

ITEM NO.301

COURT NO.2

SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s). 940/2017

BIKRAM CHATTERJI & ORS.

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No. 110402/2020 - APPLICATION FOR TAKING ON RECORD
IA No. 110027/2020 - APPLICATION FOR TAKING ON RECORD
IA No. 50370/2020 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 189314/2019 - COMPLIANCE OF COURTS ORDER
IA No. 60700/2020 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES
IA No. 127793/2019 - RECALLING THE COURTS ORDER
IA No. 127787/2019 - RECALLING THE COURTS ORDER)

WITH

W.P.(C) No. 245/2018 (X)
(IA No. 27275/2022 - CLARIFICATION/DIRECTION)

W.P.(C) No. 306/2018 (X)

W.P.(C) No. 502/2019 (X)

Diary No(s). 36392/2019 (X)

SLP(C) No. 1879/2018 (XVII)

SMC(Cr1) No. 4/2018 (XVII)

W.P.(C) No. 378/2018 (X)

W.P.(C) No. 298/2018 (X)

CONMT.PET.(C) No. 483/2020 in W.P.(C) No. 940/2017 (X)

W.P.(C) No. 288/2018 (X)

W.P.(C) No. 1397/2018 (X)

W.P.(C) No. 246/2018 (X)

W.P.(C) No. 226/2018 (X)

W.P.(C) No. 267/2018 (X)

W.P. (C) No. 1018/2017 (X)

W.P. (C) No. 353/2018 (X)

W.P. (C) No. 460/2018 (X)

W.P. (C) No. 829/2018 (X)

W.P. (C) No. 742/2018 (X)

W.P. (C) No. 199/2018 (X)

W.P. (C) No. 134/2018 (X)

(IA No. 27193/2022 - APPROPRIATE ORDERS/DIRECTIONS)

W.P. (C) No. 164/2018 (X)

W.P. (C) No. 1206/2017 (X)

W.P. (C) No. 281/2018 (X)

W.P. (C) No. 1116/2017 (X)

W.P. (C) No. 1156/2017 (X)

W.P. (C) No. 1144/2017 (X)

W.P. (C) No. 1041/2017 (X)

W.P. (C) No. 971/2017 (X)

W.P. (C) No. 947/2017 (X)

W.P. (C) No. 56/2018 (X)

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

W.P. (C) No. 74/2018 (X)

W.P. (C) No. 131/2018 (X)

W.P. (C) No. 182/2018 (X)

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

W.P. (C) No. 8/2018 (X)

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

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

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

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

W.P.(C) No. 91/2018 (X)

W.P.(C) No. 160/2018 (X)

Date : 25-07-2022 These matters were called on for hearing today.

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

PART - I

Re.: ARBITRATIONS INITIATED AGAINST THE AMRAPALI GROUP OF COMPANIES

(I) Learned Court Receiver has brought to our notice two instances where arbitration proceedings have been initiated

against Amrapali Group of Companies.

(A) Claim raised by S.T. Constructions Pvt. Ltd. Against Amrapali Princely Estate Pvt. Ltd.

Pursuant to the order dated 04.05.2022 passed by the High Court of Delhi in Arbitration Petition No.627 of 2017, the matter has been referred to Dr. Justice B.S. Chauhan, Retired Judge of this Court. After noticing that learned Court Receiver has been appointed by this Court, the matter was adjourned by the learned Arbitrator on 23.05.2022.

The order dated 23.07.2022 indicates that the matter is to be listed on 27.07.2022 at 5.00 P.M. by video conferencing.

(B) MAHENDRA SINGH DHONI MATTER

Arbitration Petition No.107 of 2019 was moved by Mr. Mahendra Singh Dhoni against Amrapali Homes Projects Pvt. Ltd. In these proceedings Ms. Veena Birbal, former Judge of Delhi High Court has been appointed as sole Arbitrator and the proceedings are pending before the learned Arbitrator.

(II) Learned Court Receiver submits that with the object of securing the interest of the flat buyers, this Court took cognizance of these matters and was pleased to appoint Court Receiver to see that the construction is completed well within

time and the allotment of apartments happens at the earliest. In his submission, it would be extremely difficult for the Receiver to defend and take care of such arbitral proceedings.

At the same time, it cannot be accepted that the erstwhile management or anybody else can represent the cause of Amrapali Group of Companies before the learned Arbitrators.

In the circumstances, some workable arrangements will have to be arrived at whereunder the claims made by the flat buyers are first satisfied and only thereafter the interest of the Amrapali Group of Companies on other fronts is looked into.

In order to have a complete view in the matter, we issue notice to the claimants in the aforesaid two arbitration cases, returnable on 08.08.2022.

At this stage, we may request the learned Arbitrators to hold their hands till the matter is considered and disposed of by this Court.

The Court Receiver or his representative shall place certified copies of this order in the aforesaid arbitration proceedings.

PART - II

(A) Mr. M.L. Lahoti, learned Advocate appearing for Home Buyers has furnished a tabular chart giving details about the status of some of the I.As. which are still pending consideration. He has tabulated these matters in 13 different segments as under:

Nature and status of 127 out of 155 pending IA's
in Bikram Chatterjee matter. W.P (C) No. 940 of 2017

i. Disposed off/Infructuous Applications

- 1 (17) Z-311
- 2 (24) Z-318
- 3 (32) Z-326
- 4 (51) Z-348
- 5 (58) Z-355
- 6 (59) Z-356
- 7 (60) Z-357
- 8 (63) Z-360
- 9 (1) I-6 [Resolution
Professional]
- 10 (2) I-11 [Resolution
Professional]
- 11 (3) I-13 [Resolution
Professional]
- 12 (4) I-18 [Resolution
Professional]
- 13 (5) I-32 [Resolution
Professional]
- 14 (6) I-37 [Resolution
Professional]
- 15 (7) I-73
- 16 (17) I-127
- 17 (25) I-145
- 18 (33) I-159
- 19 (36) I-162
- 20 (42) I-171
- 21 (46) I-177
- 22 (60) I-194

ii. Applications for Purchase of properties

- 1 (7) Z-300
- 2 (26) Z-320
- 3 (54) Z-351
- 4 (92) Z-393

- 5 (93) Z-394
- 6 (24) I-144
- 7 (32) I-156

iii. Applications on the Rate of Interest payable to NOIDA / Greater NOIDA Authorities

- 1 (3) Z-296
- 2 (29) Z-323
- 3 (30) Z-324
- 4 (31) Z-325
- 5 (27) I-147
- 6 (28) I-148

iv. Applications for payment to Labours

- 1 (10) Z-303
- 2 (11) Z-304
- 3 (12) Z-305
- 4 (13) Z-306
- 5 (14) Z-307
- 6 (15) Z-308
- 7 (20) Z-314
- 8 (21) Z-315
- 9 (22) Z-316
- 10 (53) Z-350

v. Applications by Contractors

- 1 (47) Z-344
- 2 (50) I-182

vi. Applications for Refund

- 1 (2) Z-295
- 2 (16) Z-310
- 3 (25) Z-319
- 4 (35) Z-329
- 5 (36) Z-330
- 6 (46) Z-343
- 7 (52) Z-349
- 8 (62) Z-359
- 9 (84) Z-383
- 10 (87) Z-387

vii. Applications for Possession

- 1 (6) Z-299
- 2 (28) Z-322
- 3 (33) Z-327
- 4 (34) Z-328
- 5 (37) Z-333
- 6 (75) Z-372
- 7 (81) Z-378
- 8 (83) Z-382
- 9 (90) Z-372 [kept pending vide Order dated 18.07.2022]

- 10 (39) I-166
- 11 (47) I-179
- 12 (52) I-186

viii. Applications for Registration

- 1 (49) Z-346
- 2 (57) Z-354
- 3 (61) Z-358
- 4 (72) Z-369
- 5 (80) Z-377
- 6 (85) Z-384
- 7 (86) Z-385

ix. Applications by Shop Owners

- 1 (8) Z-301
- 2 (9) Z-302
- 3 (39) Z-335
- 4 (40) Z-336
- 5 (68) Z-365

x. Applications by Banks / Authorities

- 1 (27) Z-321 [PVVNL]
- 2 (44) Z-340 [Rail Land
Development
Authority]
- 3 (50) Z-347 [State of
Bihar]
- 4 (82) Z-381 [Bank of
Maharashtra]
- 5 (15) I-113 [HDFC-
Surekha]
- 6 (16) I-119 [HDFC-
Surekha]
- 7 (18) I-128 [Axis
Bank]
- 8 (23) I-142 [Bank of
Baroda]
- 9 (34) I-160 [HUDCO]
- 10 (48) I-181 [Bank of
Maharashtra]
- 11 (54) I-188 [PVVNL]
- 12 (55) I-189 [PVVNL]
- 13 (56) I-190 [PVVNL]

xi. Applications for mere impleadment/intervention

- 1 (38) Z-334
- 2 (45) Z-341
- 3 (48) Z-345
- 4 (64) Z-361
- 5 (67) Z-364
- 6 (71) Z-368
- 7 (73) Z-370
- 8 (74) Z-371

- 9 (76) Z-373
- 10 (77) Z-374
- 11 (79) Z-376
- 12 (88) Z-388
- 13 (94) Z-395

**xii. Applications for Modification of Judgment dated 23.07.2019/
Objections to Forensic Audit Report**

- 1 (1) Z-201
- 2 (5) Z-298
- 3 (42) Z-338
- 4 (10) I-95
- 5 (11) I-97
- 6 (12) I-98
- 7 (13) I-99

**xiii. Applications by Promoters/Directors/Family Members/
Surekha, etc.**

- 1 (4) Z-297 [Anil Mittal]
- 2 (43) Z-339 [Shahi Infrastructure Pvt. Ltd.]
- 3 (78) Z-375 [Sonali Suman w/o Shiv Priya]
- 4 (8) I-85 [Surekha]
- 5 (9) I-86 [Surekha]
- 6 (14) I-103 [Surekha]
- 7 (19) I-131 [Prem Mishra]
- 8 (21) I-140 [Amrapali Promoters]
- 9 (22) I-141 [Prem Mishra]
- 10 (29) I-149 [Surekha]
- 11 (30) I-150 [Surekha]

At this juncture, we may dispose of matters in the 1st, 3rd and 11th segments.

The matters pertaining to second segment are of some significance and shall be taken up for hearing as early as possible. Let these matters be listed soon after disposal of the matters pertaining to Surekha Family.

On lines similar to the case of M/s. Moon Buildtech Pvt.Ltd. (Vol. No.Z-389) which was dealt with in the order dated 18.07.2022, the applications and segments 4 & 5 shall

be kept in abeyance till further orders.

PART - III

NOTE NO.2 SUBMITTED BY LEARNED COURT RECEIVER ON 22.07.2022

I. With regard to "Sale of Unused FAR of Princely Estate"

The note has referred to applications preferred on behalf of Noida/Greater Noida being I.A. Nos.141062 and 155624 of 2019, wherein following prayers were made:

"Noida's Prayers

a) issue directions for return of the unused FAR of 98,445.77 Sq. M., to Applicant NOIDA, details whereof are mentioned in Para 6;

b) issue directions to each Flat Buyers to pay to the applicant NOIDA the proportionate increase in the land cost on account of the judgement passed by this Hon'ble Court approving the Full Bench Judgement of the Allahabad High Court;

c) issue direction/declaration that NOIDA shall have first charge in comparison to Banks/other financial institutions, on all the properties/assets which are made liable for recovery of dues of NOIDA towards allotment of land to the Amrapali Group companies the first right be declared in favour of NOIDA.

d) Issue directions that the recoveries that may be effected from the sale of attached properties of the Amrapali Group Companies may be apportioned between NOIDA and Greater NOIDA Authority in proportion to their respective dues as mentioned in the Judgment Dt. 23.07.2019.

e) pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case."

Greater Noida's Prayers

"a) issue directions for return of the vacant land/unused FAR to applicant GNIDA, details whereof are mentioned in Para 7 read with Annexure B (colly) and GNIDA may be permitted to make allotment of these pockets and appropriate to itself the premium to be received and adjust the same against land dues;

b) issue directions to each Flat Buyers to pay to the applicant GNIDA the proportionate increase in the land cost on account of the judgement passed by this Hon'ble Court approving the Full Bench Judgement of the Allahabad High Court;

c) issue direction/declaration that GNIDA shall have first charge in comparison to Banks/other financial institutions, on all the properties/assets which are made liable for recovery of dues of GNIDA towards allotment of land to the Amrapali Group companies the first right be declared in favour of GNIDA.

d) Issue directions that the NBCC shall to complete construction of 10556 nos of flats and not 11469 nos of flats on Plot No GH09, Sector Tech Zone 4, Greater Noida.

e) Issue directions that the recoveries that may be effected from the sale of attached properties of the Amrapali Group Companies may be apportioned between NOIDA and Greater NOIDA Authority in proportion to their respective dues as mentioned in the Judgment Dt. 23.07.2019.

f) pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case."

The applications prayed for return of unused FAR/ land to be appropriated towards dues of these authorities. In its order dated 10.06.2020 the submissions raised on behalf of Noida/Greater Noida were rejected by this Court on the ground that Home Buyers would have first charge on unused or

unutilized FAR.

Learned Court Receiver now prays for following directions:

“(i) The sale of balance FAR shall be available within the Sanctioned Plan;

(ii) The sale of unused FAR shall be up to permissible limit @ 2.75 or more as available;

(iii) The sale of FAR beyond 2.75 up to 3.5 under the purchasable scheme or otherwise granted in Dream Valley Project, Plot No. GH-09, Tech Zone IV, Greater Noida, and other projects or any increase in FAR beyond permissible/purchasable due to 17 whatever reasons such as the coming up of Metro project are to be sold & transferred under the Authority of Receiver and Committee appointed by this Court.

(iv) The above direction will be notwithstanding any previous dues of the Amrapali Group, their associate companies/ developers/ other contractors deployed by them, or any other previous/present outstanding.

(v) The Noida/ Greater Noida Authorities or any other Development Authorities, where these projects are situated, will not take into account any cost consideration and will provide additional FAR as may be available due to existing/proposed metro line and sanction their plans accordingly within a fixed time frame of 30 days after submission of the details and designs.

(vi) The Noida/ Greater Noida Authorities/ Public Authorities/ Various Service Departments/ Authorities like Water/Power/Sewage/Pollution etc. shall adhere to the advice/ request of the Receiver appointed by this Court and will consider the same as a direction issued by this Court.

(vii) With respect to purchasable FAR, if any amount is payable to Noida and Greater Noida Authorities it shall be paid after the sale of the FAR.”

II. In order to utilize and monetize the unused FAR for the construction of projects, the committee members discussed this matter in various meetings and

also took suggestions and requirement of NBCC to find out the possible options. Following options were explored:

1. Revision of Existing layout plans of projects wherever required or beneficial in the interest of better utilization.
2. Exploring possibilities to separate out the vacant plots of projects and sale the FARs in the best interest of completing the construction of projects of homebuyers keeping in view the directions passed by this Hon'ble Court vide order Dt. 10.06.2020."

Learned Court Receiver submits that there are many instances where a portion or part of land is lying unused and without any construction. In such cases, the available capacity of such portion of open land can be utilized in open market to generate sufficient resources for flat buyers' benefit.

In his submission, the element of unused and unutilized FAR may as well be worth Rs.700 crores and if permission is granted by this Court, the interested buyers may come forward for purchasing that component which is presently lying unutilized. This component in reality belongs to the home buyers and if sold, will help in carrying out construction of unfinished towers/ flats.

It is submitted by the learned Receiver that the fact that the authorities were requesting for separation of such component is indicative that it is quite possible and

permissible.

Mr. Ravindra Kumar, learned Senior Advocate appearing for Noida/Greater Noida authorities submits that hiving off the plot or division of the plot must be in accordance with the existing policies.

Mr. Siddhartha Dave, learned Senior Advocate appearing for NBCC has supported the contention raised by the learned Court Receiver. He states that a note shall be prepared and placed before this Court so that concrete examples are furnished to the Court.

At this stage, we may request learned Court Receiver to come out with at least 5 to 7 such concrete instances where unused and unutilized FAR could be purchased by outsiders and thus sizeable contribution could be made to the fund available for completing the project.

Let a Note in that behalf be given by learned Court Receiver and NBCC at least three days in advance before the next date of hearing.

List the matter on 16.08.2022.

Mr. Ravindra Kumar, learned Senior Advocate has assured us that some higher-ranking officials shall remain present in

Court on the next occasion to render assistance to the Court.

PART-IV

I.A. Nos. 109596 & 109599 of 2020 and 109573 & 109576 of 2020
in Writ Petition (Civil) No. 940/2017 [Z-301 & 302]

List these I.As. on 08.08.2022.

(INDU MARWAH)
COURT MASTER (SH)

(RAM SUBHAG SINGH)
BRANCH OFFICER