

Court No. - 39

Case :- WRIT - C No. - 38488 of 2024

Petitioner :- Mrs Manju Rakesh

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Ravi Kant,Vatsala

Counsel for Respondent :- Ankit Prakash, Ashok Kumar
Srivastava,C.S.C.,Mohd. Afzal

With:

Case :- WRIT - C No. - 38495 of 2024

Petitioner :- Ritu Kumar And Another

Respondent :- State Of Uttar Pradesh And 2 Others

Counsel for Petitioner :- Ravi Kant,Vatsala

Counsel for Respondent :- Ashok Kumar Srivastava,Ankit
Prakash,C.S.C.,Mohd. Afzal

With:

Case :- WRIT - C No. - 38521 of 2024

Petitioner :- Dr Vivek Logani And Another

Respondent :- State Of Up And 2 Others

Counsel for Petitioner :- Ravi Kant,Vatsala

Counsel for Respondent :- Ashok Kumar Srivastava,Ankit
Prakash,C.S.C.,Mohd. Afzal

Hon'ble Siddhartha Varma,J.

Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard Ms Vatsala, learned counsel for the petitioners, Sri Ankit Prakash, learned counsel for respondent no.2, Sri Rohan Gupta, learned counsel for respondent no.3 and learned Standing Counsel for the State.

2. Learned counsel for the parties have agreed that all the writ petitions are based on similar set of facts and have sought similar reliefs, and that they may be heard and decided together.

3. The petitioners/home buyers claim to have been allotted residential flats in project 'Knights Court' - Jaypee Greens Wish Town, Sector-128, Noida, Uttar Pradesh developed by Builder-Respondent no.3/Jaiprakash Associates Ltd. Aggrieved by the delay in completion of the project and handing over of possession of the flats in question, the petitioners in Writ-C No.38488 and Writ-C No.38521 of 2024, filed complaints before the Uttar Pradesh Real Estate Regulatory Authority¹, which were allowed in terms of the orders dated 6.5.2019, with a direction to respondent no.3 to handover possession within a period of 45 days from the date of the order, and in case it was unable to do so, to refund the amount deposited together with interest.

4. It is stated that respondent no.3-Builder neither handed over possession of the residential flats in question, nor refunded the amount, hence, in regard to the petitioners in Writ-C No.38488 and Writ-C No.38521 of 2024, recovery certificates, bearing dates 18.12.2020 and 10.1.2020 were issued by the UPRERA. An agreement dated 22.1.2021 was entered into between respondent no.3-Builder and the Association of Home Buyers of the Project, for completion of project and handing over possession to all the home buyers under the provisions of the UPRERA. Thereafter, an order of rehabilitation under Section 8 of the Real Estate (Regulation and Development) Act, 2016² was passed by the UPRERA, directing completion of project and delivery of possession, within a specified time period. It has been asserted in Writ-C No.38488 of 2024 that upon consent being accorded by the petitioners, on 31.3.2021, an order was passed by the UPRERA, directing that recovery certificate issued pursuant to the order dated 6.5.2019 be kept in abeyance. The petitioners in Writ-C No.38521 of 2024 have also stated that they accorded their consent for completion of project and taking of possession consequent to the agreement dated 22.1.2021.

1 UPRERA

2 Act, 2016

5. The petitioners in Writ-C No.38495 of 2024, also filed a complaint before the UPRERA, which was decided by means of an order dated 27.7.2021 wherein, keeping in view the order of rehabilitation which had been passed earlier, a direction was issued for refund of the amount on completion of the project after 30.4.2022. It is stated that due to non-compliance of the order by respondent no.3, the UPRERA issued a recovery certificate dated 22.5.2024, which has remained un-executed.

6. In due course of time, insolvency proceedings were initiated against respondent no.3-Builder on a petition filed by the Banks/Financial Institutions and a Resolution Professional³ was appointed by the National Company Law Tribunal⁴ to manage the affairs of respondent no.3-Builder.

7. The petitioners in Writ-C No.38488 and Writ-C No.38521 of 2024 submitted their claims on 15.6.2024 and 21.6.2024 respectively under the Insolvency and Bankruptcy (Insolvency Resolution Process for Corporate Persons) Regulations, 2016⁵. The petitioners in Writ-C No.38495 of 2024 are stated to have sent an e-mail to the RP on 3.11.2024 for 'conversion of request from refund to possession' of their allotted residential flats. The claims of the petitioners along with other home buyers of the project are stated to have been taken up by the Authorized Representative⁶ of the home buyers in the meeting of the Committee of Creditors⁷. A grievance is sought to be raised that despite the claim of the petitioners and other home buyers having been taken up by the AR in the meeting of COC, in the presence of the RP, their claims with regard to handing over possession of the residential flats have not been accorded due consideration.

8. The petitioners in Writ-C No.38488 and Writ-C No.38521 of 2024 have sought quashing of the orders dated 6.5.2019 passed by the Respondent no.2/UPRERA to the extent it directs refund of the amount

³ RP

⁴ NCLT

⁵ CIRP Regulations, 2016

⁶ AR

⁷ COC

which, according to the petitioners, were never sought by them. The petitioners in Writ-C No.38495 of 2024, have similarly prayed for quashing of the order dated 27.7.2021 passed by the UPRERA, on their complaint, to the extent a direction for refund of the amount had been issued. Further prayer has been made in all the three writ petitions for quashing and setting aside decisions dated 30.08.2024, 27.09.2024, 25.10.2024 and Note on offer of possession issued by the Resolution Professional of Respondent no.3/Builder. Also a similar prayer has been made in all the three writ petitions to direct Respondent no.3/Builder through its Resolution Professional to immediately offer possession of the respective residential units to the Petitioners.

9. Learned counsel for the petitioners has sought to argue that the orders dated 6.5.2019 and 27.7.2021 passed by the UPRERA to the extent it directs refund of the amount, are erroneous since the relief with regard to the refund was never sought by the petitioners. It has been further contended that the decisions dated 30.8.2014, 27.9.2024 and 25.10.2024, taken at the meetings of the COC, are liable to be set aside, since in terms thereof, the RP has refused to offer possession of the residential unit which had been allotted by the Builder to the petitioners.

10. Learned counsel appearing for the respondents has pointed out that the order dated 6.5.2019 passed by the UPRERA, on the complaint of the petitioners, in terms of which a direction was issued to handover possession of the residential flats, within a specified time period, and in case of failure to do so, to refund the amount is, in fact, in favour of the petitioners. It is submitted that the challenge, which is sought to be raised against the aforesaid order to the extent it relates to refund of the amount, which was a direction issued in case the Builder failed to handover possession within a stipulated time period, cannot be entertained at this belated stage particularly, in view of the agreement entered into between the home buyers and the builder subsequently. It is also submitted that the aforesaid order passed by the UPRERA would be subject to the statutory

remedy of appeal and a relief in regard to the same cannot be sought by means of the present writ petitions.

11. As regards the other reliefs sought in the present writ petitions, it is submitted that the decisions taken at the meetings of the COC, held on 30.8.2024, 27.9.2024 and 25.10.2024, cannot be challenged at this stage since no final conclusions have been arrived at and the resolution plan is yet to be finalized and approved. It is submitted that the direction which is being sought to respondent no.3-Builder through RP to offer possession of the residential units, cannot be entertained at this stage since the resolution plan is yet to be finalized.

12. It is not in dispute that the order dated 6.5.2019 passed by the UPRERA was on the complaint made by the petitioners and in terms of the said order, a direction was issued to handover possession of the residential units within a stipulated period of time, and in case of failure to do so, to refund the amount. The recovery certificate was issued consequent to the aforesaid order and it was in view of the consent accorded by the petitioners in furtherance of the agreement entered into between the Builder and the Association of Home Buyers that the recovery certificate was directed to be kept in abeyance. The challenge which is now sought to be raised against the order dated 6.5.2019, that the order directs the refund of the amount, appears to be an after thought and cannot be entertained at this belated stage in a writ petition, bypassing the statutory alternative remedy of an appeal under the Act, 2016.

13. Insofar as the other prayers, including the relief sought for setting aside the decisions dated 30.8.2024, 27.9.2024 and 25.10.2024, which are essentially the minutes of the meetings of COC, also cannot be entertained at this stage. This would be particularly for the reason that the record of the meetings are indicative of the deliberations between the parties with no final decision having been arrived with regard to the resolution plan, which would be required to be approved by the

Adjudicating Authority. Moreover, it is not disputed that the home buyers including the petitioners, are duly represented by their authorized representative in the meetings of COC with the RP, and the claims put forward on behalf of the home buyers are being considered and final conclusion is yet to be arrived at. It is also not disputed that the petitioners along with other home buyers, as financial creditors, have duly submitted their claims before the RP, in the ongoing Corporate Insolvency Resolution Process⁸.

14. The importance of concluding CIRP proceedings has been emphasised by the Supreme Court in **Mohammed Enterprised (Tanzania) Ltd vs. Farooq Ali Khan and others**⁹ wherein, while entertaining appeals against a judgment of the High Court exercising power of judicial review interdicting Corporate Insolvency Process, it was observed that an unjustified interference with the proceedings initiated under the Insolvency and Bankruptcy Code-2016¹⁰, breaches the discipline of law. It was further stated that the IBC, being a complete Code in itself, exercise of supervisory and judicial review powers by the High Court would demand a rigorous scrutiny of judicious application.

15. A similar view had been taken in an earlier decision in **Committee of Creditors of KSK Mahanadi Power Co. Ltd. vs. Uttar Pradesh Power Corporation Ltd. and others**¹¹, where the Supreme Court underlined the importance of concluding the CIRP and took exception to the High Court deferring a CIRP in exercise of powers under Article 226 of the Constitution.

16. In view of the aforesaid legal position, we are of the opinion that the Insolvency and Bankruptcy Code, being a complete Code in itself, with sufficient checks and balances remedial avenues and appeals, any interference by the High Court in exercise of its extraordinary powers

⁸ CIRP

⁹ 2025 SCC Online SC 23

¹⁰ Code-2016

¹¹ 2024 SCC Online SC 4013

under Article 226 of the Constitution, which may have the effect interdicting the CIRP, would not be permissible as a matter of course.

17. Having regard to the aforesaid and in particular, taking note of the fact that the petitioners have already filed their claims in the pending CIRP proceedings, we are not inclined to entertain the writ petitions, in respect of the reliefs sought, at this stage.

18. It would be open to the petitioners to seek appropriate legal remedies as may be available under the law.

19. The writ petitions are, accordingly, **disposed of**.

Order Date :- 9.1.2025

PK/RKK/-

(Dr Y K Srivastava, J)

(Siddhartha Varma, J)