

(2023) 6 High Court Cases (Del) 624 : 2023 SCC OnLine Del 1589

HIGH COURT OF DELHI

(BEFORE PURUSHAINDR KUMAR KAURAV, J.)

SUPERTECH URBAN HOME BUYERS ASSOCIATION

(SUHA) FOUNDATION . . Petitioner;

Versus

UNION OF INDIA AND OTHERS . . Respondents.

WP (C) Nos. 9491 and 9493 of 2020, WP (C) Nos. 1144, 1149, 1225, 1377, 5870, 5879, 7749, 7766, 7956, 10223, 11168, 11184, 11266, 11995, 11998, 12222, 12250, 12368, 12461, 13159, 13232, 13257, 13335, 14070, 14079, 14359, 14859 of 2021, WP (C) Nos. 1604, 1717, 2927, 2946, 3084, 3107, 3455, 3513, 4287, 4526, 4989, 5101, 5192, 5389, 5546, 5567, 5934, 6006, 6104, 6142, 6459, 6504, 6508, 6512, 6582, 6594, 6608, 6713, 6732, 6831, 7109, 7126, 7128, 7129, 7131, 7154, 7165, 7177, 7237, 7443, 7582, 7798, 7812, 7828, 7894, 7918, 8168, 8274, 8526, 8604, 8785, 8932, 8971, 8972, 8989, 9101, 9104, 9110, 9114, 9116, 9127, 9143, 9178, 9180, 9207, 9224, 9273, 9327, 9330, 9357, 9423, 9465, 9919, 10122, 10140, 10211, 10214, 10299, 10340, 10346, 10348, 10351, 10379, 10394, 10399, 10401, 10402, 10405, 10411, 10413, 10414, 10415, 10419, 10429, 10443, 10470, 10481, 10506, 10524, 10686, 10772, 10773, 10803, 10824, 11063, 11067, 11144, 11161, 11209, 11215, 11239, 11354, 11362, 11431, 11586, 11628, 11670, 11756, 11810, 11822, 11983, 12372, 12392, 12520, 12593, 12612, 12704, 12863, 13006, 13063, 13074, 13127, 13179, 13362, 13365, 13431, 13595, 13710, 13718, 13823, 13872, 13915, 13929, 14490, 14589, 14620, 14654, 14683, 14938, 15190, 15237, 15244, 15353, 15358, 15451, 15523, 15535, 15677, 15698, 15750, 16039, 16256, 16570, 16608, 16654, 16859, 16989, 17024, 17034, 17347, 17387, 17469, 17500, 17528, 17555, 17588 of 2022, WP (C) Nos. 28, 30, 47, 62, 72, 74, 84, 99, 176, 253, 318, 372, 431, 454, 460, 548, 578, 719, 749, 859, 891, 953, 1038, 1089, 1122, 1165, 1219, 1313, 1468, 1632, 1889, 1941, 2012 of 2023, CM No. 30535 of 2020, Cont. Cas (C) Nos. 939 and 1207 of 2022, decided on March 14, 2023

A. Constitution of India — Art. 226 — Maintainability of writ petition — Availability of alternative remedy and alternative forum — Petitioner/homebuyers booking flats in project of builder — Banks disbursed home loan directly to builder under

subvention schemes wherein builder liable to pay EMI's — Default in paying EMI — No possession of flats given to homebuyers — Banks/financial institutions started sending payment reminders to homebuyers — Writ petition by homebuyers seeking directions from banks/financial institutions to not charge EMIs till possession of flats received — Held on facts, homebuyers claiming their rights on basis of terms of the contract/RBI Circulars — Rights of petitioners flowing from private contract involving complex and disputed question of facts — Held, no writ/order can be issued under Art. 226 of the Constitution to compel the authorities to remedy pure and simple breach of contract



Page: 625

— Held on facts, “builder-buyer agreement” categorically provides for arbitration clause — Banks initiated insolvency proceedings against the respondent-builder — Homebuyers can raise their claim before the Tribunal concerned — Various statutes where the petitioners can raise their grievances such as Real Estate (Regulation and Development) Act, 2016, Consumer Protection Act, 1986, Insolvency and Bankruptcy Code, 2016, Sarfaesi Act, 2002, etc. — Held, in view of availability of alternative remedies, writ petition not entertainable

— Cases in hand, purely contractual in nature — As has been noted, the “builder-buyer agreement” also categorically provides for an arbitration clause, whereby, any dispute pertaining to the said agreement was to be referred to arbitration — In some of the cases, homebuyers have already approached alternate forums and cases are pending — In some cases where banks have initiated insolvency proceedings against them, homebuyers can raise their claim before the Tribunal — There are various statutes such as RERA Act, Consumer Protection Act, Insolvency and Bankruptcy Code, 2016, SARFAESI Act, etc. where petitioners can raise their grievances — Constitution of India — Art. 226 — Alternative remedy and alternative forum — Contract and Specific Relief — Contractual Obligations and Rights — Housing and Real Estate — RERA Jurisdiction

Association Home Buyers petitioner consists of 123 homebuyers, who had booked flats in projects of the builder Respondent 3 being Supertech Limited and had availed home loans from banks/financial

institutions (Respondents 4 to 11) who on basis of subvention schemes disbursed the sanctioned amount to the builder directly and he was supposed to pay EMIs on the sanctioned loan.

Builder started defaulting in payments of EMIs and the banks/financial institutions started sending payment reminders to the homebuyers. Builder was obligated to deliver the possession of the residential flats but in none of the cases had fulfilled its obligation. Also, Corporate Insolvency Resolution Process has been initiated against the builder by National Company Law Tribunal and moratorium in under Section 14(1)(a) of the Insolvency and Bankruptcy Code, 2016 was imposed. Writ petition filed by the Home Buyers Association seeking directions to the banks/financial institutions to not charge EMIs from the homebuyers till the possession of flats is delivered to them.

The questions that arose before the Court were (i) Whether the present writ petition is maintainable against the respondent, and (ii) Whether the present writ petition deserves to be entertained.

Dismissing the application, the High Court of Delhi

Held:

The "maintainability" and "entertainability" of a writ petition are distinct concepts. The question of "maintainability" or the "jurisdiction" of the court concerned to decide the controversy goes to the root of the matter. The question of "entertainability" is entirely within the realm of discretion of the High Courts. Writ remedy being discretionary, despite being petition maintainable, the same may not be entertained by the High Court for many reasons. It is also to be noted



Page: 626

that where the controversy is purely legal one and it does not involve the disputed question of fact but only question of law, it should be decided by the High Court instead of dismissing the writ petition on the question of an alternate remedy being available. Violations of all rights may not necessarily be entertained in a writ jurisdiction.

(Paras 76 and 77)

Federal Bank Ltd. v. Sagar Thomas, (2003) 10 SCC 733, *applied*

Mathew Varghese v. M. Amritha Kumar, (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254; *K.K. Saksena v. International Commission on Irrigation & Drainage*, (2015) 4 SCC 670 : (2015) 2 SCC (Civ) 654 : (2015) 2 SCC (L&S) 119; *Supriyo Basu v. W.B. Housing Board*, (2005) 6 SCC 289; *Sardar Associates v. Punjab & Sind Bank*, (2009) 8 SCC 257 : (2009) 3 SCC (Civ) 350; *U.P. State Coop. Land*

Development Bank Ltd. v. Chandra Bhan Dubey, (1999) 1 SCC 741 : 1999 SCC (L&S) 389, *followed*

U.P. State Sugar Corpn. Ltd. v. Kamal Swaroop Tondon, (2008) 2 SCC 41 : (2008) 1 SCC (L&S) 352; *A.V. Venkateswaran v. Ramchand Sobhraj Wadhwani*, 1961 SCC OnLine SC 16; *Maharashtra Chess Assn. v. Union of India*, (2020) 13 SCC 285; *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625; *L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577; *Ram Kishun v. State of U.P.*, (2012) 11 SCC 511 : (2013) 1 SCC (Civ) 382; *Federal Bank Ltd. v. Sagar Thomas*, (2003) 10 SCC 733; *Peerless General Finance & Investment Co. Ltd. v. RBI*, (1992) 2 SCC 343; *Federal Bank Ltd. v. Sagar Thomas*, (2003) 10 SCC 733, *relied on*

However, the question of “entertainability” is entirely within the realm of discretion of the High Courts. As has been noted, writ remedy being discretionary, despite being petition maintainable, the same may not be entertained by the High Court for many reasons. It is also to be noted that where the controversy is purely legal one and it does not involve the disputed question of fact but only question of law, it should be decided by the High Court instead of dismissing the writ petition on the question of an alternate remedy being available. Violations of all rights may not necessarily be entertained in a writ jurisdiction.

(Para 77)

There may be various innocent homebuyers and there might be various petitions pending before the Court and other High Courts, however, such litigation arising out of projects involving disputed question of facts ranging myriad issues, cannot be entertained as the courts cannot possibly take account of all such real estate projects and the gamut of issue arising from them.

(Para 80)

In the present case, not only the rights of the petitioners are flowing from private contract but the complex and disputed question of facts are involved and the parties are not remediless. Alternative forums are already in place. Interference by the writ court under the facts of the present case would amount to usurpation of powers vested with the respective forums. Such an exercise is not permissible unless extraordinary circumstances exist which are apparently non-existent in the instant cases.

(Para 85)

B. Constitution of India — Art. 226 — Maintainability of writ petition — Banks/financial institutions respondents liable to discharge their function under the governing statute — Held, writ

**petition against banks/financial institutions not maintainable —
Constitution of India — Art. 226 — Alternative remedy and
alternative forum**

Held:

A perusal of various clauses of respective agreements, be it "buyer-developer agreement", "loan agreement" or "tripartite agreement", the rights claimed by the



Page: 627

petitioners are eventually flowing from the respective agreements only. It is also to be noted that the violation of RBI Circulars has been alleged by the petitioners homebuyers, which is disputed by the respondents.

(Para 84)

In the present case, not only the rights of the petitioners are flowing from private contract but the complex and disputed question of facts are involved and the parties are not remediless. Alternative forums are already in place. Any interference by the writ court under the facts of the present case would amount to usurpation of powers vested with the respective forums. Such an exercise is not permissible unless extraordinary circumstances exist which are apparently non-existent in the instant cases.

(Para 85)

The homebuyers are claiming their rights on the basis of terms of the contract or on the basis of RBI Circulars. Their rights are mainly governed by the terms of the contract which they have entered into and to enforce the terms of the contract, no writ or order can be issued under Article 226 of the Constitution so as to compel the authorities to remedy a breach of contract pure and simple.

(Para 86)

Bareilly Development Authority v. Ajai Pal Singh, (1989) 2 SCC 116, followed

Pleadings between the parties indicate that the respondent Financial Institutions are alleging breach on the part of the petitioners and are claiming full adherence of the RBI Circular. In any case, since the rights of the homebuyers are flowing from the terms of the contract and if, there is any breach of RBI Circulars at the instance of banks/financial institutions, the same by itself cannot entitle the homebuyers for the relief, which they have claimed in the instant writ petitions. The breach

of RBI Circular is again a question of fact that can still be gone into before the appropriate court.

(Para 87)

The cases in hand are purely contractual in nature. As has been noted, the "builder-buyer agreement" also categorically provides for an arbitration clause, whereby, any dispute pertaining to the said agreement was to be referred to arbitration. In some of the cases, the homebuyers have already approached the alternate forums and their cases are pending. In some cases where the banks have initiated insolvency proceedings against them, the homebuyers can raise their claim before the Tribunal concerned. There are various statutes such as Real Estate (Regulation and Development) Act, 2016, Consumer Protection Act, 1986, Insolvency and Bankruptcy Code, 2016, Sarfaesi Act, 2002, etc. where the petitioners can raise their grievances. Not advisable to entertain a writ petition under Article 226 of the Constitution under the facts of the present cases.

(Para 88)

Baljit Singh Bhatia v. Union of India, 2022 SCC OnLine Del 5028, applied

Sunil Kumar Pandey v. Union of India, 2022 SCC OnLine Del 3621; *Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir*, (2022) 5 SCC 345; *Gulshan Arora v. SRS Real Estate Ltd.*, 2022 SCC OnLine SC 2093, followed

Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771; *Bikram Chatterji v. Union of India*, (2019) 19 SCC 161; *Upendra Choudhury v. Bulandshahar Development Authority*, (2022) 11 SCC 449; *Godrej Sara Lee Ltd. v. Excise & Taxation Officer*, (2023) 109 GST 402 : 2023 SCC OnLine SC 95; *Devendra Dwivedi v. Union of India*, (2022) 11 SCC 455, relied on

Mudit Saxena v. Union of India, 2022 SCC OnLine Kar 1711; *Vineet Gupta v. RBI*, 2023 SCC OnLine Del 3001; *PNB Finance Housing Ltd. v. Union of India*, WA No. 1062 of 2022, order dated 2-12-2022 (Kar); *Sushmi Mukherjee v. National Housing Bank*,



2021 SCC OnLine Del 5830; *V.K. Naswa v. Union of India*, (2012) 2 SCC 542 : (2012) 1 SCC (Cri) 914; *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*, (1989) 2 SCC 691; *Rakesh Verma v. Union of India*, 2022

SCC OnLine Del 5138, *referred*

Supertech Ltd. v. Emerald Court Owner Resident Welfare Assn., (2021) 10 SCC 1 : (2022) 1 SCC (Cri) 1; *Apana Logistics (P) Ltd. v. Container Corpn. of India Ltd.*, 2019 SCC OnLine Del 8704; *Rajpur Hydro Power Ltd. v. PTC India Financial Services Ltd.*, 2017 SCC OnLine Del 8277; *Kelvin Jute Co. Ltd. v. Krishna Kumar Agarwala*, (2016) 14 SCC 326 : (2018) 1 SCC (L&S) 204; *CBI v. Ramesh Gelli*, (2016) 3 SCC 788 : (2016) 2 SCC (Cri) 222; *Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.*, (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153; *Ashok Amritraj v. RBI*, 2012 SCC OnLine Mad 2752; *Sterling Agro Industries Ltd. v. Union of India*, 2011 SCC OnLine Del 3162; *Karnataka State Forest Industries Corpn. v. Indian Rocks*, (2009) 1 SCC 150 : (2009) 1 SCC (Civ) 64; *Orix Auto Finance (India) Ltd. v. Jagminder Singh*, (2006) 2 SCC 598; *Bernard D'mello v. Industrial Finance Corpn. Ltd.*, 2006 SCC OnLine Del 1176; *Mardia Chemicals Ltd. v. Union of India*, (2004) 4 SCC 311; *ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.*, (2004) 3 SCC 553; *NHAI v. Ganga Enterprises*, (2003) 7 SCC 410; *Orissa State Financial Corpn. v. Narsingh Ch. Nayak*, (2003) 10 SCC 261; *Central Bank of India v. Ravindra*, (2002) 1 SCC 367; *State of Bihar v. Jain Plastics & Chemicals Ltd.*, (2002) 1 SCC 216; *Air India Statutory Corpn. v. United Labour Union*, (1997) 9 SCC 377 : 1997 SCC (L&S) 1344; *State of U.P. v. Bridge & Roof Co. (India) Ltd.*, (1996) 6 SCC 22; *Sector Twenty-one Owners Welfare Assn. v. Air Force Naval Housing Board*, 1996 SCC OnLine Del 42; *LIC v. Consumer Education & Research Centre*, (1995) 5 SCC 482; *State of Gujarat v. Meghji Pethraj Shah Charitable Trust*, (1994) 3 SCC 552; *LIC v. Escorts Ltd.*, (1986) 1 SCC 264; *Ajay Hasia v. Khalid Mujib Sehravardi*, (1981) 1 SCC 722 : 1981 SCC (L&S) 258; *D.D. Suri v. A.K. Barren*, (1970) 3 SCC 313; *Dwarka Nath v. CIT*, 1965 SCC OnLine SC 61, *cited*

NRS-AS/141244/DEL

Advocates who appeared in this case :

Ms Nidhi Raman, Dev. P. Bhardwaj, S.K. Tyagi, Rishabh Sahu, Ms Pratima N. Lakra, Ms Monika Arora, Ripudaman Bharadwaj, Anurag Ahlualia, Ajay Digpaul, Vineet Dhanda, Ms Arunima Dwivedi, Ms Manisha Agrawal Narain and Subhash Tanwar, Central Government Standing Counsels, Satya Ranjan Gusain, Central Government Senior Panel, Chetanja Puri, Abhishek Singh, Ms Archana Surve, Mimansak Bhardwaj, Kushgra Kumar, Jitendra Kumar Tripathi, Jitendra Kumar, Siddhant Gupta, Rudra Paliwal, Abhigyan Siddhant and Ms Seema Singh, Government Pleaders, Ms Bharti Raju, Neeraj, Sushil Raaja, Satya Ranjan Gusain, Ravi Prakash, Ms Monika Arora, Anil Soni, Mukul

Singh, Rakesh Kumar, Nimitjya Chaudhary, Siddharth Khatana, Jai Prakash, Naginder Benipal, Manish Kumar Rajesh Kumar, Niraj Kumar, Jitesh Vikram Srivastava, Gaurav Sharma, Farman Ali, Ms Uma Prasuna Bachu, Sandeep Vishnu, Raghvendra Shukla, K.K. Jha, Atul Krishna, Pradeep Kumar Jha, Nitinjya Chaudhry, Akash Vajpai, Ajay Kumar Panday, Ms Anushkaa Arora and Satya Ranjan Swain, Senior Panel Counsels, Ms Abha Malhotra, Senior Central Government Counsel, Shadan Farashat, Additional Standing Counsel, Anubha Bhardwaj, Government Counsel, Aniruidh Sukla (GD), Rahul Kumar Sharma, (GP) Counsels (Nishant Das, Ms Aatrayi Das, Deepak Gautam, Ms Akanksha Kapoor, Avinash Sharma, Sidanant Chaudhary, Mukesh Kumar, Sanyam Saxena, Nubair Alvi, Vibhor Bagga, Ms Esha Dogra, Yugantar Singh Chauhan, Shashwat Anand, Shashwat Parihar, Dhruva Vig, Abhinav Agnihotri, Deepak Vohra, Ms Divya Rana, Ritesh Khare, Hardik Vashisht, Ms Adith Menon, Abhishek Gusain, Ms Namrata, Ms Esha Tibriwal, Souray Ghosh, Ms Akriti Arva, Rajiv Kapur, Akshit Kapur, Ms Zubeda Begum, R.L. Sinha, Amandeep Singh, Karmveer, Dilip Kumar Niranjan, Ajay Kumar, Ms Harshit Goyal, Deepak Parashar, Prakhar Singh, Rahul Malhotra, Ms Anchal Tiwari, Alok Tripathi, Ms Rashmi Jain, Mihir Garg, Manoj Yadav, Akshat Bisht, Akshay Srivastava, Piyush Singh, Aditya Parolia, Ms Mahima Ahuja, Ms Ridhi Jain, Ehraz Zafar, Manish Patni, Aayush



Milruka, Vishal Hablani, Akshay Sahay, Ms Shradha Narayan, Ratnesh Sharma, Rahul Raman, Sachin Bajpai, Ms Sonam Priya, Siddhant Kumar, Ms Vidhi Udayshankar, Ms Anushree Narain, Mayank Srivastava, Ms Kiran Bhardwaj, Ms Anushree Malviya, Abhinav Sharma, Ms Sakshi Jain, Pooran Chand Roy, Mukul Daves Chaurasia, Virender Pratap Singh, Ms Priya Mishra, Ms Pinky Yadav, Ms Shubhra Parashar, Chaitanyashil Priyadarshi, Ms Saloni Sharma, Tejaswi, Aditya Bhattacharya, Abhinav Jaganathan, Paresh B. Lal, Abhishek Singh, Deepak Prakash, Subhash Choudhary, Ravindra Singh, Ms Monika Rai, Raghavendra M. Bajaj, Kumar Karan, Nikhil Bamal, Pradeep Kumar, Ms Tanu Priya Gupta, Bhaavan Mahajan, Aayush Agarwal, Devansh Shekhar, Sanjeev Kumar Singh, Bishm Pratap Singh, Shighra Kumar, Ms Rishi K. Awasthi, Usman G. Khan, Rahul Kumar, Deepak Biswas, Ms Varsha Agarwal, Saket Sikri, Vikalp Mudgal, Kshitij Mudgal, Ms Priya Singh, Ms Shobhana Takiar, Shrey Nanda, Ms Swadha Gupta, Prabhat Kumar, Anurag Dhar Dubey, Anshul Gupta, Ms Kirti Dua, Shubham Kaushik, Ravi Shandilkar, Ms Shubhangi Tiwari, Prakhar Bharadwaj, Bharat Bhushan, Sidhant Kumar, Ms Manyaa Chandok, Ms Muskan

Gopal, Sandeep Bajaj, Devansh Jain, Ms Vasudha Chadha, M.P. Sahay, Ms Eccha Shukla, Ms Awantika, Sachin Kharb, Sahaj, Vedansh, Anand, Rudra, Jatin Singh, Ms Roppali, Ms Archana Pathak Dave, Parmod Kumar Vishnoi, Deepak, Ms Aakansha Kaul, Digvijay Prasad, Anand Awasthi, Rahul Kumar Gupta, Nirvikar, Ms Ayshwara Chander, K.S. Pratap, Pallav Saxena, Mohammad, Diwaker, Abdul Wasin, Vijay Joshi, Gurjas Singh Narula, Kautilya Birat, Om Prakash, Chandresh Pratap, Ms Swati Mishra, Ms Parnashree Banerjee, Kunwar Sachdev, IDBI, Rahul Chauhan, Ms Reema Khorana, Ajay Uppal, Zubin Singh, Ms Charu Modi, Vedanta Varma, Vibhor Kush, Sameer Sharma, Ramesh Babu, Ms Manisha Singh, Ms Tanya Chowdhary, Ms Jagriti Bharti, Rohan Srivastava, Govind Manoharan, Ms Diksha Tiwari, Ms Amrita Singh, Atul Kumar Singh, Divyanshi Maurya, Jatin Singh, Keshav Sehgal, Shivam Gaur, Kashish Bajaj, Ms Ritu Reniwal-SPC, Chandan Prajapati, Apoorv Sharma, Kavindra Gill-SPC, Sahay, Ms Ekta Chaudhary, Divyank Dutt Dwivedi, Amit Mahaliyan, Santosh Kumar Raut, Abhishek Chaudhary, Sameer Vats, Ms Anubha Bhardwaj, Venancio D'Costa, Ms Astha, Himanshu Sharma, Yash Tyagi, Vinay K. Sharma, Vikram Aditya Mishra, Chiranjiv Kumar, Mukesh Sachdeva, Ms Swati Kwatra, Kamal Dignpaul, Samir Malik, Shahan Ulla, Krishan Kumar, O.P. Gaggar, Sachindra Karn, Varun Aggarwal, Amon Rewaria, Farmon Ali, Ms Ramneet Kaur, Shaurya Katoch, Chritarth Palli, Ritik Shah, R.K. Sinha, Ayan, Ms Vandana, Atul Nayak, Dheeraj, Ms Mani Gupta, Ms Saumya Upadhyay, Aman Choudhary, Ms Sonali Jain, Premtosh Mishra, Vasoodev Sharma, Ms Nishtha Jain, Prajesh Vikram Srivastava, Siddhartha Nagpal, Virendra Pratap Singh Charak, Nikhil Verma, Rishabh Jain, Ms Usha Jomnal, Ajay Kohli, Ms Dipika Prasad, Akshay Amritanshu, Samyak Jain, Devvrat Yadav, Lalit Mohan, Videh Vaish, Ms Aaknsa, Abhay Gupta, Akhil Anand, Kushagra Singh, Aalok Kumar, Gurtejpal Singh, Ms Suditi, Ms Aashna Arora, T. Singhdev, Anum Hussain, Tanishq Srivastava, Aabhas Sukhramani, Bhanu Gulati, Ms Ramanpreet Kaur, Abhijit Chakravarty, Rajendra Sahu, Saurabh Duggal, Tushar Pandey, Vaibhav Luthra, Anupam Singh, Nipun, Anil Devlal, Nishant Awana, Hardik Choudhary, Rajat Bhalla, Sunil, Himanshu Sinha, Bhuwan Dhoopar, Parash Biswal, Ruchir Mishra, Mukesh Kumar Tiwari, Ms Reba Jeana Mishra, Sanjiv Kumar Saxena, Nitin Khanna, Avinash Singh, Shubham Prasad, Ms Gurleen Kaur, Ms Pinky Pawar, Aakash Pathak, Sanjeev Singh, Ms Ridhi Pahuja, Dhruv Chawla, Ms Garima Saxena, Vikrant N. Goyal, Ms Ayushi Garg, Tesu Gupta, Ms Tanija Bansal, Vikas Sethi, Altamish, Ms Aarzoo Aneja, Ms Vanshita Gupta, Amit Kumar, Asit Kumar, Rohit Kumar, Kushank Sindhu, Gazal Ghai, Anmol Singh, Sandeep Singh Somria, Mimansak Bhardwaj, Ashish Chaudhary, Sachin Singh, Piyush Mishra, Ms K.M. Monika, Krishna Kr. Sharma, Ms Jyoti, Ms Anam Siddiqui, Gagan Kumar, Ms Nishtha Kaura, Shashwat Roy, Ms Sangeeta Sondhi,

Gorang Goyal, Kuber Dewan, Ms Neeharika Agarwal, Ms Trisha Raychaudhuri, Kaustav Srivastava, Manu Beri, Prateek Kasliwal, Ms Aditi Tomar,



Page: 630

Ratna Dwivedi Dhingra, Bhrigu Dhami, Aman Naqvi, Siddharth, Abhishek, Aditya Kapoor, Ms Himanshi Madan and Rishav Dubey, Advocates), for the appearing parties.

Chronological list of cases cited	on page(s)
1. 2023 SCC OnLine Del 3001, <i>Vineet Gupta v. RBI</i>	645, 666
2. (2023) 109 GSTR 402 : 2023 SCC OnLine SC 95, <i>Godrej Sara Lee Ltd. v. Excise & Taxation Officer</i>	645
3. (2022) 11 SCC 455, <i>Devendra Dwivedi v. Union of India</i>	662
4. (2022) 11 SCC 449, <i>Upendra Choudhury v. Bulandshahar Development Authority</i>	641, 661
5. (2022) 5 SCC 345, <i>Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir</i>	641, 665
6. (2022) 3 SCC 694, <i>Akshay N. Patel v. RBI</i>	643
7. 2022 SCC OnLine Kar 1711, <i>Mudit Saxena v. Union of India</i>	642, 643, 666
8. 2022 SCC OnLine Del 5028, <i>Baljit Singh Bhatia v. Union of India</i>	641, 664, 665
9. 2022 SCC OnLine Del 3621, <i>Sunil Kumar Pandey v. Union of India</i>	641, 663, 666
10. 2022 SCC OnLine SC 2093, <i>Gulshan Arora v. SRS Real Estate Ltd.</i>	641, 662
11. WA No. 1062 of 2022, order dated 2-12-2022 (Kar), <i>PNB Finance Housing Ltd. v. Union of India</i>	642
12. (2021) 10 SCC 1 : (2022) 1 SCC (Cri) 1, <i>Supertech Ltd. v. Emerald Court Owner Resident Welfare Assn.</i>	643
13. (2021) 6 SCC 771, <i>Radha Krishan Industries v. State of H.P.</i>	641, 663
14. (2021) 6 SCC 258 : (2021) 2 SCC (Cri) 818 : (2021) 3 SCC (Civ) 427, <i>P. Mohanraj v. Shah Bros. Ispat (P) Ltd.</i>	635
15. 2021 SCC OnLine Del 5725, <i>Adavya Projects (P) Ltd. v. Vishal Structurals (P) Ltd.</i>	643

16. 2021 SCC OnLine Del 4754, <i>Sunil Tandon v. Union of India</i>	635
17. 2021 SCC OnLine SC 884, <i>Commr. (GST) v. Commercial Steel Ltd.</i>	641
18. 2021 SCC OnLine Cal 503, <i>Pearson Drums & Barrels (P) Ltd. v. RBI</i>	643
19. 2021 SCC OnLine SC 222, <i>Shelly Lal v. Union of India</i>	641, 661
20. (2020) 13 SCC 285, <i>Maharashtra Chess Assn. v. Union of India</i>	659
21. 2020 SCC OnLine Ori 189, <i>Radhakrishna v. Aditya Birla Finance Ltd.</i>	641
22. (2019) 19 SCC 161, <i>Bikram Chatterji v. Union of India</i>	663
23. 2021 SCC OnLine Del 5830, <i>Sushmi Mukherjee v. National Housing Bank</i>	641
24. (2018) 17 SCC 691, <i>Bikram Chatterji v. Union of India</i>	643
25. 2019 SCC OnLine Del 8704, <i>Apana Logistics (P) Ltd. v. Container Corpn. of India Ltd.</i>	635
26. 2017 SCC OnLine Del 8277, <i>Rajpur Hydro Power Ltd. v. PTC India Financial Services Ltd.</i>	641
27. (2016) 14 SCC 326 : (2018) 1 SCC (L&S) 204, <i>Kelvin Jute Co. Ltd. v. Krishna Kumar Agarwala</i>	644
28. (2016) 3 SCC 788 : (2016) 2 SCC (Cri) 222, <i>CBI v. Ramesh Gelli</i>	644
29. (2015) 4 SCC 670 : (2015) 2 SCC (Civ) 654 : (2015) 2 SCC (L&S) 119, <i>K.K. Saksena v. International Commission on Irrigation & Drainage</i>	636, 658
30. (2014) 5 SCC 610 : (2014) 3 SCC (Civ) 254, <i>Mathew Varghese v. M. Amritha Kumar</i>	659
31. (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153, <i>Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.</i>	641
32. (2012) 11 SCC 511 : (2013) 1 SCC (Civ) 382, <i>Ram Kishun v. State of U.P.</i>	659
33. (2012) 2 SCC 542 : (2012) 1 SCC (Cri) 914, <i>V.K. Naswa v. Union of India</i>	637
34. 2012 SCC OnLine Mad 2752, <i>Ashok Amritraj v. RBI</i>	643

35. 2011 SCC OnLine Del 3162, <i>Sterling Agro Industries Ltd. v. Union of India</i>	643
36. (2009) 8 SCC 257 : (2009) 3 SCC (Civ) 350, <i>Sardar Associates v. Punjab & Sind Bank</i>	656
37. (2009) 1 SCC 150 : (2009) 1 SCC (Civ) 64, <i>Karnataka State Forest Industries Corpn. v. Indian Rocks</i>	643
38. (2008) 2 SCC 41 : (2008) 1 SCC (L&S) 352, <i>U.P. State Sugar Corpn. Ltd. v. Kamal Swaroop Tondon</i>	660
39. (2006) 2 SCC 598, <i>Orix Auto Finance (India) Ltd. v. Jagminder Singh</i>	641
40. 2006 SCC OnLine Del 1176, <i>Bernard D'mello v. Industrial Finance Corpn. Ltd.</i>	641
41. (2005) 6 SCC 289, <i>Supriyo Basu v. W.B. Housing Board</i>	657
42. (2004) 4 SCC 311, <i>Mardia Chemicals Ltd. v. Union of India</i>	643
43. (2004) 3 SCC 553, <i>ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.</i>	645
44. (2003) 7 SCC 410, <i>NHAI v. Ganga Enterprises</i>	635
45. (2003) 10 SCC 733, <i>Federal Bank Ltd. v. Sagar Thomas</i>	641, 643, 644, 656, 658, 661
46. (2003) 10 SCC 261, <i>Orissa State Financial Corpn. v. Narsingh Ch. Nayak</i>	641
47. (2002) 1 SCC 367, <i>Central Bank of India v. Ravindra</i>	643
48. (2002) 1 SCC 216, <i>State of Bihar v. Jain Plastics & Chemicals Ltd.</i>	636
49. (1999) 1 SCC 741 : 1999 SCC (L&S) 389, <i>U.P. State Coop. Land Development Bank Ltd. v. Chandra Bhan Dubey</i>	658
50. (1997) 9 SCC 377 : 1997 SCC (L&S) 1344, <i>Air India Statutory Corpn. v. United Labour Union</i>	643
51. (1997) 3 SCC 261 : 1997 SCC (L&S) 577, <i>L. Chandra Kumar v. Union of India</i>	659
52. (1996) 6 SCC 22, <i>State of U.P. v. Bridge & Roof Co. (India) Ltd.</i>	635
53. 1996 SCC OnLine Del 42, <i>Sector Twenty-one Owners Welfare Assn. v. Air Force Naval Housing Board</i>	641
54. (1995) 5 SCC 482, <i>LIC v. Consumer Education & Research</i>	

<i>Centre</i>	644
55. (1994) 3 SCC 552, <i>State of Gujarat v. Meghji Pethraj Shah Charitable Trust</i>	636
56. (1992) 2 SCC 343, <i>Peerless General Finance & Investment Co. Ltd. v. RBI</i>	643, 644, 657
57. (1989) 2 SCC 691, <i>Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvama Jayanti Mahotsav Smarak Trust v. V.R. Rudani</i>	643, 645
58. (1989) 2 SCC 116, <i>Bareilly Development Authority v. Ajai Pal Singh</i>	635, 666
59. (1986) 1 SCC 264, <i>LIC v. Escorts Ltd.</i>	643
60. (1981) 1 SCC 722 : 1981 SCC (L&S) 258, <i>Ajay Hasia v. Khalid Mujib Sehravardi</i>	641
61. (1980) 3 SCC 625, <i>Minerva Mills Ltd. v. Union of India</i>	659
62. (1970) 3 SCC 313, <i>D.D. Suri v. A.K. Barren</i>	644
63. 1965 SCC OnLine SC 61, <i>Dwarka Nath v. CIT</i>	643
64. 1961 SCC OnLine SC 16, <i>A.V. Venkateswaran v. Ramchand Sobhraj Wadhwani</i>	644, 660
65. 2022 SCC OnLine Del 5138, <i>Rakesh Verma v. Union of India</i>	656



The Judgment of the Court was delivered by

Purushaindra Kumar Kaurav, J.— This batch of petitions, involving similar issues, is being decided by this common order.

2. The petition bearing WP (C) No. 9491 of 2020 is being treated as a lead matter, therefore, for the sake of convenience, the facts and pleadings are being referred therefrom. However, facts of individual cases would be referred, wherever so required.

3. In all these petitions, the reliefs claimed are almost similar except for small variations. The dominant relief claimed is to issue a writ in the nature of mandamus/certiorari or any other writ directing the respondent Banks/Financial Institutions not to charge the pre-EMIs or full EMIs from the petitioners/alike homebuyers. It is also prayed that

the respondent Banks/Financial Institutions be directed not to charge the pre-EMIs/full EMIs till the possession is not delivered by the respondent builder/alike real estate developers to the petitioners with respect to their respective flats. For the sake of clarity prayer clause from the lead writ petition i.e. WP (C) No. 9491 of 2020 is being reproduced as under:

"(i) allow the present petition;

(ii) issue a writ in the nature of the mandamus/certiorari or any other writ directing the respondent Banks/Financial Institutions to not charge the pre-EMIs or full EMIs from the petitioners/alike homebuyers;

(iii) issue a writ in the nature of mandamus/certiorari or any other writ directing the respondent Banks/Financial Institutions to charge all the pre-EMIs/full EMIs till the possession is not delivered from the respondent builder/alike real estate developers;

(iv) issue a writ in the nature of mandamus/certiorari or any other writ directing the respondent Banks/Financial Institutions to refund the pre-EMIs/full EMIs paid by the petitioners to the petitioners and recover the same from the respondent builder herein;

(v) issue a writ in the nature of mandamus/certiorari or any other writ directing the respondent State to frame clear and strict guidelines to regulate the transactions pertaining to the subvention scheme prevalent in the real estate sectors;

(vi) issue guidelines to the effect that any financial institution including banks/financial institutions ought not to auction the property of any real estate builder without the consent of the homebuyers who have invested their hard money and also of the respondent State Authorities;

(vii) issue a writ in the nature of mandamus/certiorari or any other writ directing the respondent State to make sure that the petitioners are provided their respective flats in a time-bound manner;

(viii) pass an appropriate order or direction against Respondent 2 for initiating strict action against respondent Banks/Financial Institutions for violating the rules and regulations laid down by Respondent 2 as a regulator for the banking sector; and/or

(ix) pass appropriate guidelines to be followed by all the nationalised and private banks/financial institutions including the respondent Banks/Financial Institutions herein for release/disbursal of funds to real estate companies in case of loans sanctioned against any real estate project so that such acts are not repeated in future; and/or

(x) pass an appropriate order or direction appointing a Committee of Experts to examine the grounds raised by the petitioner in their representation submitted to the respondent(s) with a direction to submit a report in a time-bound manner; and/or

(xi) pass an appropriate order or directions to Respondent 1 to frame guidelines and monitoring system where the citizens/aggrieved people submitting their objections can be monitored in a transparent and time-bound manner; and/or

(xii) pass order(s) as this Court may deem fit and proper in the present case.”

4. After issuance of notice in the lead matter and in some of the other writ petitions, the respondents have filed their objections/counter-affidavits. On 31-1-2022, this Court passed an interim order restraining the respondents from taking any coercive steps against the petitioners.

5. When the batch of these writ petitions was taken up for hearing by this Court on 9-1-2023, the learned counsel appearing on behalf of the respondent Banks/Financial Institutions and learned CGSC has raised preliminary objections regarding maintainability of these writ petitions in view of the availability of efficacious alternative remedies under various enactments. Accordingly, the parties were called upon to make their submissions. On 18-1-2023, the parties were heard extensively on the question of maintainability of these writ petitions and they were further directed to submit their written submissions/clarifications, if any. On 31-1-2023, the written submissions filed by respective parties were also taken on record and the matter was reserved for orders, however, on 15-2-2023, again the cases were listed along with fresh filed cases and further submissions were heard on the question of entertainability of the petitions.

6. To deal with the foregoing issue, it would be befitting to survey the pleadings in WP (C) No. 9491 of 2020. Following important facts are discernible:

6.1. The petitioner is an association by the name of Supertech Urban Home Buyers Association (SUHA) Foundation consisting of 123 homebuyers. Respondent 3 Supertech Limited is a builder and

Respondents 4 to 11 are the banks/financial institutions.

6.2. Respondent 3 builder (hereinafter referred to as "builder") in the year 2013-2018 publicised its project being developed by it at Sector 68, Gurgaon, Haryana, namely, "Supertech Hues", "Azalia" and "Scarlet" (hereinafter referred to as "projects") through various newspapers. The members of the petitioner Association booked their flats and in order to meet financial



Page: 634

demands, they took home loans for their respective residential units through respondent Banks/Financial Institutions. The home loans were availed by the members of the petitioner association on the basis of subvention schemes, whereby, the respondent Banks/Financial Institutions would disburse the sanctioned amount to the respondent builder directly and the respondent builder was supposed to pay the pre-EMIs or full EMIs on the sanctioned loan. The separate agreements were executed between the members of the petitioner Association and the respondent Banks/Financial Institutions. As per the terms and conditions of respective agreements, the builder paid pre-EMIs or full EMIs to the respective respondent Banks/Financial Institutions. However, around December 2018, the builder started defaulting in payments of the pre-EMIs or full EMIs and the respondent Banks/Financial Institutions started sending payment reminders to the members of the petitioner Association. According to the petitioners, the builder was obligated to deliver the possession of the residential flats by December 2019. However, in none of the cases the respondent builder has fulfilled its obligation. When the builder stopped paying pre-EMIs, the banks have started sending demands to the members of the petitioner Association. The members of the petitioner Association raised the grievance that the respondent Banks/Financial Institutions have not followed the guidelines issued by the Reserve Bank of India (hereinafter referred as "RBI") and have disbursed the amount without taking into consideration the fact that the builder has not made any construction of flats.

6.3. It is the case of the petitioner that the respondents have failed to fulfil and abide by their duties and obligations, as a result of which the members of the petitioner Association are suffering heavily and are deprived of their basic fundamental right guaranteed under Articles 19 and 21 of the Constitution of India. They, therefore, have prayed for the relief, as has been reproduced in preceding paragraphs.

7. There are two issues that are required to be determined by the

present order, them being:

(a) Whether the present writ petition is maintainable against the respondent.

(b) Whether the present writ petition deserves to be entertained by this Court.

8. The stand of the builder is that the petition, at the instance of the association, would not be maintainable in the absence of clear disclosure of the names of the members of the petitioner Association. It is also stated that Respondent 3 is a purely private limited company and is not a State or its instrumentality. The dispute between respondents and the petitioner has arisen out of an agreement entered between them. The same is completely contractual in nature within the realm of contract law; therefore, the petition would not be maintainable. It is stated that if the petitioner or any of its member has any grievance, appropriate alternative remedies are available to them approaching Real Estate Regulatory Authority (hereinafter referred to as "RERA") or consumer court. It is stated that some of the homebuyers have already moved



Page: 635

under the Real Estate Regulations and Development Act, 2016 (hereinafter referred to as "RERA Act"), and therefore, in view of the availability of civil remedy, extraordinary jurisdiction of this Court should not be exercised.

9. Respondent 3 builder in its written submissions states that corporate insolvency resolution process (CIRP) has been initiated against it by National Company Law Tribunal (NCLT), Delhi. After initiation of the said process, a moratorium in terms of Section 14(1)(a) of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) was imposed. According to the builder, if the relief prayed for in the instant writ petition is granted, the same would have direct impact on pending CIRP. Reliance in this regard is placed on a decision in *P. Mohanraj v. Shah Bros. Ispat (P) Ltd.*¹ It is also stated that builder is not discharging any public duty and, therefore, is not amenable to the writ jurisdiction of this Court. According to Respondent 3, there are various contracts between the parties which relate to loan transactions. He explains that the buyer agreement and memorandum of understanding was entered into between the homebuyers and Respondent 3 builder; and tripartite agreement was entered into between homebuyers, banks/financial institutions and Respondent 3 builder. Any dispute

relating to the interpretation or enforcement of the terms and conditions of such contract cannot be agitated in writ jurisdiction. The liability to pay off the loan and interest is only of the petitioners, who availed the loan as per their own requirement from the bank/financial institutions. Reliance is also placed on the decision of *State of U.P. v. Bridge & Roof Co. (India) Ltd.*² Since the amount has been disbursed on account of flat buyers agreement therefore, the reliance has been placed in *Bareilly Development Authority v. Ajai Pal Singh*³ and *NHAI v. Ganga Enterprises*⁴. According to Respondent 3 builder, even the homebuyers can approach the NCLT or file a civil suit for alleged grievance against the respondent Company. He states that in some of the cases the disputes are to be resolved through arbitration. The reliance is also placed on the decisions in *Sunil Tandon v. Union of India*⁵ and *Apana Logistics (P) Ltd. v. Container Corpn. of India Ltd.*⁶

10. Respondent 2 Reserve Bank of India, while adopting the counter-affidavit filed in the petition being WP (C) No. 9491 of 2020, states that the cause of action has not arisen within the territorial jurisdiction of this Court and therefore, these writ petitions should not be entertained only on account of the fact that seat of government bodies situates in Delhi. It is the specific case of RBI that the dispute between the members of the petitioner Association and Respondent 3 builder is a subject-matter of a contractual agreement executed between the parties. Respondent 2 only enjoys regulatory power under Section



35-A of the Banking Regulation Act, 1949 to issue necessary directions to banking companies generally or to any banking companies in particular from time to time. The RBI has issued various directions to ensure that the banking affairs in the country is uniformly conducted as per the required standard to secure proper management of bank's finance as well as to the interest of depositors and banks. The RBI is empowered under Section 47-A of the Banking Regulation Act, 1949 to impose monetary penalty on the banks for contravening the provisions of the Banking Regulation Act, or if any default is made in compliance with the requirement of that Act. It is stated that master circular on housing finance dated 1-7-2015 (hereinafter referred to as "master circular") was issued which has advised the banks to ensure proper use off funds and to prevent diversion/siphoning of funds by the borrowers/lenders. The directions of master circular were further reiterated in another Circular dated 15-7-2015 (Annexure R-2). It has been emphasised that subvention schemes are offered by

builders/developers, and regulations of RBI/national housing bank (hereinafter referred to as "NHB") are applicable to banks and the housing finance companies only. The schemes are not under the regulatory purview of the bank. The decision to be a party to the subvention scheme of developers/builders is purely an individual decision. However, it is stated that in terms of the Circular dated 19-7-2019, the Housing Finance Companies shall desist from offering loan products involving such schemes. Copy of Circular dated 19-7-2019 issued by NHB has been placed on record as (Annexure R-5). It is also stated that the RBI has performed its duty to the best of its ability in discharge of its statutory obligation under various statutes, including those under the Banking Regulation Act, 1949 and therefore, the writ petition should be dismissed.

11. Learned counsel appearing on behalf of the respondent UOI in petition being WP (C) No. 372 of 2023 also filed a written note objecting the maintainability to entertain these writ petitions. According, to him, a writ is a public law remedy and is not available in the private law field, that is, where a non-statutory contract governs the matter. To substantiate the submissions, he placed reliance on the decisions in *State of Gujarat v. Meghji Pethraj Shah Charitable Trust*⁷ and *K.K. Saxena v. International Commission on Irrigation & Drainage*⁸. He also placed reliance on a decision in *State of Bihar v. Jain Plastics & Chemicals Ltd.*⁹ to state that the High Court should not grant relief in the case of a breach of private contract. According to him, the law to address breach of contract already exists in the form of the Contract Act, 1872, Arbitration and Conciliation Act, 1996 (hereinafter referred to as "A&C Act, 1996") and the Consumer Protection Act, 2019 and especially the RERA Act. Since sufficient mechanism is provided ensuring adequate remedies under the prevailing law, writ court should refrain from exercising its extraordinary jurisdiction. According to him, insofar as the prayer with respect to a direction to frame appropriate guidelines or regulations is concerned, the same is also



not possible in view of the law laid down by the Supreme Court in *V.K. Naswa v. Union of India*¹⁰.

12. In the petition being WP (C) No. 1225 of 2021, learned counsel for Respondent 8 Trans Union CIBIL Limited submitted that any rectification in the data base of credit information or change in the

credit information can only be made in accordance with the provisions of Credit Information Companies (Regulations) Act, 2005 (CICRA). It states that the Credit Information Company is governed by the provisions of CICRA. It further states that a person aggrieved by the information disseminated by the credit institution can either approach the credit institution concerned or can approach the RBI for redressal of their grievances and further in case the dispute persists, the same shall be settled by conciliation and arbitration as provided under A&C Act, 1996. Relying on Section 18 of the CICRA, it is submitted that the said respondent is not a necessary party and the petition against it deserves to be dismissed.

13. Respondent 6 Punjab National Bank Housing Finance Limited (hereinafter referred to as "PNBHFL"), while filing its counter-affidavit states that it is a company incorporated under the Companies Act, 1956 (hereinafter referred to as "Companies Act"). Respondent 6 claims to be the largest Housing Finance Company duly registered with the NHB. It is primarily engaged in the business of rendering home loans/finance facilities predominantly against security of immovable property. It states that the petitioner Association has not filed any list of members of the association. It further states that the members of the petitioner Association chose the answering respondent to avail financial assistance on their own volition and they availed the services of Respondent 6 PNBHFL without any compulsion. The respondent builder offered interest on subvention of the loan, which was accepted by the members of the petitioner Association. The members of the petitioner Association in furtherance to avail the financial assistance have entered into a tripartite agreement. As per the tripartite agreement, it was the principal liability of the borrower, that is, the members of the petitioner Association to honour all the EMIs as well as pre-EMIs of the loan advanced. It is stated that Respondent 6 PNBHFL has funded 144 customers in the project "Supertech Azalia" and 50 customers in the project "Supertech Hues". It is stated that there is no element of State involvement in the matter and the issue is purely private in nature. The relationship between Respondent 6 PNBHFL and its customers rests on respective loan agreements and is completely contractual in nature. Various terms and conditions of the loan documents have been relied upon to indicate that the parties are bound by the terms and conditions of the respective agreements. According to Respondent 6 PNBHFL, as per tripartite agreement, the respondent builder had assumed the liability of the members of petitioner Association to the limited extent of payment of pre-EMIs only for a certain period of months from the date of first disbursement or till possession/completion of the flat, whichever was earlier. It is stated that such liability of the builder has in no



way, relinquished or reduced the liability of the members of the petitioner Association towards Respondent 6 PNBHFL to repay the borrowed amount. It is stated that the obligation to repay the loan/EMI including the pre-EMI is a distinct and independent obligation of the borrower.

14. Respondent 5 Housing Development Finance Corporation Limited (hereinafter referred to as "HDFCL") also filed its short affidavit stating therein that Respondent 5 HDFCL is a registered Housing Finance Company and is a major provider of finance to housing in India. The same is a private corporate body incorporated under the provisions of the Companies Act. It does not discharge any functions or duties of public nature and is regulated by the National Housing Finance Companies Directions, 2010 as amended from time to time. It is also stated that it is also regulated by the RBI. It is further stated that since Respondent 5 HDFCL cannot be said to be an instrumentality or agency of Government to fall within the contours of the expression "State" under Article 12 of the Constitution, therefore, writ petition against Respondent 5 HDFCL would be a gross abuse of the process of law. It is the case of Respondent 5 HDFCL that the delay in handing over the possession in time-bound manner is a dispute between homebuyers and the respondent builder, which is purely contractual in nature. The homebuyers have remedy against the builder. It is stated that the dispute between the members of the petitioner Association and the builder is governed by the builder-buyer agreement and, therefore, the same must be referred to the sole arbitrator in terms of the provisions of the A&C Act, 1996. Besides that, it is stated that the members of the petitioner Association have other efficacious statutory remedies available under the RERA Act and under the Consumer Protection Act, 2019. While relying on the home loan agreement executed between Respondent 5 HDFCL and one of the homebuyers, it is stated that the borrower's liability to repay the loan is an independent contractual obligation. The homebuyers have executed separate independent contract with the developer and home loan lenders for independent services and obligations. It is the specific case of Respondent 5 HDFCL that it has not funded homebuyers for Respondent 3's project known as "Supertech Scarlet". This respondent has only acted in a limited capacity to fund the homebuyers who had taken an informed decision to invest in the project.

15. Respondent 8 Aditya Birla Housing Finance Limited also filed its

counter-affidavit reiterating the same submissions. It is stated that the said respondent is a non-banking financial company which is covered under clause (f) of Section 45-I of the RBI Act, 1934. In Table 1 of its counter-affidavit, the names of borrowers and co-borrowers against loan amount sanctioned to them have been mentioned. It has been pointed out that after the receipt of loan applications from respective borrowers, the said respondent sanctioned the home loan facilities against mortgage of the units/flats as mentioned in Table 2 of its counter-affidavit. It is stated that separate home developer agreement dated 29-7-2017 was executed between respondent builder and the borrower. The loan agreement is an independent agreement executed by the said respondent with each of the borrowers. It is also stated that the tripartite



Page: 639

agreement was also executed between respective borrowers, builder and the respondent financial institutions, agreeing therein that respective borrowers are under obligation to repay the loan. However, the builder undertook to pay only interest to the said respondent on behalf of the borrower for the loan disbursed to them as per applicable provisions of the MoU for the subvention period. It is the case of Respondent 8 that in exercise of its right as a secured creditor under the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act"), the said respondent had served upon the borrowers notices under Section 13(2) of the Act of 2002 calling upon them to discharge their liability.

16. The stand of Respondent 10 M/s L&T Housing Finance in its short affidavit is that Respondent 10 M/s L&T Housing Finance has merged with L&T Finance Limited w.e.f. 12-4-2021. It is stated that Respondent 10 is a non-banking financial company incorporated under the provisions of Companies Act. Similar objections have been raised with respect to maintainability of the writ petition against the said respondent as has been taken by other respondent Banks/Financial Institutions. It is the case of this respondent that several homebuyers approached the said respondent for seeking financial assistance for the project of Respondent 3 being "Azalia" and "Hues". Besides the execution of loan agreement, homebuyers have also entered into tripartite agreement which provided for subvention period. According to this respondent, after the expiry of subvention period, the homebuyers were liable to make the payments towards the pre-EMIs and EMIs.

17. Respondent 9 ICICI Bank Ltd., also filed its short counter-affidavit stating therein that the same is a private corporate body incorporated under the provisions of the Companies Act and does not discharge any functions or duties, which are public in nature. Similar objections have been raised by this respondent, taking a specific ground that the petitioners have alternative and efficacious remedies available under various laws. According to this respondent, the petitioners cannot be allowed to seek for amendment or rewriting of the contract (loan agreement) under the garb of enforcement of fundamental rights. It is stated that this respondent has sought payment of EMI from the petitioners, names thereof, have been mentioned in the reply in terms of the contract executed between them (loan document). In addition, issue with respect to territorial jurisdiction has also been raised and it is stated that the accounts of some of the homebuyers have been classified as non-performing assets (NPAs) and the accounts of some of the homebuyers are regular.

18. Respondent 4 Indiabulls Housing Finance Limited has also filed its short counter-affidavit stating therein that the writ petition is not maintainable against private entities. According to this respondent, the obligation to repay the loan/EMI/interest is distinct and independent that flows from the respective loan agreement and, therefore, this Court should not entertain the instant writ petitions.



19. Respondent 11 IIFL Home Finance Limited has also filed its counter-affidavit, wherein similar objections have been raised with respect to the maintainability of the instant writ petitions.

20. In the petition being WP (C) No. 14859 of 2021, the State Bank of India has also filed its written submissions stating therein that the branch concerned of the said respondent was located at Ghaziabad, which does not fall within the territorial jurisdiction of this Court. It emphasised that the tripartite agreement was executed and certain terms and conditions stipulated therein does not absolve the borrowers from the repayment of the disbursed amount. Various factual issues have also been referred in the said written submissions.

21. In the petition being WP (C) No. 8604 of 2022, Respondent 3 Futureworld Greenhouse Pvt. Ltd. has also raised similar objections, and it is specifically stated that the disputed question of facts are involved which cannot be gone into in these proceedings. The parties are bound

by the terms of tripartite agreement and the builder-buyer agreement and the Circular of RBI are not binding on Respondents 1 and 2 in the said writ petition.

22. Learned counsel appearing on behalf of the respondents while elaborating their submissions on justifiability to entertain these writ petitions made extensive submissions which can be summarised as under:

22.1. The writ petitions are not maintainable in view of the availability of efficacious alternate remedies to the homebuyers under the relevant provisions of RERA Act, Consumer Protection Act, Insolvency and Bankruptcy Code, 2016 and SARFAESI Act, etc.

22.2. The writ petitions are not maintainable against respondent financial institutions since challenge is arising out of agreement between private parties and the reliefs sought for in these writ petitions are flowing from individual agreements.

22.3. There is no violation of any directives of RBI or NHB that would render the present writ petitions maintainable. Even in case of any violations also, no writ would lie against them.

22.4. This Court lacks the territorial jurisdiction to entertain these writ petitions.

23. Learned nodal counsel appearing on behalf of the respondent Financial Institutions in order to substantiate their submission, have explained various clauses of "buyer-developer agreement", "loan agreement" and "tripartite agreement" to indicate that respective agreements and their clauses would be applicable as per the terms of the agreement concerned which cannot be gone into in these writ petitions. They state that in some of the cases, the request for disbursal of the amounts was made by the borrowers to the builder concerned. According to them, each case will have different set of facts and the parties are bound by their individual agreements. According to them, if an efficacious alternate remedy is available, the writ jurisdiction ought not to be exercised. They placed reliance on the decisions in *Upendra Choudhury v.*



*Bulandshahar Development Authority*¹¹, *Gulshan Arora v. SRS Real Estate Ltd.*¹², *Shelly Lal v. Union of India*¹³, *Commr. (GST) v. Commercial Steel Ltd.*¹⁴, *Sunil Kumar Pandey v. Union of India*¹⁵, *Baljit Sinah Bhatia v. Union of India*¹⁶ and *Radha Krishan Industries v. State*

of H.P.¹⁷

24. To substantiate their submissions that the financial institutions are not amenable to writ jurisdiction as the respondents are not "State" in terms of the Article 12 of the Constitution, they rely on the decisions in *Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir*¹⁸, *Federal Bank Ltd. v. Sagar Thomas*¹⁹, *Rajpur Hydro Power Ltd. v. PTC India Financial Services Ltd.*²⁰, *Sushmi Mukherjee v. National Housing Bank*²¹, *Radhakrishna v. Aditya Birla Finance Ltd.*²² and *Ajay Hasia v. Khalid Mujib Sehravardi*²³.

25. With respect to their submission regarding scope of interference into contractual matters arising out of an agreement between the builder and homebuyers and the terms and conditions of the private contracts, they rely on the decisions in *Orix Auto Finance (India) Ltd. v. Jagminder Singh*²⁴, *Orissa State Financial Corpn. v. Narsingh Ch. Nayak*²⁵ and *Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd.*²⁶

26. With respect to territorial jurisdiction, they seek to rely on the decisions in *Sector Twenty-one Owners Welfare Assn. v. Air Force Naval Housing Board*²⁷ and *Bernard D'mello v. Industrial Finance Corpn. Ltd.*²⁸

27. Learned counsel specifically points out that the Division Bench of this Court in *Sunil Kumar Pandey case*¹⁵ has affirmed the view of learned Single Judge not to entertain a petition under similar circumstances.

28. Learned counsel appearing on behalf of respondents also clarified that the decision relied upon by the petitioners, rendered by learned Single Judge of the High Court of Karnataka, Bangalore dated 14-9-2022 in *Mudit Saxena v.*



*Union of India*²⁹ and other connected matters has been stayed by the Division Bench of the said High Court in *PNB Finance Housing Ltd. v. Union of India*³⁰ in terms of order dated 2-12-2022.

29. In response to the submissions made by learned counsel appearing on behalf of the respondents, learned counsel for the

petitioners submitted that the objections so raised by the respondents are bereft of merit and the writ petitions are maintainable in view of the various pronouncements of the Supreme Court and this Court. It is submitted that the writ petitions are maintainable even against a private sector bank, if there is a dereliction of statutory duty imposed on the said bank. According to them, the writ jurisdiction under Article 226 of the Constitution is very wide and is meant to remedy injustice wherever it is found. It is submitted that the banks and financial institutions are bound by the directions/guidelines issued by the RBI. The RBI is also supposed to monitor whether the guidelines are being truthfully followed or not. Despite the fact that though there was no construction on ground, no units were built up and no possessions were handed over, the financial institutions concerned continued to disburse the pre-EMIs/EMIs in favour of the builder, which is in gross violation of the RBI guidelines. According to learned counsel for the petitioners, the financial institutions may have remedy against the builder but there is no remedy available to the petitioners homebuyers against non-adherence of the RBI guidelines by the respondents. Such a question cannot be agitated before any of the authorities. According to them, the tripartite loan agreement clearly records that it would be the liability of the builder to make repayment of the loan if the buyer defaults in repayment. A reference is made to Clause 7 at p. 162 and Clause 8 at p. 168 besides reference being made to various other clauses. It is also submitted that the financial institutions have the first charge over the mortgaged property as per the tripartite loan agreement and the MoU between the homebuyers and builder specifically mentions that no EMI would be payable till possession is handed over, which the bank/financial institutions were aware of. According to them, the RBI Circulars have been issued under Sections 21-A and 35-A of the Banking Regulation Act, 1949 and thus have statutory force and are binding. The Circulars clearly state that the disbursal of the housing loan sanctioned to individuals is closely linked to the stage of construction of the housing projects and upfront disbursal of the amount to the builder should not be made. Even an architect is required to be appointed by the bank to certify the stages of construction. It is, therefore, submitted that the RBI can levy a penalty and take other necessary actions against financial institutions, but this Court can also grant relief to the beleaguered homebuyers. The homebuyers are being made to pay loan which was disbursed directly to the builders in contravention to RBI guidelines and without receiving any payment. It is pointed out that the respondent Financial Institutions can recover their amount from the insolvency resolution process, where they are adequately represented in the Committee of Creditors having the first charge over the property. However, the

petitioners cannot be compensated as they have already



Page: 643

lost the hope of having their own shelter and also have to suffer the recovery proceedings at the instance of financial institutions. They placed reliance on the decision in *Federal Bank Ltd. case*¹⁹, *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust v. V.R. Rudani*³¹, *Dwarka Nath v. CIT*³², *Air India Statutory Corpn. v. United Labour Union*³³, *Sterling Agro Industries Ltd. v. Union of India*³⁴ *Peerless General Finance & Investment Co. Ltd. v. RBI*³⁵, *Central Bank of India v. Ravindra*³⁶, *Bikram Chatterji v. Union of India*³⁷, *Supertech Ltd. v. Emerald Court Owner Resident Welfare Assn.*³⁸ and the decision of the Karnataka High Court in *Mudit Saxena v. Union of India*²⁹.

30. Separate submissions have been made by learned counsel for the petitioner who appears in the petition being WP (C) No. 11063 of 2022. It is stated that the RBI and Union of India are admittedly "State" therefore, this Court can exercise its jurisdiction under Article 226 of the Constitution against parties discharging public functions, where elements of public law is involved. According to this petitioner, the lending obligations of bank are subject to jurisdiction under Article 226 of the Constitution and this Court has territorial jurisdiction as the bodies against whom the writ is sought, situates within the territorial jurisdiction of this Court and, if a part of cause of action has arisen within the jurisdiction of this Court, this Court would have jurisdiction to entertain the petition. It is submitted that there is no alternative remedy available to the petitioners. Learned counsel has placed reliance in *Akshay N. Patel v. RBI*³⁹, *Peerless General Finance & Investment Co. Ltd. case*³⁵, *LIC v. Escorts Ltd.*⁴⁰, *Ashok Amritraj v. RBI*⁴¹, *Karnataka State Forest Industries Corpn. v. Indian Rocks*⁴², *Mardia Chemicals Ltd. v. Union of India*⁴³, *Pearson Drums & Barrels (P) Ltd. v. RBI*⁴⁴, *Sterling Agro Industries Ltd. v. Union of India*³⁴ and *Adavya Projects (P) Ltd. v. Vishal Structural (P) Ltd.*⁴⁵

31. The written submissions have also been filed by the petitioner in the petition being WP (C) No. 10686 of 2022. It is stated that this Court, while considering extensive submissions has passed interim order on 31-1-2022,



where all issues were considered. According to him, a writ would be maintainable against a private party where rights of an individual are infringed due to non-compliance of statutory duties. It is stated that the respondent Banks/Financial Institutions function within the statutory guidelines which clearly reflects the concern of the regulatory authorities and unless the said concern translates into substantive reliefs, the petitioners would not be able to get justice. It is stated that there is an infringement of the fundamental and legal rights of private individual on account of non-compliance of the mandatory guidelines/circulars. A reference has been made to various circulars issued by the RBI to indicate that the same should have been followed in their letter and spirit and failure to comply with the said circulars result in violation of legal rights of the petitioners, therefore, this Court must entertain these writ petitions. The reliance is placed on various decisions in *LIC v. Consumer Education & Research Centre*⁴⁶, *Federal Bank Ltd. case*¹⁹, *CBI v. Ramesh Gelli*⁴⁷, *Kelvin Jute Co. Ltd. v. Krishna Kumar Agarwala*⁴⁸, *Peerless General Finance & Investment Co. Ltd. case*³⁵, *A.V. Venkateswaran v. Ramchand Sobhraj Wadhwani*⁴⁹ and *D.D. Suri v. A.K. Barren*⁵⁰.

32. Learned counsel Shri Ratnesh Sharma, who appeared in the petition being WP (C) No. 10686 of 2022 has placed on record various interim orders passed by this Court, wherein the interim order dated 31-1-2022 has been followed. Learned counsel made a specific reference to order dated 19-7-2022 passed in this writ petition where learned Single Judge vide order dated 17-8-2022 recorded that prima facie case of maintainability has been made out and accordingly, he directed for issuance of notices.

33. Shri Anshul Gupta, learned counsel who appeared on behalf of the petitioners in the petition being WP (C) No. 9178 of 2022 has referred to various circulars and indicated that on a particular date, the entire sanctioned amount was disbursed without following applicable circulars. He stated that this is a clear case of violation of statutory regulations and a fraud has been committed upon the petitioners. According to him, to do justice, this Court must entertain these writ petitions and not relegate the petitioners to any other alternate forum.

34. Shri Anshul Gupta, learned counsel pointed out that on 31-7-2015, 100% amount was disbursed by the financial institutions and he explained that the same is in clear violation of RBI Circulars.

35. Shri Ratnesh Sharma, learned counsel who appeared on behalf of the petitioners in some of the petitions, states that the issue with respect to maintainability has already been examined by this Court on 31-1-2022 and by various other interim orders passed from time to time, therefore, the said issue need not be examined again.



Page: 645

36. Shri Aditya Bhattacharya, and Shri Abhinav Jaganathan, learned counsel submitted that in their petitions there are additional prayers, which require consideration. While placing reliance on the decision of the Supreme Court in various cases, they submit that the petitioners cannot be relegated to any other forum.

37. Shri Jagdeep Sharma, learned counsel who appeared in some of the matters submitted that under the facts of the present case, when a large scale of fraud has been committed by builders, this Court is the only remedy to seek justice.

38. Shri Shrey Nanda, learned counsel who appeared in the petition being WP (C) No. 1377 of 2021 submitted that paras 11, 17 and 20 of the decision in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust case*³¹ clearly support their stand.

39. Shri Bharat Bhushan Singh, who appeared in petitions being WP (C) Nos. 9101 and 13929 of 2022, while placing reliance on the decision of the Supreme Court in *ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.*⁵¹ submitted that these writ petitions are maintainable. The similar stand is taken by Shri Shubham Kaushik, learned counsel who appeared on behalf of the petitioner in the petition being WP (C) No. 13431 of 2022 and other learned counsel who appeared in different petitions.

40. The petitioners in addition to the aforesaid submissions also specifically addressed this Court as to why, this Court should entertain these writ petitions. According to them, all the prayers are capable of being entertained under Article 226 of the Constitution of India. Article 226 of the Constitution of India is an intrinsic feature of the basic structure of the Constitution. The subvention arrangement itself is prohibited in terms of RBI Circular dated 3-9-2019. Most of the builders are under CIRP and moratorium is operating against them. There are more than 200 homebuyers who cannot be left remediless. The

regulatory authorities such as RBI or the Union Government cannot remain mute spectator. In some cases the tenure of the loan period and the interest thereon has been unilaterally increased without the consent of the borrower. This is a case where large-scale diversion of funds has taken place.

41. Reliance is placed on a decision of the Supreme Court in *Godrej Sara Lee Ltd. v. Excise & Taxation Officer*⁵². It is also pointed out that the Division Bench of this Court in *Vineet Gupta v. RBI*⁵³ is also seized with the same issue.

42. I have heard learned counsel appearing on behalf of the parties and perused the record.

43. If the reliefs sought for in the instant writ petitions, and in few other connected matters are perused, the same can summed up as under:



Page: 646

43.1. To direct the respondent Banks/Financial Institutions not to charge the pre-EMIs or full EMIs from the petitioner homebuyers.

43.2. To direct the respondent Banks/Financial Institutions not to charge all the pre-EMIs or full EMIs till the possession is not delivered from the respondent builder/real estate developers.

43.3. To direct the respondent Banks/Financial Institutions to refund the petitioners' pre-EMIs or full EMIs paid by them.

43.4. To direct the respondent State to frame clear and strict guidelines to regulate the transactions pertaining to the subvention schemes prevalent in the real estate sectors.

43.5. To direct respondent Banks/Financial Institutions not to auction the property of any real estate builder without the consent of the homebuyers who have invested their money.

43.6. To direct the respondent to ensure that the petitioners are provided their respective flats in a time-bound manner.

43.7. To direct the respondents to initiate strict action against respondent Banks/Financial Institutions for violating the rules and regulations laid down by RBI.

43.8. To pass appropriate guidelines to be followed by all nationalised and private banks/financial institutions including the

respondent Banks/Financial Institutions for release/disbursal of funds to real estate companies in cases of loans sanctioned against any real estate project.

43.9. To direct for appointment of a committee of experts to examine the grounds raised in the petitions and their representations with further direction to submit the report in a time-bound manner.

43.10. To direct the Union of India to frame guidelines and monitoring system where the aggrieved people can submit their objections which can be monitored in a transparent and time-bound manner.

43.11. To direct the respondents to ensure that no recoveries are made from the petitioners and to stop them from enforcing repayment obligations in pursuant to facility availed by the petitioners.

43.12. To direct the respondents to restore the CIBIL score to declare certain clauses of tripartite agreement as null and void and to direct the respondent to comply with the norms of the subvention schemes, directing the respondent Banks/Financial Institutions to withdraw the complaint under Section 138 of the Negotiable Instruments Act, 1881 pending before the Metropolitan Magistrate concerned.

43.13. To direct the respondents not to present the ECS/security cheques submitted by the petitioners with the banker of the petitioners before the actual physical possession of the unit concerned is handed over to the petitioners.

43.14. To stay various proceedings already initiated or likely to be initiated by respondent Banks/Financial Institutions under the provisions of Payment and Settlement System Act, 2007, Negotiable Instruments Act, 1881, Sarfaesi Act or any other coercive action.



43.15. To direct the respondents not to declare the account of the petitioner as NPA.

44. Both sides i.e. the homebuyers and the respondents are relying on various clauses of respective agreements. It would be appropriate to consider the relevant clauses relied upon by them. One of the agreements entered between the parties is known as "buyer-developer agreement". A copy of "buyer-developer agreement" has been placed on record at pp. 235 to 253 of the convenience compilation. The same is entered into between Supertech Limited (builder) and Mr Dhananjay

Bhatt homebuyer on 29-7-2017 which states that buyer has requested for allotment of one residential unit in Supertech "Azalia" project with full knowledge and subject to all the laws, notifications and rules applicable to the said project. Various terms and conditions were mentioned in the said "buyer-developer agreement". Clause 3 of the terms and conditions of "buyer-developer agreement" dated 29-7-2017 is reproduced as under:

"3. That in case buyer(s) wants to avail a loan facility from any bank/financial institution/agency to facilitate the purchase of the said allotted unit, then the following conditions shall apply in this case:

(i) The buyer(s) shall arrange/avail the loan facility from bank/financial institution/agency on its own and the developer shall not be responsible or liable for the sanctioning and for non-sanctioning of the same in any manner whatsoever.

(ii) In such case the buyer(s) shall ensure that the instalment as stipulated in payment plans are paid on due dates as per payment schedule notwithstanding any delay in reimbursement of loan or non-sanction of the loan by the bank/financial institution/agency.

(iii) If in such case the instalment are not paid on due dates as stipulated in payment plan above, the developer shall act per clause (1) stated above, notwithstanding anything contrary to this contained in any other agreement executed among the developer, the buyer and the bank/financial institution/agency. Yours for life.

(iv) In case the bank/financial institution/agency makes a lump sum advance payment for the cost of allotted unit, the developer shall not be liable to pay interest or any other charges to the buyer(s) for receiving the payment before due dates.

(v) In case of non-sanctioning of loan, the buyer(s) shall ensure to pay the instalments as per the payment plan from its own sources, failing which the buyer(s) shall be governed by the provisions of Clause 1 above."

45. Clause 48 of the said "buyer-developer agreement" reads as under:

"48. That all or any disputes arising from or out of or touching upon or in relation to the terms or formation of this provisional allotment or its termination, including the interpretation and validity thereof and the respective rights and obligations of the

parties shall be settled



Page: 648

amicably by mutual discussion, failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996, or any statutory amendments, modifications or re-enactment thereof for the time being in force. A sole arbitrator, appointed by the developer, shall hold the arbitration proceedings at New Delhi. The decision of the sole arbitrator including but not limited to costs of the proceedings/award shall be final and binding on the parties. The allottee(s) hereby confirms that he/she shall have no objection to such appointment and proceedings of arbitration."

46. Another agreement which is executed between the parties is known as "loan agreement". The "loan agreement" is executed between the buyer being the first party and the respondent Banks/Financial Institutions as the second party. A copy of one of the loan agreements dated 27-10-2017 executed between Aditya Birla Housing Finance Limited Respondent 8 and Dhananjay Bhatt has been placed on record at pp. 254 to 286 of the convenience compilation. Clause 7.1 stipulates therein that if the borrower fails to pay to the financial institutions any amount when due and payable under the said agreement, the same would be treated to be an event of default and under such circumstances, the financial institutions may, by written notice to the borrower declare all sums outstanding under the loan to become due and payable forthwith and can take any other action as it may deem fit for recovery of its dues and enforce the security interest in relation to the loan upon the occurrence of any one or more of the events of defaults. Clause 7 of the loan agreement dated 27-10-2017 is being reproduced as under:

"7. Events of default.— ABHFL may by a written notice to the borrower(s), declare all sums outstanding under the loan (including the principal, interest, default interest, charges, expenses) to become due and payable forthwith, take any other action as it may deem fit for recovery of its dues and enforce the security interest in relation to the loan upon the occurrence (in the sole decision of ABHFL) of any one or more of the following events:

7.1. the borrower(s) fails to pay to ABHFL any amount when due and payable under this agreement;

7.2. the borrower(s) defaults in performing any of his

obligations under this agreement or breaches any of the terms or conditions of this agreement.

7.3. any information or detail provided by the borrower to ABHFL is or becomes untrue, incorrect or misleading;

7.4. the borrower(s) opts to resign or retires from the employment prior to the age of superannuation or is discharged or removed from service before such date for any reason whatsoever;

7.5. any the information provided by the borrower(s) to avail the loan or any of his representations and warranties herein being found to be or becoming incorrect or untrue;



Page: 649

7.6. any person other than ABHFL commencing any civil/criminal proceedings against the borrower(s);

7.7. the value of the property or any security (including guarantee/s) created or tendered by the borrower(s), in the sole discretion and decision of ABHFL, depreciates entitling the ABHFL to call for further security and the borrower(s) failing to give additional security;

7.8. if the property is destroyed, sold, disposed of, charged, encumbered, alienated, attached or restrained in any manner;

7.9. the borrower(s) fails to create the security interest as provided herein;

7.10. ABHFL, for any regulatory or other reasons, is unable or unwilling to continue the loan;

7.11. the death, insolvency, failure in business, commission of an act of bankruptcy, general assignment for the benefit of creditors, suspension of payment to any creditors or threat to do so by the borrower(s), filing of any petition in bankruptcy or winding-up by or against the borrower(s); or

7.12. the borrower(s) fails to furnish any information or documents or to submit or execute the relevant post disbursement documents as required by ABHFL.”

47. Clause 10 of the said loan agreement governs the law and dispute resolution. The same is also reproduced as under:

“10. Governing law and dispute resolution

10.1 Laws of India shall govern this agreement, the security and other documentation pursuant hereto. The courts in the city of Mumbai (unless specified otherwise in this agreement) will have exclusive jurisdiction over all aspects governing the interpretation and enforcement of this agreement.

10.2 The parties also agree and acknowledge that in case of any dispute or difference arising out of or in connection with this agreement whether during its subsistence or thereafter between the parties including any dispute or difference relating to the interpretation of the agreement or any clause thereof shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, or any statutory modifications thereof and shall be referred to a sole arbitrator, to be appointed by ABHFL alone.

10.3 The venue for conducting arbitration proceedings shall be conducted at the place mentioned Schedule I and the language of arbitration shall be in English.

10.4 Notwithstanding anything contained in the agreement, in the event, the loan of ABHFL is assigned to any bank and/or financial institution which have the benefit under the



Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Securitisation Act) or the Recovery of Debts and Bankruptcy Act, 1993 (the 'DRT Act') and/or the legal status of ABHFL changes or in the event of the law being made or amended so as to bring ABHFL under the Securitisation Act or DRT Act (being notified under the Securitisation Act and/or DRT Act), to enable ABHFL to enforce the security under the Securitisation Act or proceed to recover dues from the borrower under the DRT Act, the arbitration provisions contained shall, at the option of ABHFL shall continue and if arbitration proceedings are commenced but no award is made, then at the option of ABHFL such proceedings shall continue. Provided that neither a change in the legal status of ABHFL nor a change in law as referred to in this sub-paragraph, will result in invalidating an existing award passed by an Arbitral Tribunal constituted pursuant to the provisions of the agreement."

48. Another agreement that is known as “tripartite agreement” is executed between borrower, builder and financial institutions. A copy of one of the tripartite agreements executed between Manish Kumar Garg (borrower), Supertech Limited (Respondent 3) and Indiabulls Housing Finance Limited Respondent 4 has been placed on record at pp. 287-292 of the convenience compilation.

49. Recital in clauses (A) to (G) are reproduced as under:

“(A) As part of its business activity, the builder has developed/in process of development of a project mentioned in Schedule I (hereinafter referred to as the ‘Unit No. 2207/T2 Supertech Azalia’) situated at Sector 68, Golf Course Extn., Road, Gurgaon 122 101.

(B) The borrower have represented that the builder is of their choice and that they have satisfied themselves with regard to integrity, capability for quality construction of the builder and the builder's ability for timely completion and on time delivery of the project.

(C) The borrower desire to purchase a property details whereof are mentioned under Schedule I costing for an amount as mentioned in Schedule I from the builder which envisages allotment to applicants/borrower of such property (hereinafter referred to as the ‘property’, more specifically mentioned in the Schedule) and payment by the applicants/borrower of the cost of construction and purchase of land and common facilities therefore to the builder in instalments.

(D) The borrower are short of finance for purchasing the property hence in order to make up their finance for the purchase approached ABHFL for grant of housing loan. The borrower under the provisions of the housing loan scheme framed by the ABHFL have applied to ABHFL for a loan for the purchase of the property and ABHFL has agreed to grant a loan for an amount as mentioned under Schedule I to the borrower (hereinafter referred to as the ‘loan’) subject to the terms and conditions applicable to the loan



for purchase of property. The borrower have represented that they have not availed any loan from anywhere.

(E) The builder hereby offers interest subvention for the loan extended by ABHFL to the borrower to purchase the property which the borrower accepts. The builder liability for payment of interest

on the loan amount disbursed/to be disbursed by ABHFL will be for initial period as mentioned in Schedule I from the date of loan disbursement in respect of the abovesaid property, (hereinafter referred to as 'subvention period').

(F) ABHFL has considered the said request with a clear understanding and an irrevocable undertaking by the borrower that subsequent to the disbursements as requested by the borrower, there would be no repayment default for any reason whatsoever including but not limited to any concern/issues by and between the borrower and the builder/developer.

(G) The borrower have represented, and such representation being a continuing representation, that borrower's obligation to repay the loan shall be a distinct and independent obligation more particularly independent of any issues/concern/dispute of whatsoever nature between the borrower and builder."

50. Clause B of the said "tripartite agreement" defines that the borrowers have represented that the builder is of their choice and they are satisfied with regard to integrity, capability for quality construction of the builder and the builder's ability for timely completion and on timely delivery of the project.

51. Clauses (f) recites that the financial institutions have considered the request of the borrowers with a clear and irrevocable understanding by the borrowers that subsequent to the disbursement, as requested by the borrowers, there would be no repayment default for any reason, whatsoever, including but not limited to any concern/issues by and between the borrowers and the builder/developer.

52. Clauses (5) and (7) stipulates that in respect of the stage of construction, the borrowers shall be liable to pay the EMIs and that in the event of default, the financial institutions shall have the right to recover the amount from the borrowers. Clauses (5) and (7) are reproduced as under:

"5. That irrespective of the stage of construction of the project and irrespective of the date of handing over the possession of the property to the borrower by the builder, the borrower shall be liable to pay to ABHFL regularly each month, the pre-EMIs/EMIs as laid down in the disbursement letter signed by and between ABHFL and the borrower. The borrower shall execute an indemnity and such other documents as may be required by ABHFL in favour of ABHFL in this regard.

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7. Without prejudice to the remedies which ABHFL may have against the developer, in the event the developer fails to honour

its obligation (as stated above), the same shall constitute an event of default under the loan



Page: 652

documents and the borrower shall be liable to pay the entire outstanding amount along with the amount due by way of PEMII."

53. Another "tripartite agreement" dated 17-7-2014 between homebuyer, Supertech Limited and HDFC Bank has also been placed on record at pp. 293-297. Clauses (4) and (9) clearly indicates that the liability of the borrower is independent of the builder. Clauses (4) and (9) of the tripartite agreement dated 17-7-2014 are being reproduced as under:

"4. That irrespective of the stage of construction of the project and irrespective of the date of handing over the possession of the residential apartment to the borrower by the builder the borrower shall be liable to pay to HDFC regularly each month the EMIs as laid down in the loan agreement to be signed by and between HDFC and the borrower. The borrower shall execute an indemnity and such other documents as may be required by HDFC in favour of HDFC in this regard.

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9. Further if the borrower commits a breach of any of the terms and conditions of this tripartite agreement it shall be treated as an event of default under the agreement for sale/allotment-cum-agreement for sale or any such agreement or document signed by and between the borrower and the builder for the sale of the said residential apartment.

That in the event of occurrence of default under the loan agreement which would result in the cancellation of the allotment as a consequence thereof and/or for any reason whatsoever if the allotment is cancelled, any amount payable to the borrower on account of such cancellation shall be directly paid to HDFC. However it is further agreed between the parties that such payment made by the builder directly to HDEC shall not absolve the borrower from his liability to pay the residual amount, if any, from the outstanding under the loan agreement.

That the borrower agrees that it unconditionally and irrevocable subrogates its right to receive any amount payable by the builder to the borrower in the event of cancellation in favour of HDFC and that the act of payment by the builder to HDFC under this clause shall amount to a valid discharge of the builder of its obligation to

pay the borrower such cancellation amount.

Further that the parties agree that the builder shall in no circumstances forfeit any amount over and above the amount equivalent to the borrowers contribution towards the purchase consideration paid to the builder. Borrower's contribution for the purposes of this clause shall mean and include the difference between the total cost of the residential apartment and the loan amount as mentioned above."

54. Some of the request letters for disbursal of the amount in favour of financial institutions have also been signed by the borrowers. Some of them have been placed on record at pp. 398-303. Copy of request for disbursal dated 31-5-2018 is reproduced as under:



Page: 653

"Request for disbursal

Dated: 31-5-2018

To,
Aditya Birla Housing Financing Limited
A-4, Aditya Birla Centre, S.K. Ahire Marg,
Worli, Mumbai 400 030
India.

Sub: Request for disbursal of housing loan sanctioned in our favour vide sanction letter dated 30-5-2018

Ref: Our Application No. 38949 dated 31-5-2018

Dear Sir/Madam

This is with reference to my/our facility/ies sanctioned by your office and in furtherance of the same I/we request you to kindly disburse the loan amount in following manner:

Favouring 1:

Favouring Aditya Birla Sunlife Insurance Company Ltd.
Bank Name & A/c No. Citibank A/c No. 9421114

Amount_____1,36,700

Favouring 2:

Favouring_____

Bank Name & A/c No. _____

Amount_____

Favouring 3:

Favouring _____

Bank Name & A/c No. _____

Amount _____

Favouring 4:

Favouring _____

Bank Name & A/c No. _____

Amount _____

I/We hereby declare that,

1. I/we shall be responsible and liable for the above disbursement made by ABHFL as requested for above and the same shall be treated as a facility under all the documents executed/to be executed with respect thereto.

2. Interest calculation will start from the date of respective disbursal irrespective of the date of realisation of funds in my/our account.



Page: 654

3. Interest shall be payable by me/us even in case the disbursement amount instrument is not deposited by me/us in the bank for realisation or disbursement amount is not utilised by me/us.

(Signature of borrower)

Name: Sahil Thakur

(Signature of Co-borrower)

Name: _____

(Signature of Co-borrower)

Name: Geetika Chugh

(Signature of Co-borrower)

Name: _____

Note: Every cancellation/correction/modification needs counter-signature by borrower and co-borrower. ABHFL will not be responsible for any change with respect to a person favouring, other than filed as herein."

55. Learned counsel appearing on behalf of the petitioners have specifically pointed out that in one of the "buyer-developer agreement" dated 21-7-2017 executed between the Supertech Limited builder and Puneet Verma homebuyer with respect to Supertech "Azalia", the

builder agreed to pay penalty to the allottee @ Rs 5 per sq ft of super area of the allotted unit per month for any delay in handing over possession beyond the given date plus grace period of six months and up to the offer of possession or actual physical possession, whichever is earlier. According to him, the possession of the allotted unit was to be given to the allottee by the company by December 2019 and the same was only extendable for a further grace period of six months. Clauses (1) and (2) of the said "buyer-developer agreement" are reproduced as under:

"1. The possession of the allotted unit shall be given to the allottee/s by the company by December 2019. However, this period can be extended for a further grace period of 6 months. The possession clause is subject to the timely payment of all instalments and other dues by the allottee/s and the allottee/s agrees to strictly abide by the same in this regard.

2. The company hereby agrees to pay penalty to the allottee's @ Rs 5 (five rupees only) per sq ft of super area of the allotted unit per month for any delay in handing over possession beyond the given date plus grace period of 6 months and up to the offer of possession or actual physical possession whichever is earlier. However, any delay in project execution or its possession caused due to force majeure conditions and/or any judicial pronouncement shall be excluded from the aforesaid possession period. The compensation amount will be calculated after the lapse of the grace period and shall be adjusted or paid, if the adjustment is not possible because of the complete payment made by the allottee/s till such date, the time of final account settlement before possession of the unit. The penalty clause will be applicable to only those allottees who have not booked their unit under any special beneficial scheme of the company i.e. no EMI till offer of possession, subvention scheme, assured return, etc. and who honour their agreed payment schedule and make the timely payment of due instalments and additional charges as per the payment plan given in allotment letter."



56. While referring Clause 7 of one of the "tripartite agreement" dated 1-8-2017 executed between the borrowers, financial institutions and builder, it has been pointed out that the pre-EMIs interest payable under the loan document shall be serviced and borne by

builder/developer during the subvention period as primary obligor as per MoU entered between the builder and financial institutions. Clause (7) thereto is being reproduced as under:

"7. The pre-EMI interest (PEMII) payable under the loan documents shall be serviced and borne by the builder/developer during the subvention period as primary obligor as per MoU entered b/w builder & PNBHFL. The said PEMII shall be paid by the developer of the loan amount disbursed as per the MoU."

57. The reliance is also placed by learned counsel for the petitioners on Master Circular dated 1-7-2014 issued by the RBI to indicate that the same relates to the statutory directives in exercise of the power conferred under Sections 21 and 35-A of the Banking Regulation Act, 1949. It is indicated that the grant of loan to individual for purchase/construction of dwelling units per family is governed by regulatory regime and according to petitioners, even the financial institutions are required to appoint an architect to certify various stages of construction of building to ensure that the same is as per the sanctioned plan and to monitor the progress of the construction.

58. Clauses 3(c) to (f) have been specifically pressed in service. The same are reproduced as under:

"3 (c) However, in cases where the cost of the house/dwelling units does not exceed Rs 10 lakhs, bank may add stamp duty, registration and other documentation charges to the cost of the house/dwelling unit for the purpose of calculating LTV ratio.

(d) It has been observed that some banks have introduced certain innovative housing loan schemes in association with developers/builders, e.g. upfront disbursement of sanctioned individual housing loans to the builders without linking the disbursements to various stages of construction of housing project, interest/EMI on the housing loan availed of by the individual borrower being serviced by the builders during the construction period/specified period, etc. This might include signing of tripartite agreement between the bank, the builder and the buyer of the housing unit. These loan products are popularly known by various names like 80:20, 75:25 schemes.

(e) Such housing loan products are likely to expose the banks as well as their home loan borrowers to additional risks e.g. in case of dispute between individual borrowers and developers/builders, default/delayed payment of interest/EMI by the developer/builder during the agreed period on behalf of the borrower, non-completion of the project on time, etc. Further, any delayed payments by developers/builders on behalf of individual

borrowers to banks may lead to lower credit rating/scoring of such borrowers by credit information companies (CICs) as information about servicing of loans get passed on to the CICs on a regular basis. In cases, where bank loans are



Page: 656

also disbursed upfront on behalf of their individual borrowers in a lump-sum to builders/developers without any linkage to stages of constructions, banks run disproportionately higher exposures with concomitant risks of diversion of funds.

(f) Banks are advised that disbursal of housing loans sanctioned to individuals should be closely linked to the stages of construction of the housing project/houses and upfront disbursal should not be made in cases of incomplete/under construction/green field housing projects.”

59. One of the arguments made by learned counsel for the petitioners that the issue with respect to the maintainability has already been decided, deserves consideration. The order dated 31-1-2022 passed by this Court, whereby interim relief has been granted in favour of the homebuyers restraining the respondents from taking any coercive steps against the petitioners is concerned, this Court in para 28 of the said order has clearly observed that the view expressed in the said order was prima facie view. It was clarified that the same will not prejudice any of the parties at the time of hearing of these cases. A specific objection has been recorded on behalf of the respondent that in order dated 31-1-2022, the said issue was not decided, as has been noted therein.

60. Insofar as another order dated 17-8-2022 passed in *Rakesh Verma v. Union of India*⁵⁴ is concerned, in para 10 of the said order, this Court has again clarified that prima facie case of maintainability has been made out. The other orders which have been cited by learned counsel for the petitioners to state that the issue of maintainability of these writ petitions have been decided, nowhere indicates as if this Court has gone into the merits of submissions and has held that the writ petitions are to be entertained.

61. The orders which are being relied upon by learned counsel for the petitioners only record prima facie view. It is thus held that the issue with respect to justifiability to maintain the present writ petitions has not yet been decided by any of the interim orders or final order passed by this Court, therefore, it is necessary to deal with the said

issue.

62. Learned counsel for the petitioner places reliance on the decision of Supreme Court in *Sardar Associates v. Punjab & Sind Bank*⁵⁵ to contend that the RBI is entitled to formulate the policies as per Section 21 of the Banking Regulation Act, 1949 and the policies so framed are binding on all the banking companies. There is no dispute with respect to the said proposition. The other set of decisions which have been relied upon to contend that mandamus can be issued to any person performing public duty, owing positive obligation to the effected party, it is also not in dispute that against private companies in certain circumstances, a writ can be issued as there may be statute which needs to be complied with by all including private companies concerned.

63. The Supreme Court in *Federal Bank Ltd. case*¹⁹ in para 27 has held as under: (SCC p. 756, para 27)



Page: 657

"27. Such private companies would normally not be amenable to the writ jurisdiction under Article 226 of the Constitution. But in certain circumstances a writ may issue to such private bodies or persons as there may be statutes which need to be complied with by all including the private companies concerned. For example, there are certain legislations like the Industrial Disputes Act, the Minimum Wages Act, the Factories Act or for maintaining proper environment, say the Air (Prevention and Control of Pollution) Act, 1981 or the Water (Prevention and Control of Pollution) Act, 1974, etc. or statutes of the like nature which fasten certain duties and responsibilities statutorily upon such private bodies which they are bound to comply with. If they violate such a statutory provision a writ would certainly be issued for compliance with those provisions. For instance, if a private employer dispenses with the service of its employee in violation of the provisions contained under the Industrial Disputes Act, in innumerable cases the High Court interfered and has issued the writ to the private bodies and the companies in that regard. But the difficulty in issuing a writ may arise where there may not be any non-compliance with or violation of any statutory provision by the private body. In that event a writ may not be issued at all. Other remedies, as may be available, may have to be resorted to."

64. The Supreme Court in *Peerless General Finance & Investment Co. Ltd. case*³⁵ has held that the RBI is “a bankers bank and lender of the last resort”. Its object is to ensure monetary stability in India and to operate and regulate the credit system of the country. It, therefore, has to maintain a delicate balance between the need to preserve and maintain the credit structure of the country by strengthening the rupee as well as apparent credit worthiness of the banks operating in the country and the interest of the depositors. The RBI occupies place of “pre-eminence” to ensure monetary discipline and regulate the economy of the credit system of the country as an expert body. The banks or non-banking institutions shall have to regulate their operations, not only as per the provisions of the Act but also the rules and directions or instructions issued by the RBI in exercise of the powers thereunder. The directions, therefore, are statutory regulations. They are incorporated and have become part of the act itself. They must be governed by the same principles as the statute itself.

65. The Supreme Court in *Supriyo Basu v. W.B. Housing Board*⁵⁶ has held that if a society which is not a department of the State and is also not a creature of the statute but if it is governed by a statute and it is established that the mandatory provision of a statute has been violated, a writ petition could be maintainable. Para 6 of the said decision is reproduced as under: (SCC p. 291, paras 7 and 8)



“7. According to learned counsel for the respondents the High Court has rightly held that the writ petition was not maintainable and that there was not even semblance of public duty.

8. The rival stands need consideration on the core issue of maintainability of the writ petition, though several other issues were raised by learned counsel for the appellants. It is undisputed that the respondent Society is a cooperative society constituted on agreement between members thereof who had agreed to abide by the provisions of the West Bengal Cooperative Societies Act, 1983, the Rules framed thereunder or the bye-laws framed by the society. The society is undisputedly not a department of the State and is also not a creature of a statute but merely governed by a statute. Only if it is established that the mandatory provision of a statute has been violated, a writ petition could be maintainable. Before a party can complain of an infringement of his fundamental

right to hold property, he must establish that he has title to that property and if his title itself is in dispute and is the subject-matter of adjudication in proceedings legally constituted, he cannot put forward any claim based on the title until as a result of that enquiry he is able to establish his title. It is only thereafter that the question whether the rights in or to that property have been improperly or illegally infringed could arise. The dispute as noted by the High Court essentially related to the claims of two rival groups of private individuals in relation to common car parking spaces. Learned Single Judge gave certain directions, which even touched upon the legality of the sale deeds. It was not open to be dealt with in a writ petition. As observed by this Court in *U.P. State Coop. Land Development Bank Ltd. v. Chandra Bhan Dubey*⁵⁷ in relation to the question whether a writ petition would lie against a cooperative society the question to be considered is what is the nature of the statutory duty placed on it and the court is to enforce such statutory public duty. The question as to entitlement of the members was to be discussed in the annual general body meeting. The writ petitioners could not have questioned the decision of the society to discuss the matter in the annual general body meeting. We, therefore, find no merit in this appeal. The society is free to convene a General Body Meeting and to discuss the rival claims regarding entitlement. We make it clear that we have not expressed any opinion on that aspect of the matter. The appeal fails, but without any order as to costs."

66. In *K.K. Saxena v. International Commission on Irrigation & Drainage*⁸, while noting the decision of the Supreme Court in *Federal Bank Ltd. v. Sagar Thomas*¹⁹, it was reiterated that if a person or authority performs public duty, writ petition can lie. Such a private body should either run substantially on State funding or discharge public duty/positive obligation of public nature or is under liability to discharge any function under any statute to compel it to perform such a statutory function.



67. In *Mathew Varghese v. M. Amritha Kumar*⁵⁸, while placing reliance on various earlier decisions including the decision in *Ram Kishun v. State of U.P.*⁵⁹, it has been held that a right to hold property is a constitutional right as well as a human right. A person cannot be

deprived of his property except in accordance with the provisions of a statute. The condition precedent for taking away someone's property by disposing of the secured assets is that the authority must ensure compliance with the statutory provisions. It has been held that although recovery of public dues should be made expeditiously, however, it should be in accordance with the procedure prescribed by law and that it should not frustrate the constitutional right.

68. While placing reliance on various decisions, the Supreme Court in *Maharashtra Chess Assn. v. Union of India*⁶⁰ has categorically held that the powers of the High Court in its writ jurisdiction are not subject to strict legal principles. Two clear principles emerge with respect to when a High Court's writ jurisdiction may be engaged. Firstly, the decision of the High Court to entertain or not entertain a particular action under its writ jurisdiction is fundamentally discretionary. Secondly, limitations placed on the court's decision to exercise or refuse to exercise its writ jurisdiction are self-imposed. It has also been held that writ jurisdiction of a High Court cannot be completely excluded by statute. If a High Court is tasked with being the final recourse to upholding the rule of law within its territorial jurisdiction, it must necessarily have the power to examine any case before it and make a determination of whether or not its writ jurisdiction is engaged. Judicial review under Article 226 is an intrinsic feature of the basic structure of the Constitution. (See *Minerva Mills Ltd. v. Union of India*⁶¹ and *L. Chandra Kumar v. Union of India*⁶².)

69. It is well-settled that the remedy under Article 226 of the Constitution being, in general, discretionary, the High Court may refuse to grant it where there exists an alternate remedy, which is equally efficient and adequate. It is equally true that the existence of alternate remedy does not affect the jurisdiction of the court to issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226 of the Constitution. Existence of an alternate remedy is not an absolute bar to the relief under Article 226 of the Constitution. However, the same is a rule of policy, convenience and discretion rather than a rule of law. The High Courts normally refrain from exercising their extraordinary power, if the litigant has an alternate efficacious remedy.

70. The jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power under the Article 226 can be exercised by the High Court to reach injustice wherever it is found. The powers of the High Court in exercise of its writ jurisdiction cannot be circumscribed by strict



legal principles so as to hobble the High Court in fulfilling its mandate to uphold the rule of law. (See *U.P. State Sugar Corpn. Ltd. v. Kamal Swaroop Tondon*⁶³ and *A.V. Venkateswaran v. Ramchand Sobhraj Wadhvani*⁴⁹.)

71. A survey of long line of decisions would make it clear that a writ would be maintainable against a person or a body which is under a liability to discharge any function under any statute and is compelled to perform such a statutory function.

72. In the case in hand, a perusal of definition of financial institution under Section 45-I of the Reserve Bank of India Act, 1934 (hereinafter referred to as "RBI Act, 1934") would indicate that any non-banking institution which carries on its businesses or part of businesses; and performing activities as mentioned therein, would fall within the definition of the "financial institutions". "Non-banking financial company" is also defined under Section 45-I(f) of the RBI Act, 1934. The definition of "banking company" is also prescribed in Section 45-A (a) of the RBI Act, 1934. As has been noted the object of the RBI Act, 1934 is to regulate the issue of bank notes and keep the reserves with a view to secure monetary stability in India and generally to operate the currency and credit system of the country to its advantages. Various kinds of banks and financial institutions are defined in the RBI Act, 1934 for their regulations. Section 45-J(a) of the RBI Act, 1934 empowers the RBI to determine policy and issue directions.

73. Banking Regulation Act, 1949 curbs various mischievous activities such as prohibiting non-banking companies from accepting deposits repayable on demand and prohibition of trading with a view to eliminate non-banking risks. It also ensures minimum capital standards limiting the payment in dividends, introduction of comprehensive systems of licensing of banks and their branches, and provides comprehensive definitions of banking so as to bring within the scope of the legislation or institutions, which receive deposits, repayable on demand or otherwise, for lending or investment besides providing various other provisions. Section 2(b) defines "banking" and Section 2 (c) defines "banking company". Sections 35-A, 36, 36-AA, 36-AD and 47-A empowers RBI to give direction, remove managerial and other persons including various other powers.

74. The SARFAESI Act regulates securitisation and reconstructions of financial assets and enforcement of security interest and provides for a central database of security interest created for property rights and for

matters connected therewith and incidental thereto. The entire mechanism for enforcement of security interest and remedies to borrowers is governed by the provisions of the SARFAESI Act.

75. It is thus seen that the respondent Banks/Financial Institutions in the present case are fully governed by various statutes as referred hereinabove. They are required to discharge their function as per the governing statute. They are also bound by the applicable statute and are compelled to perform their



Page: 661

statutory function. If the principle laid down in *Federal Bank Ltd. case*¹⁹ and various other decisions, as have been referred to hereinabove, are applied in the present case, it can be seen that the respondents in the present case are under liability to discharge their function under the statute and therefore, it is held that the writ petition against the respondents is maintainable.

76. Having held so, the question that further arises for consideration by this Court is whether under the facts of the present case the petitions are “entertainable”? The “maintainability” and “entertainability” of a writ petition are distinct concepts. The question of “maintainability” or the “jurisdiction” of the court concerned to decide the controversy goes to the root of the matter.

77. However, the question of “entertainability” is entirely within the realm of discretion of the High Courts. As has been noted, writ remedy being discretionary, despite being petition maintainable, the same may not be entertained by the High Court for many reasons. It is also to be noted that where the controversy is purely legal one and it does not involve the disputed question of fact but only question of law, it should be decided by the High Court instead of dismissing the writ petition on the question of an alternate remedy being available. Violations of all rights may not necessarily be entertained in a writ jurisdiction.

78. The Supreme Court in *Upendra Choudhury case*¹¹ while considering the nature of relief prayed therein had noted that entertaining a petition involving multiple issues relating to various enactments would be virtually carrying out a day-to-day supervision of a building project. Paras 2 and 6 to 9 are being reproduced as under: (SCC pp. 451 and 453-454, paras 2 and 6-9)

“2. The above extract would indicate that the primary relief which has been sought is: (i) cancellation of all the agreements;

(ii) refund of moneys to purchasers, and in the alternative; (iii) ensuring that the construction is carried out and that the premises are handed over within a reasonable period of time. Incidental to the above reliefs, the petitioner seeks the constitution of a committee headed by a former Judge of this Court together with other persons to monitor and handle the projects of the developer in the present case. The petitioner also seeks a forensic audit, an investigation by CBI and by other authorities such as the Serious Fraud Investigation Office and Enforcement Directorate.

* * *

6. Following the earlier view which has been taken on 7-1-2021 in *Shelly Lal v. Union of India*¹³, we are of the considered opinion that it would be inappropriate to entertain a petition under Article 32 for more than one reason. There are specific statutory provisions holding the field, including among them:



Page: 662

(i) the Consumer Protection Act, 1986 (the 1986 Act) and its successor legislation;

(ii) the Real Estate (Regulation and Development) Act, 2016 (RERA); and

(iii) the Insolvency and Bankruptcy Code, 2016 (IBC).

7. Each of these statutory enactments has been made by Parliament with a specific purpose in view. The 1986 Act as well as the subsequent legislation contain provisions for representative consumer complaints. One or more homebuyers can consequently seek relief to represent a common grievance for a whole class of purchasers of real estate. The RERA similarly contains specific provisions and remedies for dealing with the grievance of purchasers of real estate. The provisions of the IBC have specifically taken note of the difficulties which are faced by homebuyers by providing for remedies within the fold of the statute.

8. Entertaining a petition of this nature will involve the court in virtually carrying out a day-to-day supervision of a building project. Appointing a committee presided over by a former Judge of this Court would not resolve the problem because the court will have nonetheless to supervise the Committee for the reliefs

sought in the petition under Article 32. Insofar as the remedies of a criminal investigation are concerned, there is reason for this Court not to entertain a petition directly under Article 32 in the present set of facts. Adequate remedies are available in terms of the Criminal Procedure Code, 1973. The statutory procedures which are enunciated have to be invoked. Adequate provisions have been made in the statute to deal with the filing of a complaint and for investigation in accordance with law. Judicial intervention is provided at appropriate stages by competent courts in that regard.

9. In *Devendra Dwivedi v. Union of India*⁶⁴, a three-Judge Bench of this Court (of which one of us was a member) held that, determining 'whether recourse to the jurisdiction under Article 32 be entertained in a particular case is a matter for the calibrated exercise of judicial discretion'. It was further held that this remedy cannot be used as a ruse to flood this Court with petitions that must be filed before the competent authorities set-up pursuant to the appropriate statutory framework. In view of the statutory framework, both in terms of civil and criminal law and procedure, we are of the view that entertaining a petition under Article 32 would be inappropriate."

79. The Supreme Court in another *Gulshan Arora case*¹² was considering the petition filed on behalf of the homebuyers to issue the writ to the bank, not to precipitate the action under Section 13(4) of the SARFAESI Act. The Supreme Court noted that the grievances of the writ petitioners and similarly placed persons (homebuyers) of such project can be assuaged and redressed by



RERA in the light of the decision of the Supreme Court in *Bikram Chatterji v. Union of India*⁶⁵.

80. The Division Bench of this Court in *Sunil Kumar Pandey case*¹⁵ has considered almost the similar issue. While relying on various decisions including the recent decision of the Supreme Court in *Radha Krishan Industries v. State of H.P.*¹⁷, it has been held that the High Court should not interfere when the party can pursue an alternate remedy such as civil suit, although exception exists. In para 15 of the said order, it has been observed that there was an arbitration clause in the agreement entered into between the appellant therein and the

respondent. The Division Bench of this Court, while dismissing the LPA has also noted that there may be various innocent homebuyers and there might be various petitions pending before this Court and other High Courts, however, such litigation arising out of projects involving disputed question of facts ranging myriad issues, cannot be entertained as the courts cannot possibly take account of all such real estate projects and the gamut of issue arising from them. Paras 17 to 20 of the decision in *Sunil Kumar Pandey case*¹⁵ are reproduced as under: (SCC OnLine Del paras 17 to 20)

"17. Considering the principles canvassed above, and the factual matrix of the instant case, the WP (C) No. 11865 of 2022, was in fact not maintainable, as alternate remedies exist and have been availed. As noted in *Radha Krishan Industries case*¹⁷, extraordinary circumstances qualify as exceptions to the rule of alternate remedy, and necessitate the interference of this Court. Such exceptions are: (1) when the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (2) violation of the principles of natural justice is made out; (3) the order or proceedings are wholly without jurisdiction; or (4) the vires of a legislation is challenged. Unfortunately, the case of the appellants does not fall under any of these exceptions either.

18. The appellants have claimed that the learned Single Judge has failed to note that the civil suit has been rendered infructuous due to the moratorium imposed upon Respondent 3. However, this anxiety of the appellants is ill-founded as the moratorium operates qua Respondent 3 i.e. the builder, and not Respondent 4 i.e. the bank. As the prayers in the suit are sought qua Respondent 4, an equitable alternate remedy is still available to the appellants. In any event, the moratorium will cease to exist once the proceedings under the Insolvency and Bankruptcy Code culminates. In light of this, this Court does not find any occasion to interfere with the impugned order.

19. While this Court is dismissing the instant LPA, it recognises that several real estate projects across the country are facing a similar situation. The grievances of the appellants are mirrored in other petitions filed by



other innocent homebuyers as well. Such petitions too are pending before this Court, other High Courts, and also, the Supreme Court. It

is a rather unfortunate trend that builders often resort to dilatory tactics, defraud homebuyers by selling units to multiple individuals, delay the execution of projects, and execute projects without requisite sanctions. Invariably most of such builders also undergo insolvency. The greatest loss is incurred by innocent homebuyers who are not only forced to embroil themselves in litigation but are also divested of their hard-earned savings.

20. However, it must be considered that the litigation arising out of such projects involve disputed questions of fact, ranging myriad issues. Although this Court sympathises with the appellants, and similarly placed innocent homebuyers, courts cannot possibly take account of all such real estate projects, and the gamut of issues arising from them.”

81. It be also noted that the Coordinate Bench of this Court in *Baljit Singh Bhatia case*¹⁶ has considered a similar prayer to direct the respondent Banks/Financial Institutions not to charge any EMI or take coercive action against the petitioners therein till the CIRP reaches its conclusion. It was also prayed therein that the respondent Banks/Financial Institutions be directed not to charge all pre-EMIs or full-EMIs till the possession is delivered to the petitioners from respondent builder. It is seen that there were various other similar prayers as have been made in the present set of cases. This Court while dealing with the submissions of respective parties in detail, has held that the payment obligation under the loan agreement were not honoured by the borrower and since that was the main controversy, therefore, no exception can be carved out to exercise jurisdiction under Article 226 of the Constitution, as the subject-matter is governed purely by the terms of the contract. Para 13 of the said decision is being reproduced as under: (SCC OnLine Del para 13)

“13. The instant petition is *ex facie* not maintainable for the following reasons:

13.1. The real cause of action is perhaps the failure on part of GPRPL to keep its commitment of completion of construction. The fact that the payment obligations under the loan agreement have not been honoured by the petitioners is not in controversy. However, merely because the construction of the property is not complete, cannot absolve the petitioners of such liability which has been undertaken independent of the same, as per the terms of the loan agreement.

13.2. Unfortunately for the petitioners, the dispute raised in the instant petition is purely contractual in nature, and

the petitioners' desire to wriggle out of their contractual repayment obligations under the tripartite and loan agreements, cannot lend any colour of maintainability to the instant petition.

13.3. There is no violation or infringement of any right, much less a fundamental right, which is demonstrable from the facts of the petition.



Page: 665

13.4. No exceptional or extraordinary circumstance is demonstrated for this Court to exercise jurisdiction under Article 226 of the Constitution of India, in relation to a subject-matter which is governed purely by the terms of the contract.

13.5. Petitioners have also not made out any case for contravention of RBI/NHB Circular(s)/guideline(s) to seek prayers (iv) and (vii) which are directed towards Respondent 1 UOI and Respondent 2 RBI. The bald assertion of contravention of RBI Circulars for making upfront disbursement of loan amount is found to be factually incorrect, as discussed above. No demonstrable irregularity has been shown in the grant of sanction of loan by TCHFL. The claims made in the petition do not indicate any cause of action qua the Ministry of Housing and Urban Affairs, UOI. It is therefore evident that UOI and RBI have been impleaded only to overcome the bar of maintainability."

82. In *Baljit Singh Bhatia case*¹⁶, a specific argument of the homebuyers has been noted in para 8 that the disbursement of the loan amount to financial institutions was in flagrant violation of statutory circulars issued by RBI or by NHB.

83. The Supreme Court in *Phoenix ARC (P) Ltd. case*¹⁸ has also held that writ petition against the private financial institution ARC (asset reconstruction company) against the proposed action under Section 13 (4) of the SARFAESI Act, would not be maintainable.

84. A perusal of various clauses of respective agreements, be it "buyer-developer agreement", "loan agreement" or "tripartite agreement", the rights claimed by the petitioners are eventually flowing from the respective agreements only. It is also to be noted that the violation of RBI Circulars has been alleged by the petitioners

homebuyers, which is disputed by the respondents.

85. In the instant case, not only the rights of the petitioners are flowing from private contract but the complex and disputed question of facts are involved and the parties are not remediless. Alternative forums are already in place. Any interference by the writ court under the facts of the present case would amount to usurpation of powers vested with the respective forums. Such an exercise is not permissible unless extraordinary circumstances exist which are apparently non-existent in the instant cases.

86. The cases in hand clearly indicate that the homebuyers are claiming their rights on the basis of terms of the contract or on the basis of RBI Circulars. Their rights are mainly governed by the terms of the contract which they have entered into and to enforce the terms of the contract, no writ or order can be issued under Article 226 of the Constitution so as to compel the authorities to



Page: 666

remedy a breach of contract pure and simple. Reference can be made to the decision of the Supreme Court in *Bareilly Development Authority case*³.

87. The pleadings between the parties would further go on to indicate that the respondent Financial Institutions are alleging breach on the part of the petitioners and are claiming full adherence of the RBI Circular. In any case, since the rights of the homebuyers are flowing from the terms of the contract and if, there is any breach of RBI Circulars at the instance of banks/financial institutions, the same by itself cannot entitle the homebuyers for the relief, which they have claimed in the instant writ petitions. In any case, the breach of RBI Circular is again a question of fact that can still be gone into before the appropriate court.

88. The cases in hand are purely contractual in nature. As has been noted, the "builder-buyer agreement" also categorically provides for an arbitration clause, whereby, any dispute pertaining to the said agreement was to be referred to arbitration. In some of the cases, the homebuyers have already approached the alternate forums and their cases are pending. In some cases where the banks have initiated insolvency proceedings against them, the homebuyers can raise their claim before the Tribunal concerned. There are various statutes such as RERA Act, Consumer Protection Act, Insolvency and Bankruptcy Code, 2016, SARFAESI Act, etc. where the petitioners can raise their

grievances. It would not be advisable to entertain a writ petition under Article 226 of the Constitution under the facts of the present cases.

89. The Division Bench in *Vineet Gupta case*⁵³ is seized with the matter where the order passed by the DRT is under challenge. No final opinion has been expressed in the same. However, the Division Bench in *Sunil Kumar Pandey case*¹⁵ has clearly declined to entertain the writ appeal involving almost similar issues. The nature of the relief, as has been quoted in the preceding paragraphs, which are multiple in nature, are apparently not capable of being decided in summary jurisdiction of the writ court.

90. So far as the decision of the learned Single Judge of the High Court of Karnataka in *Mudit Saxena case*²⁹ is concerned, firstly the same is not binding on this Court and secondly, it has already been stayed by the Division Bench of the Karnataka High Court and therefore, it would not be appropriate to take any view on the basis of the said decision. Nevertheless, this Court has considered the submissions made by the respective parties and has taken a view not to entertain these petitions in exercise of power under Article 226 of the Constitution of India.

91. In view of the aforesaid, this Court, in view of the availability of alternative remedies, does not find it appropriate to entertain these writ petitions and, therefore, the same are dismissed along with the pending application(s), if any.



Page: 667

92. This Court has not expressed any opinion on the merits of the case and has consciously not given any finding with respect to the violations/non-violations on the part of the respective parties, as the same would prejudice their rights before different forum where multiple proceedings are going on. However, since the interests of large number of homebuyers are involved in these cases, if the homebuyers avail alternative remedies, as may be available to them, the same may be considered and decided expeditiously in accordance with law.

¹ *P. Mohanraj v. Shah Bros. Ispat (P) Ltd.*, (2021) 6 SCC 258 : (2021) 2 SCC (Cri) 818 : (2021) 3 SCC (Civ) 427

- ² *State of U.P. v. Bridge & Roof Co. (India) Ltd.*, (1996) 6 SCC 22
- ³ *Bareilly Development Authority v. Ajai Pal Singh*, (1989) 2 SCC 116
- ⁴ *NHAI v. Ganga Enterprises*, (2003) 7 SCC 410
- ⁵ *Sunil Tandon v. Union of India*, 2021 SCC OnLine Del 4754
- ⁶ *Apana Logistics (P) Ltd. v. Container Corpn. of India Ltd.*, 2019 SCC OnLine Del 8704
- ⁷ *State of Gujarat v. Meghji Pethraj Shah Charitable Trust*, (1994) 3 SCC 552
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