

ITEM NO.12

COURT NO.4

SECTION XVII

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

Civil Appeal No(s). 6044/2015

M/S UNITECH RESIDENTIAL RESORTS LTD.

Appellant(s)

VERSUS

ATUL GUPTA AND ANR.

Respondent(s)

(With appln.(s) for dismissal of appeal and exemption from filing C/C of the impugned order and permission to appear and argue in person and permission to file additional documents and stay and office report)

WITH

C.A. No. 6119-6148/2015

(With appln.(s) for ex-parte stay and permission to file additional documents and Office Report)

C.A. D 12512/2016

(With appln.(s) for permission to appear and argue in person and condonation of delay in filing appeal and Office Report)

Date : 19/10/2016 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE AMITAVA ROY
HON'BLE MR. JUSTICE A.M. KHANWILKAR

For Appellant(s) Dr. A.M. Singhvi, Sr. Adv.
Mr. Mahesh Agarwal, Adv.
Mr. Rishi Agrawala, Adv.
Mr. Rajiv Virmani, Adv.
Mr. Abhinav Agrawal, Adv.
Ms. Swati Sinha, Adv.
Mr. E.C. Agrawala, AOR
Ms. Anchal Mallick, Adv.

For Respondent(s) Mr. Pawanshree Agrawal, AOR

Ms. Nilofar Khan,Adv.

Ms. Manju Jetley,Adv.

Mr. K.K. Bhat, Adv.

Mr. Ranjan Kumar Pandey, AOR

Mr. Jayant Bhushan, Sr. Adv.

Mr. Brajesh Kumar, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The respondents, 39 in number, submit in unequivocal and categorical terms that their patience is on the burial pyre and they cannot wait any longer believing in the concept of optimism and expectation, for the appellant M/s. Unitech Residential Resorts Ltd. has not built the flats as assured, and in fact, compelled them to land up in such a financial crisis that they had never conceived of. Learned counsel appearing for the respondents would submit that as per the directions given by this Court, the appellant had already deposited a sum of Rs.15,00,00,000/- (Rupees fifteen crores only) and vide order dated 17.8.2016, a chart showing the names of the flat buyers interested in seeking refund of money with interest has already been recorded.

At this juncture, we are obliged to record the submission of Dr. A.M. Singhvi, learned senior counsel appearing for the appellant. The submission, in fact, as the learned senior counsel would put it, is a method of solution. The suggestion given by the appellant is that it would complete three towers by the end of April, 2017 and would hand over possession to some of the respondents by that time and further the respondents can be allowed to take some amount by direction of this Court. To elaborate, the respondents can be distributed Rs.5,00,00,000/- (Rupees five crores only) towards the principal and be handed over flats by the end of April, 2017 and some shall be given thereafter when the other towers are complete. The rest of the amount, that is,

Rs.10,00,00,000/- (Rupees ten crores only) that have been deposited before the Registry of this Court be allowed to be refunded to the appellant for facilitating the construction.

The learned counsel for the respondents and some of the respondents who are personally present are not in a position to accept the said method of solution. The voice of anguish is echoed in the court room as they say their dreams have been shattered and they have been constrained to pave the path of impecuniosity.

It needs no special emphasis to state that the property developer has to respect the contractual commitment. It has to live up to the terms of the contract and gain trust so that the people who dream of houses can repose faith in him. Not for nothing, it has been said, "the foundation of any economy is faith and if faith is lost, everything is lost". True it is, there is a saying, "Rome was not built in a day" but it is in the realm of metaphor. The appellant by delaying or procrastinating the completion of the flats cannot base its stand on excuses or any subterfuge to advance the stand that the constructions take time. The submission in a way rests upon the metaphor that "Rome was not built in a day" but serves no purpose. It is "flat" or "money". And nothing else. The respondents collectively make a demand for refund of money because they have fought the litigation with ceaseless vigour and enormous hope.

The order dated 17.08.2016 mentions the names of 38 persons in three civil appeals. At this juncture, Mr. K.K. Bhatt, learned counsel submits that there is another respondent in Civil Appeal D. No.12512 of 2016 who wants to have the refund. The name of the said respondent is Neelesh Goel and the amount paid till date is Rs.47,71,271/- (Rupees forty seven lac, seventy one thousand two hundred and seventy one only).

Mr. Pawanshree Agrawal, who has assisted the Court in preparing the chart which finds mention in order dated 17.08.2016 is granted liberty to mention the amount in respect of the

respondent at serial No.7 of the Chart in Civil Appeal No. D12512 of 2016, namely Abhineet Sawa & Ms. Prachi Chhajer. We have already stated that the respondents are not interested in taking the flats. They are fundamentally interested to get their money back with interest and compensation. The principal amount deposited by the respondents as computed by Mr. Pawanshree Agrawal amounts to Rs.16,55,02,525/- (Rupees sixteen crore fifty lac two thousand five hundred and fifty five only). As Rs.15,00,00,000/- (Rupees fifteen crores only) have been invested and some interest has accrued, let the same be given to the respondents on *pro rata* basis on proper identification by the learned counsel. If any respondent(s) has appeared in person, Mr. Pawanshree Agrawal is appointed as *amicus curiae* to identify him/them in appropriate manner before the Registry of this Court.

The appellant company is directed to deposit a further sum of Rs.2,00,00,000/- (Rupees two crore only) within four weeks hence.

Let the matter be listed on 11.01.2017.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master