the order dated 02.11.2020 and 16.11.2020 is deferred.

Mr. Keshav Mohan submits that if his contention is correct that four apartments collectively valued at Rs. 5 Crores were given by the Company to Mr. Santosh Kumar Chaubey and Mr. Nishant Chaubey in discharge of the obligation under the Agreement dated 04.04.2016, and if his client has been asked to deposit Rs. 5 Crores in the Registry of this Court, in the fitness of things, Mr. Santosh Kumar Chaubey and Mr. Nishant Chaubey be restrained from alienating those four apartments.

We see force in the submission. Therefore, by way of an ad-interim injunction, Mr. Santosh Kumar Chaubey and Mr. Nishant Chaubey are restrained from alienating or creating any third party interest in respect of said four apartments (being Flat Nos. 3202, 3201, 3211 and 3212 all measuring 2095 sq.ft. as super area, situated on the 20th & 21st Floor, Tower-3, Project Ace Golfshire,

Sector-150, Noida).

Let notices be issued to Mr. Santosh Kumar Chaubey and Mr. Nishant Chaubey, returnable in the first Week of January, 2021.

PART - III (OTHER APPLICATIONS)

A) IA Nos. 114869/2020 (Z-321):

At the request of Mr. Krishnan Venugopal, learned Senior Advocate, a week's time was granted earlier to furnish the concerned details. Mr. Venugopal however submits that without proper readings, from the concerned matters no details could be furnished. He therefore submits that liberty be given to Noida Power Company Limited to have the facility of taking appropriate reading and then present his view in about a week's time. Liberty as prayed for is granted.

List this application along with IA No. 114877/2020 (Z-326) on 04.01.2021.

B) IA Nos. 122221, 122225 & 122226/2020 (Z-331):

Application for impleadment is allowed.

In his Note dated 28.10.2020 (R-98), Mr. M.L. Lahoty learned Counsel, dealt with the amounts due from various directors in para 5. The tabular chart appended at Annexure-B, in respect of Mr. Ajay Kumar referred to pages 1015 & 1054 from the report of the Forensic Auditors and also referred to pages 175 & 176 of the judgment dated 23.07.2019 passed by this Court.

Mr. Ajay Kumar had initially filed certain interim applications, which are now been renewed and renumbered as IA No. 122291/2020, and IA No. 122225/2020. A chart (R-125) has also been filed on 28.05.2020. We have gone through the report of the

Forensic Auditors which shows (from pages 1051) that in the inquiry held by the Forensic Auditors, Mr. Ajay Kumar had participated and had given his reply. He had also sent an e-mail to the Forensic Auditors. The conclusions arrived at by the Forensic Auditors have thus rightly been made the basis of the Note submitted by Mr. M.L. Lahoty.

We have gone through the IAs filed by Mr. Ajay Kumar. In none of these applications, the conclusions of the Forensic Auditor are sought to be controverted. We, therefore, see no reason to entertain these applications. The applications preferred by Mr. Ajay Kumar are dismissed.

Mr. Sidharth Luthra, learned Senior Advocate has however invited our attention to para 11 of IA No. 122225/2020 to submit that "Plot No. A-014, Pelican Villa, Jaypee Green, Noida" has been mentioned in the report of the Forensic Auditors twice over. According to him, there is only one property which is Plot No. A-014 Pelican Villa Jaypee Green and there is no property named "Plot No. A-014, Savanna Villa, Jaypee Greens, Noida", with which Mr. Ajay Kumar has had any connection.

We issue notice confined only to this question. Let appropriate responses be filed by learned Receiver and Mr. M.L. Lahoty. All the other contentions raised in the applications filed by Mr. Ajay Kumar stand rejected.

C) IA No. 123489/2020 (Z-332)

This IA has been filed stating that the amount of Rs. 8,00,000/- deposited by the applicant in the year 2011 for booking an apartment, be refunded to him.

The refund claims are not being considered by this Court inasmuch as the entire exercise of requesting the Receiver to monitor the progress has been to see that the construction is completed and all the Home Buyers are given possession of their apartments. In case the applicant is desirous of getting the possession of the apartment that was booked by him, he is free to approach the Receiver. If the Receiver is of the view that the apartment was booked by the applicant as contended, the applicant shall have to deposit the balance amount to facilitate the construction which may then lead to possession being handed over to the applicant.

With this observation, the application is disposed of.

D) IA No. 109599 & 109596/2020:

These IAs are preferred by some persons claiming to be allottees of convenience shops in the project launched by Amrapali Group of Companies. Mr. Manoj Singh, learned Advocate for Amrapali Group submits that these shops were allotted by Vinay Kumar Shahi who did not have the authority to make any allotment and said Mr. Shahi had pocketed the entire money. He further submits that an appropriate affidavit to that effect has been filed.

Let the Receiver and Mr. M.L. Lahoty take instructions in the matter. These IAs shall be taken up as first matter on 07.12.2020.

(R.NATARAJAN)
AR-cum-PS

(INDU MARWAH)
COURT MASTER (SH)

(PRADEEP KUMAR)
BRANCH OFFICER