

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

**I.A. No.192235/2022, I.A. No.192248/2022, I.A.
No.192436/2022, I.A. No.12917/2023 and I.A.
No.26340/2023**

IN

WRIT PETITION(CIVIL) NO(S). 940 OF 2017

BIKRAM CHATTERJI & ORS.

....PETITIONER(S)

VERSUS

UNION OF INDIA & ORS.

....RESPONDENT(S)

J U D G M E N T

Rastogi, J.

1. The present batch of IAs has been filed by various promoters/ developers/builders working in Noida/Greater Noida for recalling of the order dated 07th November, 2022. Pursuant thereto, orders dated 10th June, 2020, 19th August, 2020 and 25th August, 2020 passed in the pending proceedings were recalled.

2. At a given point of time, lease deeds were executed between such project builders/developers/promoters with the Noida/Greater Noida authorities, keeping in view the commercial considerations on agreed terms and conditions, later sought to invalidate and intended to amend their contractual terms so far as the payment of interest is concerned, through the intervention of this Court and all of them have accordingly filed their respective IAs for recalling of the order dated 7th November, 2022 passed by this Court.

3. To look into the complaint of the present applicants, it will be apposite to take note of the background facts, which may be relevant for proper appreciation of the grievance which each of the applicants has pointed out in raising their joint voice for recall of the order dated 7th November, 2022, pursuant to which the interim orders passed by this Court dated 10th June, 2020, 19th August, 2020, and 25th August, 2020, stood recalled by this Court.

4. It clearly manifests from the record that various writ petitions were filed by the homebuyers, some may be in public interest, but the substratum of the writ petitions was pertaining to various projects of the companies of Amrapali Group, working as developers

in Noida/Greater Noida. It was pointed out that in the year 2011, in Noida and Greater Noida, Amrapali Group of Companies entered into various real estate projects for housing and proposed to construct approximately 42,000 flats and to fulfil their commitments, various attractive projects through the form of brochures was widely published and it was assured that the delivery of possession shall be made within the time-schedule as indicated in the brochure and it was promised that they will provide world class amenities to the homebuyers. On this public assurance extended by the Amrapali Group of Companies, it came on record that various homebuyers booked their apartments during the period 2010-2014 and after entering into Allotment-cum-Flat Buyers Agreements, payments were made by the homebuyers from 40% to 100% of the total sale consideration and later the Amrapali Group of Companies failed to fulfill their commitments and were unable to make available the “dream flats” to their customers and their lifetime’s savings and hard-earned money was allegedly siphoned by Amrapali Group of Companies.

5. At this stage, this Court in the interest of justice, stepped in and took cognizance to secure the interests of homebuyers, obviously within the four corners of law and proceeded to consider as to what relief could be extended to the homebuyers, who booked their flats in various projects of Amrapali Group of Companies. After a detailed discussion, this Court decided those writ petitions by a judgment dated 23rd July, 2019 in ***Bikram Chatterji & Ors. Vs. Union of India & Ors.***¹ and passed certain restraints while holding a vigil over the functioning of Amrapali Group of Companies and directed to take all other steps which may secure the interests of homebuyers. Para no.156 is relevant for the purpose and is reproduced hereinbelow:

“**156.** Resultantly, we order as follows:

156.1. The registration of Amrapali Group of Companies under RERA shall stand cancelled.

156.2. The various lease deeds granted in favour of Amrapali Group of Companies by Noida and Greater Noida Authorities for projects in question stand cancelled and rights henceforth, to vest in Court Receiver.

156.3. We hold that Noida and Greater Noida Authorities shall have no right to sell the flats of the homebuyers or the land leased out for the realisation of their dues. Their dues shall have to be recovered from the sale of other properties which have been attached. The direction holds good for the recovery of the dues of the various banks also.

1 2019 (19) SCC 161

156.4. We have appointed NBCC to complete the various projects and hand over the possession to the buyers. The percentage of commission of NBCC is fixed at 8%.

156.5. The homebuyers are directed to deposit the outstanding amount under the agreement entered into with the promoters within 3 months from today in the bank account opened in UCO Bank in the branch of this Court. The amount deposited by them shall be invested in the fixed deposit to be disbursed under the order of this Court on phase-wise completion of the projects/work by NBCC.

156.6. In view of the finding recorded by the forensic auditors and fraud unearthed, indicating prima facie violation of FEMA and other fraudulent activities, money laundering, we direct the Enforcement Directorate and authorities concerned to investigate and fix liability on persons responsible for such violation and submit the progress report in the Court and let the police also submit the report of the investigation made by them so far.

156.7. We direct the Institute of Chartered Accountants of India to initiate the appropriate disciplinary action against Mr Anil Mittal, CA for his conduct as reflected in various transactions and the findings recorded in the order and his overall conduct as found on forensic audit. Let appropriate proceedings be initiated and concluded as early as possible within 6 months and a report of action taken to be submitted to this Court.

156.8. We direct various companies/Directors and other incumbents in whose hands money of the homebuyers is available as per the report of forensic auditors, to deposit the same in the Court within one month from today and to do the needful in the manner as observed. The last opportunity of one month is granted to deposit the amount and to do the needful failing which appropriate action shall be taken against them.

156.9. The Ministry concerned of the Central Government, as well as the State Government and the Secretary of Housing and Urban Development, are directed to ensure that appropriate action is taken as against leaseholders concerning such similar projects at Noida and Greater Noida and other places in various States, where projects have not been completed. They are further directed to ensure that projects are completed in a time-bound manner as contemplated in RERA and homebuyers are not defrauded.

156.10. We appoint Shri R. Venkataramani, learned Senior Advocate, as the Court Receiver. The right of the lessee shall vest in the Court Receiver and he shall execute through authorised

person on his behalf, the tripartite agreement and do all other acts as may be necessary and also to ensure that title is passed on to homebuyers and possession is handed over to them.

156.11. We also direct Noida and Greater Noida Authorities to execute the tripartite agreement within one month concerning the projects where homebuyers are residing and issue completion certificate notwithstanding that the dues are to be recovered under this order by the sale of the other attached properties. Registered conveyance deed shall also be executed in favour of homebuyers, they are to be placed in the possession and they shall continue to do so in future on completion of projects or in part, as the case may be. We direct the Noida and Greater Noida Authorities to take appropriate action to do the needful in the matter. The Water Works Department of the area concerned and the Electricity Supplier are directed to provide the connections for water and electricity to homebuyers forthwith.”

6. After passing of the detailed judgment by this Court, the matter was listed for further hearing only with an object to comply its directions and to make an endeavour that each of the homebuyers’ interests be secured, as possible.

7. When the matter was taken up for further hearing, apart from the defaults committed by Amrapali Group of Companies - of which cognizance was taken by this Court - the Court Receiver submitted his note exploring the possibilities and avenues for securing and augmenting the funds for execution of stalled projects of Amrapali Group of Companies. Indisputably, upto this stage, the grievance was confined only to examine the stalled projects of Amrapali Group

of Companies and this Court ventured to find out as to how the interests of homebuyers could be secured, particularly, in the projects of Amrapali Group of Companies.

8. Around this time, when this Court was taking a call based on the Court Receiver's Report, to take a further course of action in making compliance of the directions referred to in para 156 of the judgment passed by this Court, of which reference has been made hereinabove, I.A. No.4139 of 2020 was filed by a builder, named, Ace Group of Companies, seeking certain reliefs on the same lines, as prayed for on behalf of flat buyers of Amrapali Group of Companies and it was claimed by Ace Group of Companies in their application that they may also get the benefit of reduction in the rate of interest which is to be charged by the authority. It may be appropriate to notice that Ace Group of Companies approached this Court by filing IA No.4139 of 2020 on its own behalf and not being authorized by the builders who have entered into their respective lease deeds with the Noida/Greater Noida authorities, neither the applicant (Ace Group of Companies) was holding power of attorney on behalf of others nor authorized by other developers/project

proponents working with Noida/Greater Noida authorities, or that it was in a representative capacity.

9. At the same time, there was no material available on record, even placed by Ace Group of Companies, and no builder, including Ace Group of Companies, could claim parity with the Amrapali Group of Companies for the reason that this Court by its judgment dated 23rd July, 2019, not only cancelled the lease deed executed between the Amrapali Group of Companies and Noida/Greater Noida authorities, but also appointed a Court Receiver and issued certain detailed directions - of which reference has been made in para 156 of the judgment of this Court - in reference to the Amrapali Group of Companies.

10. We are not going at this stage on the background facts as to what transpired to this Court, but from the material it reveals that on a complaint made by Ace Group of Companies for reduction of rate of interest to be charged by the Noida/Greater Noida authorities as alike extended to Amrapali Group of Companies, the matter was heard on 27th May, 2020 and order was reserved and was pronounced on 10th June, 2020. It may be noticed that looking

to the problems in cash flow because of unprecedented Covid-19 pandemic situation and its aftermaths, general directions were issued by the State of Uttar Pradesh on 9th June, 2020 reducing the rate of interest to be charged by the authorities - which was in rem applicable to all the builders/project proponents who are working and covered under the general directions issued by the Government of Uttar Pradesh - and obviously this notification could not have been available before the Court when the order was reserved on 27th May, 2020 and pronounced on 10th June, 2020, in reference to which the Court reduced the rate of interest on the outstanding premium and other dues to be realized in all such cases at the rate of 8% per annum and made it applicable to all 114 plots which were allotted from the year 2005 onwards by Noida/Greater Noida authorities. The extract of para 42 of the order, which is relevant for the purpose is reproduced hereunder:

“42. Considering the current state of real estate, the projects are standstill, and in order to give impetus to such housing projects and mainly considering plight of home buyers and as pointed out by Noida and Greater Noida Authorities that 114 plots were allotted from 2005 onwards, most of projects are incomplete; we direct that rate of interest on the outstanding premium and other dues to be realized in all such cases at the rate of 8% per annum and let the Noida and Greater Noida Authorities do a restructuring of the repayment schedule so that amount is paid and Noida and

Greater Noida Authorities are able to realize the same. As to reasonable time frame, we would like to hear the parties. In case of failure to pay, the concession granted shall stand withdrawn. However, at the same time, the Noida and Greater Noida Authorities shall also ensure that not only instalments/money are deposited, but also all such projects are completed within the stipulated time.”

11. The said order came to be clarified by an order dated 10th July, 2020 and later further orders came to be passed on various IAs filed by M/s Prateek Group of Companies and other groups, who are admittedly nowhere on screen from 22nd May, 2020 to 25th August, 2020. It may be relevant to note that regarding the projects of M/s Prateek Group of Companies, the date of allotment of lease deed was between years 2008 and 2012 and all projects were completed much before the cognizance was taken by this Court in the year 2019. As noticed by us in our order dated 7th November, 2022, it will be apposite to reproduce the same :

“That the Applicant Company, through its group companies has been allotted the following plots for the development of group housing projects as well as the progress of the Applicant on the said projects:

Sl. No	Plot No. & Location	Allottee Company	Project Name & Number of Flats constructed	Date of Allotment & Lease Deed
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1.	E-11, Sector 61, Noida	Prateek Buildtech (India) Pvt. Ltd.	Prateek Fedora 251	26.12.2008 / 31.12.2008
2.	GH-04/B Sector 45 Noida	Prateek Buildtech (India) Pvt. Ltd.	Prateek Stylome 545	08.03.2010 / 31.03.2010
3.	GH-01, Sector 120, Noida.	Prateek Realtors India Pvt. Ltd.	Prateek Laurel 1530	10.12.2009 / 07.01.2010
4.	GH-01, Sector 77, Noida	Prateek Realtors India Pvt. Ltd.	Prateek Wisteria 1800	31.03.2010 / 26.05.2010
5.	GH-01/A (Beta-II) Sector 107, Noida	Prateek Infraprojects India Pvt. Ltd.	Prateek Edifice 423	02.02.2012 / 15.02.2012

12. However, an outstanding of Rs.23.78 crores was not paid to the Noida/Greater Noida authorities - which was due and payable on behalf of M/s Prateek Group of Companies and the demand was outstanding for a sufficiently long time. But after the orders came to be passed by this Court, later on dtd. 19th August, 2020 and 25th August, 2020, an application was filed on behalf of Noida/Greater Noida authorities for recalling of all the three orders referred to hereinabove.

13. At this stage, there was strong objection made by various group of companies, including Ace Group of Companies, Prateek

Group of Companies, Paramount Group of Companies and Ajnara Group of Companies and also by other individual builders/project proponents and after the matter was heard at length and taking note of the objections made, this Court finally arrived at the conclusion that miscellaneous orders passed by this Court, in extending the relief to other promoters/developers other than Amrapali Group of Companies under its order dated 10th June, 2020 followed with orders dated 19th August, 2020 and 25th August, 2020 deserve to be recalled and accordingly under order dated 7th November, 2022, such interim orders passed by this Court were recalled with a further direction that the rate of interest should be calculated in respect of builders other than Amrapali Group of Companies, after taking into consideration the effect of the order dated 9th June, 2020 passed by the State of U.P.

14. After passing of the order dated 7th November, 2022, the present IAs being I.A. No.192235/22 by M/s Prateek Infraprojects India Pvt. Ltd.; I.A. No.192248/22 by CREDAI & NAREDCO; I.A. No. 192436/22 by M/s. Paramount Propbuild Pvt. Ltd.; I.A. No. 12917/23 by ET Infra Developers Pvt. Ltd. and I.A. No.26340/23 by

M/s. Surya Jyoti Software Pvt. Ltd. have been filed and each of them has come with a common voice that once the orders were passed by this Court after hearing the parties and taking into consideration the objections raised by Noida/Greater Noida authorities, there was no reason or justification for recalling of such orders under the order impugned dated 7th November, 2022 and a joint request is made that the order dated 7th November, 2022 passed by this Court recalling the orders dated 10th June, 2020, 19th August, 2020 and 25th August, 2020, may be recalled.

15. In support thereof, a further submission is made that one of the orders passed on 10th July, 2020 has not been recalled and if that remain on record, the authorities are under obligation to charge interest in terms of the orders dated 10th July, 2020, of which reference has not been made in the order dated 7th November, 2022.

16. Learned counsel further submits that by notification dated 9th June, 2020, the State of U.P. has made applicable the rate of interest to be charged from various builders/project proponents and that was brought to the notice of the Court after the first order

came to be passed dated 10th June, 2020 and the Court took cognizance of the notification dated 9th June, 2020 in its subsequent orders dated 10th July, 2020 and thereafter. It is also their objection that if the projects run by the Amrapali Group of Companies are entitled for certain financial benefits, why it should not be extended to other group of companies - who also face the same financial crunch during the unprecedented Covid-19 pandemic - and justification has been tendered to this Court for recalling its order dated 7th November, 2022.

17. Further submission made by the learned counsel for the applicants is that once the orders have been passed after hearing the parties on perusal of available records, at least, miscellaneous application filed for recalling of such orders was not valid and justified under the guise of miscellaneous application filed at the instance of Noida/Greater Noida authorities unless there is a manifest apparent error or mistake being traced out in the orders of which reference has been made in the order dated 7th November, 2022, recalling of such orders was ordinarily not permissible under

the law and in support thereof reliance has been placed on various judgments of this Court.

18. Per contra, learned counsel for the respondents appearing for the Noida/Greater Noida authorities submits that the order dated 10th June, 2020, was the foundational order. At that stage the only application filed, of which this Court took cognizance, was of the Ace Group of Companies and to be more specific I.A. No.4139 of 2020 (Ace Group of Companies) and no such application has been filed by Ace Group of Companies for recall of the order dated 7th November, 2022.

19. Learned counsel further submits that so far as the Prateek Group of Companies is concerned, the statement which has come on record and noticed by this Court in its order dated 7th November, 2022 is indeed alarming that all its projects were completed much before the cognizance was taken by this Court and it was unable to pay the demand as raised by the Noida/Greater Noida authorities in terms of the conditions of the lease deed executed with open eyes between the parties. It also moved an IA before this Court which was not even remotely concerned with the cause of which judicial

notice was taken by this Court with an object to secure interests of the homebuyers of Amrapali Group of Companies.

20. Learned counsel further submits that so far as IAs filed by CREDAI and NAREDCO and other developers are concerned, they have not filed any IA upto the passing of the order dated 7th November, 2022 and so far as the other IAs are concerned, all came into the pool after order of 25th August, 2020 came to be passed by this Court - at a later stage - and admittedly either of the promoters/builders was not even remotely concerned, directly or indirectly, in reference to the projects of Amrapali Group of Companies of which judicial cognizance was taken by this Court.

21. Learned counsel further submits that once this Court - after hearing the parties - arrived at the conclusion that the three orders i.e. 10th June, 2020, 19th August, 2020, and 25th August, 2020 of which a detailed reference has been made under order dated 7th November, 2022 deserve to be recalled, the present group of I.As are not maintainable and deserves to be rejected.

22. We have heard learned counsel for the parties at length and with their assistance perused the material available on record.

23. The undisputed facts which have come on record are that the initiation of proceedings in the first instance in ***Bikram Chatterji*** (supra) was only confined to consider how to secure the interests of homebuyers of Amrapali Group of Companies and at a later stage, interim application was filed by the Ace Group of Companies and later few other group of companies also intervened in the proceedings, but admittedly either of the group of companies in no manner was related to the functioning of the Amrapali Group of Companies - of which reference has been made in para 156 of the judgment.

24. It is, however, true that at one stage this Court stepped into the interim application filed by Ace Group of Companies and by the other group of companies as well and passed certain interim orders protecting them in reference to revised rate of interest chargeable from the builders/developers with a further direction of restructuring of the payment schedule payable to Noida/Greater Noida authorities.

25. On an application being filed at the instance of Noida/Greater Noida authorities, this Court has looked into and revisited the material available on record at length and arrived at a conclusion that order passed on 10th June, 2020 followed with orders dated 19th August, 2020 and 25th August, 2020 deserve to be recalled, of which express reference has been made in detail while passing the order dated 7th November, 2022.

26. We have examined the interim applications which have now been filed by various group of companies for recalling of the order dated 7th November, 2022, pursuant to which we consciously recalled our orders dated 10th June, 2020, 19th August, 2020 and 25th August, 2020 and in the present facts and circumstances, we find no reason/justification to recall our order dated 7th November, 2022. Consequently, the interim applications are without substance and deserve to be dismissed.

27. So far as the submission made that the order dated 10th July, 2020 has not been recalled is concerned, it is without substance for the reason that the order dated 10th July, 2020 is only a clarification/modification of the first foundational order passed by

this Court on 10th June, 2020 - which was independently passed on the later facts/developments placed on record. That apart, it is a mere technical objection which needs no credence.

28. The further submission made is that if this Court arrives at the conclusion that the orders passed by this Court on respective IAs filed at the instance of the builders/developers deserve to be recalled, at least their IAs may be restored and heard on merits. The submission on the face of it appears to be attractive, but holds no foundation for the reason that the IAs were filed by various group of companies, including Ace Group of Companies, but they are not in any manner concerned with the plight of homebuyers of Amrapali Group of Companies, of which judicial cognizance was taken by this Court and merely filing of IAs by other group of companies who are stranger to the cognizance taken by this Court in reference to Amrapali Group of Companies, do not deserve any indulgence at least in the instant proceedings.

29. Consequently, the IAs are dismissed.

.....J.
(AJAY RASTOGI)

.....J.
(BELA M. TRIVEDI)

**NEW DELHI;
FEBRUARY 28, 2023.**