

(2018) 17 Supreme Court Cases 691*(Record of Proceedings)*

a (BEFORE ARUN MISHRA AND UDAY U. LALIT, JJ.)
 BIKRAM CHATTERJI AND OTHERS .. Petitioners;
Versus
 UNION OF INDIA AND OTHERS .. Respondents.

b Writ Petitions (C) No. 940 of 2017[†] with Nos. 942, 947, 971,
 1018, 1041, 1116, 1144, 1156, 1206, 1242 of 2017, 8, 21, 52,
 56-58, 74, 91, 131, 134, 160, 164, 182, 199, 226, 245-46, 267,
 281, 288, 298, 306, 353, 378 of 2018, Order dated May 10, 2018

c **Housing and Real Estate — Building/Planning Norms — Illegal/ Unauthorised Development/Construction, Real Estate Frauds, Demolition and Lis Pendens — Real Estate Fraud — Interest of home buyers of Amrapali projects — Protection of — Non-compliance by Developer with directions passed by Court pursuant to its proposal for completion of various projects — Detailed coercive directions passed including attachment of bank accounts and immovable properties of developer group of companies and personal bank accounts and properties of Directors/Promoters thereof — Public sector construction company, National Buildings Construction Corporation (NBCC), permitted to complete the projects and other directions passed to**
d **further protect interests of home buyers**

— Independent proposals given by Amrapali along with the proposed co-developer had been placed before the lawyers concerned representing the flat owners in those projects and lawyers of Noida and the representatives of Greater Noida and broad consensus had been reached — On 17-5-2018, a
e detailed order qua the proposal/projects was passed by the Court and certain obligations were imposed and certain directions were issued which were to be complied with by the group of companies as well as co-promoters, etc. — In the said order, the Court inter alia observed that from the admission made by the promoter, money to the extent of Rs 2765 crores, out of the six projects
f in question, had been transmitted to other projects and also directed that an escrow account was to be opened in which the promoters were to deposit a sum of Rs 250 crores on or before 15-6-2018 — When the matter was taken up on 18-7-2018, compliance with the order was not reported and a letter dt. 13-7-2018 signed by Deputy Secretary to the Government of India, was placed on record which inter alia provided that a High-level Committee had been
g constituted by the Government of U.P. to redress the issues of home buyers and affected parties of incomplete/stalled housing projects in Noida/Greater Noida/Yamuna Expressway under the Chairmanship of Secretary, Ministry of Housing and Urban Affairs — Held (vide order dt. 1-8-2018), in case the Committee constituted by the Government of U.P. wanted to take up the matter of Amrapali Group in view of the order dt. 17-5-2018, it was necessary for them
h to seek express permission from the Court, as the Court was in seisin of the

[†] Under Article 32 of the Constitution of India (Arising out of Diary No. 30157 of 2017)

matters — Further, the order of depositing Rs 250 crores had not been complied with and there was diversion of more than Rs 2765 crores

— Vide connected order dt. 1-8-2018, thus directed: (i) bank accounts of all the aforesaid 40 companies (in the Amrapali Group of Companies) be frozen forthwith, (ii) the entire immovable properties of these 40 group of companies attached forthwith, (iii) the names of all the Chartered Accountants of all the said 40 companies be disclosed to Court and their reports from 2008 till date be placed on record, (iv) individual bank accounts of the Directors of all the 40 companies be frozen and they shall not be entitled to operate the same with immediate effect, (v) details of all bank accounts of companies and their Directors and of personal accounts of Directors to be furnished, and (vi) properties in the individual names of the Directors be attached and the same shall not be disposed of or alienated in any manner without express order of the Court [Paras 1 to 18 of Connected Order (1), Paras 1 to 4 of Connected Order (2) and Paras 1 to 9 of Connected Order (3)]

— Vide connected order dt. 2-8-2018, the order dt. 17-5-2018 permitting Amrapali Group to complete the projects recalled — Further, National Buildings Construction Corporation (NBCC) permitted to complete the projects and undertake the study and work out the details — 30 days' time granted to NBCC to submit a proposal to Court — Further, the auditors requested to find out how much money had been transmitted/diverted to other projects and how it had been used — However, considering the fact that the hospital required money on day-to-day basis, account of Amrapali Healthcare Pvt. Ltd. de-frozen — However at the same time, directed that the details of the bank account(s) of it be placed before Court from 2008 till date [Paras 7, 8, 12 and 13 of Connected Order (4)]

— Vide connected order dt. 8-8-2018, inter alia directed that the Electricity Companies of the Paschimanchal Vidyut Vitaran Nigam Ltd. (PVVNL) and Noida Power Company Ltd. (NPCL) to restore the electricity connection forthwith — Further, directed that the charges for the month of July, if not paid, shall be paid by the residents to the Amrapali Group of Companies/maintenance companies employed by it for this purpose — Further, Amrapali Group of Companies directed to furnish the names of maintenance companies/assistants project wise, projectwise information, details of amount collected from inhabitants so far including the Silicon and Zodiac Towers and how much has been actually deposited [Paras 10 and 11 of Connected Order (5)]

— Vide connected order dt. 21-8-2018 inter alia directed, with respect to electricity dues, that since substantial amount had been collected by Amrapali Group and since meters were prepaid, all the existing arrears before the month of August 2018 shall be paid by the Amrapali Group before the due date — Further, in case the arrears were not deposited, penal consequences of non-compliance with the order shall follow [Para 2 of Connected Order (6)]

Advocates who appeared in this case :

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Agnihotri, Siddhant Tripathi, Ms Aakriti Sharma, Avi Pandey, Ramesh Thakur, Balaji Srinivasan, Ms Aarohi, Badri Prasad Singh, Gaurav Tyagi, Neha Chaudhary, Purnima Jauhari, Ms Seema P., Prakash K., Priyadarshi Gopal, Ms Rashmi Singh, Amit Kr. Singh, Dr Ashwani Bhardwaj, Amit Goel, Nitin Bajpai, Ms Neha Tanwar, A.K. Tripathi and Md. Akaram, Advocates] for the appearing parties.

ORDER

1. Heard the learned counsel for the parties.

IA No. 66000 of 2018 in WP (C) No. 940 of 2017, IA No. 68025 of 2018 in WP (C) No. 182 of 2018, IA No. 68175 of 2018 in WP (C) No. 134 of 2018, IA No. 64608 of 2018 in WP (C) No. 246 of 2018, IA No. 68150 of 2018 in WP (C) No. 52 of 2018, IA No. 69072 of 2018 in WP (C) No. 164 of 2018, IA No. 64172 of 2018 in WP (C) No. 91 of 2018, IA No. 64368 of 2018 in WP (C) No. 1144 of 2017, IA No. 64161 of 2018 in WP (C) No. 52 of 2018

2. Applications for impleadment are allowed to the extent of intervention only.

3. Charts have been placed by the promoters as well as by the Noida Authority with respect to the lifts which are operational and which are under process and the lifts which are yet to be installed.

4. We have perused the charts given by the Amrapali Sapphire Developers Pvt. Ltd. in respect of Towers A to L which indicates that six lifts are yet to be installed; however, there are more towers in the same project i.e. Towers M to Z, Noida Authority was unable to inspect the said towers. Let the Noida Authority make inspection of the aforesaid Towers M to Z and submit a report in this regard on or before 15-5-2018.

5. In Towers C, E, G, H, K and L of M/s Amrapali Sapphire Developers Pvt. Ltd., there is provision of three lifts in each tower. Out of the three, one lift is yet to be installed and only two lifts are operational in the aforesaid towers. The aforesaid figures are not disputed. It is stated by the promoters that they have already furnished an undertaking that within twelve months these lifts would be installed.

6. With respect to Towers M to Z of M/s Amrapali Sapphire Developers Pvt. Ltd. it is stated that work is under progress for them and balance lifts are to be installed within 12 months and the operational lifts are stated to be two. Noida Authority to make verification in this regard and submit its report on or before 15-5-2018.

7. With respect to M/s Amrapali Platinum Pvt. Ltd., the Noida Authority has submitted the report with respect to ten towers i.e. Towers A to J and Club. There is provision of three lifts in each tower. As per the report of the Noida Authority in Tower A one is under maintenance and two are functioning. In Tower C, out of three lifts, two are functioning one is not functioning. In Tower D, out of three, two are functioning and one is to be installed. In Tower E, two are functioning and one is not installed. In Tower F, two are functioning and one is defective. And in Club, out of three lifts, two are functioning one is not installed. In Towers A, C & F, since there are defects in the lifts and maintenance is going on, let the three sanctioned lifts be made operational in

each aforesaid Towers A, C & F within a period of one month from today as assured by Mr Gaurav Bhatia, learned counsel appearing on behalf of the promoters.

a **8.** There are some low-rise buildings in Amrapali Platinum Pvt. Ltd. (G+2) and in that there is provision of total nine lifts in each building and only five lifts are installed and have not been made operational as buildings are not yet occupied by the inhabitants and work is going on and in remaining low-rise buildings, lifts are to be installed.

b **9.** With respect to *M/s Amrapali Zodiac Developers Pvt. Ltd.* Noida Authority has given a chart of 22 towers and there is provision of 51 lifts; out of that 36 lifts are reported to be functional and 15 lifts are to be installed. And additional one lift is under maintenance. The additional lift which is under maintenance in Tower L is undertaken to be made functional within one month from today and two have already been installed. It is undertaken to make it functional within one month.

c **10.** With respect to Towers B, Q & R, it is stated by the promoters that both the lifts of Tower B and one lift of Tower Q and one lift of Tower R are available at site. Installation work is going to be completed within two months from today as the work is in progress. Hence, it is directed that let the aforesaid lifts be installed as assured within two months from today in the aforesaid Towers B, Q & R.

d **11.** It is also stated on behalf of promoters that in Towers C, O and P, some lifts are working as mentioned in the chart submitted by the promoters and installation of remaining lifts are in progress which they are going to complete within two months. Remaining lifts are going to be installed as early as possible.

e **12.** With respect to *M/s Amrapali Princely Estate Pvt. Ltd.*, Noida Authority has submitted the report with respect to Towers A to S. According to Noida Authority there is provision of three lifts in each tower and two are functioning in each tower and one is not yet installed. However, with respect to Towers L, R and S, it is stated by the promoters that number of lifts to be installed as per plan is two in each tower and there is conflict in the report of Noida Authority. There is provision of two lifts only. With respect to Towers L, R & S the stand of the builder is that there is provision of two lifts in each tower, out of the two, one is operational and one is to be installed.

f **13.** Certain more towers of *M/s Amrapali Princely Estate Pvt. Ltd.* are to be inspected by the Noida Authority on or before 15-5-2018 and report would be submitted. Let the Noida Authority to verify as to the provision for how many lifts have been made in Towers L, R & S and submit its report in this Court on the next date of hearing. Let Noida Authority also make a report with respect to the stage of construction of the aforesaid towers and submit in this Court on the next date of hearing.

g **14.** *M/s Amrapali Eden Park Pvt. Ltd.* as per the report of the Noida Authority in Towers A to D there is provision of two lifts and both the lifts are functional. The fact is not disputed at the Bar and is placed on record. With

h

respect to M/s Amrapali Silicon Pvt. Ltd., we defer the order. Let other towers be inspected by the Noida Authority and report be submitted.

15. Inspection reports have been submitted with respect to the various projects annexed as Annexure C-2 along with letter dated 8-5-2018 of Chief Firefighter Officer, Gautam Budh Nagar, the same has been placed on record. There are various deficiencies pointed out in each of the reports. On consideration of the deficiencies, we direct the promoters to remove these defects and to submit its proposal in this Court on or before 15-5-2018. Let a tower-wise comprehensive proposal with respect to each and every defect as pointed out be submitted by the promoters.

16. With respect to power backup we request the officer of the authority concerned to inspect and submit the tower-wise report.

17. With respect to towers which are inhabited, obviously promoter is bound to apply for electricity, water as well as sewer connections/facilities. However, promoters have prayed for time to submit a detailed affidavit in this regard on or before 15-5-2018. Let detailed proposal in this regard supported by an affidavit be placed on record and the proposal of the builder to apply and provide electricity, water as well as sewer connections/facilities.

18. The promoters/builders cannot make any transaction/alienation regarding the projects without express permission of the Court. As and when promoter/builder proposes to do so they shall submit the entire proposal in this Court. It is made clear that our order be followed in pith and substance with respect to all projects. Greater Noida Authority also submits its affidavit. Office to accept the same waiving technical objection as to the number of case as is being filed.

19. The promoter has submitted comprehensive plan of developers and financier; let the promoter also submit flow of the finances. The details of property which is unencumbered and if encumbered what are the details of the encumbrances; which of the property can be utilised for raising the finances. Let promoters also give its proposal which projects are not viable and they propose to refund the amount to the buyers. In this regard also a detailed statement supported by affidavit be submitted in this Court on or before the next date of hearing.

20. Group of promoters for various projects as well as promoters and developers for Amrapali Heartbeat City shall file a statement of the total price of the flats, total amount paid to the builder by the flat buyers, total amount spent by the builder on the construction so far made and how the remaining part of the money has been utilised. Its outflow should be stated and who are the beneficiaries of the transfers of the said amount and on what account the money has been transferred and utilised. Let statement be made with respect to all the projects by the aforesaid promoters/builders supported by an affidavit and requisite documents and if audit reports are available, they be also placed on record. It is also submitted that the Noida Authority is also undertaking to submit the report of the audit made by it so far. Let the affidavit of the Managing Director or the person in management be placed on record with respect to all the

projects and promoters/developers as to aforesaid aspects. It appears on certain documents that money has been transferred to other companies, the details of composition of the transferee company including the names of the Director and for what purpose money was transferred and how it is to be retrieved shall also be furnished by the next date of hearing. Let details in this regard be also submitted.

21. Noida Authority is directed to inspect M/s Amrapali Heartbeat City Project also. List on 16-5-2018.

Court Masters

[CONNECTED ORDER (1)]
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(BEFORE ARUN MISHRA AND UDAY U. LALIT, JJ.)

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D/60838/S

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[†] Under Article 32 of the Constitution of India (Arising out of Diary No. 30157 of 2017)