

**Court No. - 21**

**Case :-** WRIT - C No. - 10854 of 2018

**Petitioner :-** Tarun Kapoor And 29 Others

**Respondent :-** New Okhla Industrial Development Authority  
And 2 Others

**Counsel for Petitioner :-** Nipun Singh

**Counsel for Respondent :-** Ankit Singh, Anuj

Srivastava, C.S.C., Kaushalendra Nath Singh, Kunal Ravi

Singh, Manjari Singh, Pankaj Dubey, Priyanka

Midha, Raghuvansh Misra, Ram M. Kaushik, Shikhar Kaushal

**Hon'ble Manoj Kumar Gupta, J.**

**Hon'ble Anish Kumar Gupta, J.**

1. Sixth supplementary short rejoinder affidavit and seventh supplementary short counter affidavit filed today, are taken on record.

2. Heard Sri Naman Agrawal, learned counsel for the petitioners, Sri Anurag Khanna and Sri Anil Tiwari, learned Senior Counsel assisted by Sri Shikhar Kaushal and Sri Ankitesh Agarwal, learned counsel for respondent no. 3, Sri Shivam Yadav, learned counsel for respondent no. 1 and learned Additional Chief Standing Counsel for respondent no. 2. We have also heard Sri Amit Saxena, learned Senior Counsel assisted by Ms. Manjari Singh, learned counsel for respondent no. 4.

3. The petitioners are allottees of different flats by respondent no. 3 (for short 'Developer') in a housing project in the name of Grand Omaxe, Sector 93-B, Gautam Buddha Nagar. The said project was developed by respondent no. 3 over land obtained on lease from respondent no. 1. Respondent no. 3, over the same land, has also developed another project in the name of Forest Spa. The Association of Apartment Owners (for short 'AOA') of the said project are petitioners in the connected Writ-C No.31906 of 2021.

4. The main grievance of the petitioners (hereinafter referred to as 'home buyers) and the AOA is that tripartite lease deeds in favour of the home buyers have not been executed by the builder and the development authority despite the home buyers having paid the entire price of the flats to the builder. The authority has been refusing to execute tripartite deeds in view of non payment of its dues by the developer in respect of the leased land. In the said context, when the writ petition first came up for consideration before a Co-ordinate Division Bench, the following order was passed on 23.03.2018:-

*"Heard Mr. Nipun Singh, learned counsel for the petitioners and Mr. Kaushlendra Nath Singh, learned counsel for respondents-Development Authority.*

*We have perused prayers made in the writ petition and other materials placed before us. It appears from the lease deed dated 29.12.2006, respondent no. 3 was expected to pay a lease premium of Rs.268,98,54,712/- (Rupees Two Hundred Sixty Eight Crores Ninety Eight Lacs Fifty Four Thousand Seven Hundred Twelve Only) on or before 3.10.2010. It further appears that a substantial amount had been waved by the Development Authority (vide their letter dated 28.10.2010 Annexure-4) and a fresh schedule of payment of the said amount had been prepared. Till today, we are informed, respondent no.3 has not paid the lease premium and as of today, he is in arrears of Rs.250 crores. In the questioned project, respondent no. 3 has already constructed 22 towers and the Development Authority has issued completion/ occupation certificates in respect thereof. We are further informed that respondent no. 3 has some more projects, which are under development and application for*

*occupation/completion certificates in case of same towers are pending with them.*

*In view thereof, we issue notice to respondent no.3, returnable on 20.4.2018. In addition to Court notice, the petitioners to serve notice to respondent no.3 by registered post with AD/Speed Post/Courier and to file proof of service.*

*In the meanwhile, we direct respondents-Development Authority not to issue occupation/completion certificates in respect of remaining towers, if any, in the project in question and also in other projects within their jurisdiction. The Development Authority shall not allow respondent no.3 to part with possession of any apartment either in this project or in any other projects within their jurisdiction till the next date. It is, however, made clear that if respondent no.3 deposits the entire arrears of lease premium with interest, if any, it would be open to the Development Authority to deal with their application for completion/occupation certificates in respect of other projects within their jurisdiction before the next date on merits in accordance with law.*

*S.O. to 20.4.2018. "*

5. The said order remained in operation.
6. The developer/builder aggrieved by the interim order and the subsequent orders passed in the writ petition from time to time, filed Special Leave Petition (Civil) Diary No. 11380 of 2025 before the Supreme Court, and the same was disposed of by the Supreme Court by following order dated 07.03.2025:-

*"1. Delay condoned.*

*2. While we are not inclined to interfere with the order(s) passed by the High Court, we request the High Court to*

*dispose of the writ civil as expeditiously as possible, preferably within a period of 30 days from today.*

*3. Learned counsel for the petitioner has brought to our notice G.O.No.7774/77-4—2023-6011/2023 dated 21.12.2023 as per which it is submitted that there would be nothing remained for the High Court to adjudicate. The said submission may be made before the High Court.*

*4. With these observations, the Special Leave Petitions are disposed of.*

*5. Pending application(s), if any, shall stand disposed of."*

7. During pendency of the writ petition, a Government Order was issued on 21.12.2023, wherein the State Government introduced comprehensive measures for revival of legacy stalled projects in the NCR region. As part of this initiative, various relaxations were granted to the developers/builders with the aim of reviving the stalled projects and simultaneously safeguarding the interest of home buyers.

8. The Developer, respondent no. 3, also sought benefit of the said Government Order and deposited Rs. 93,46,38,902/-, equivalent to 25% of the amount in default, as required under the said scheme. Upon deposit of the aforementioned amount, the respondent-Development Authority issued an order on 04.04.2025 permitting execution of sub-lease for 77 additional flats. Subsequently, by an order dated 17.04.2025, the Developer was informed that it was entitled to the release of 170 flats as against the deposit made by it under the Government Order. The communication issued in this regard clarified that out of total sanctioned 1692 flats, sub-lease had already been executed in respect of 1014 flats, leaving 678 flats pending. As 25% of the amount had been deposited, therefore, the Developer was entitled to get sub-leases executed for an additional 170 flats.

9. During course of making oral submissions, a statement was made on behalf of the Developer that the Developer is

ready to pay the remaining dues to facilitate release of flats of at least two projects viz. Grand Omaxe and Forest Spa, which would cover the home buyers in both the cases.

10. Vide order dated 23.04.2025, direction was issued to the development authority to re-calculate the dues to enable deposit of the remaining amount and execution of sub lease deeds in favour of home buyers of at least two projects i.e. Grand Omaxe and Forest Spa. For Grand Omaxe, completion certificate had already been issued whereas in respect of Forest Spa, the completion certificate was not issued on account of various reasons including the interim order in the instant case. The third project i.e., Grand Riyasat has yet not commenced.

11. In compliance of the order, the respondent-Development Authority, vide letter dated 03.05.2025 re-calculated the dues. It is admitted therein that the Developer had deposited 25% of the total dues. The next installment would fall due on 15.10.2025 and the other installments on 15.04.2026, 15.10.2026 and 15.04.2027.

12. Sri Shivam Yadav, learned counsel for respondent no. 1, submits that lease rent/interest to the tune of Rs. 8,61,11,326/- (for the years 2024-25 and 2025-26) and time extension charges of Rs. 02,59,62,13/-, total sum 11, 20,73,339/-, is not payable at present. He further clarified that this outstanding amount does not hinder the execution of tripartite lease deeds for the flats released by the Authority.

13. Sri Anurag Khanna, learned counsel for the Developer/Builder submits that recalculation done by the authority is erroneous and the Developer has challenged the same by filing revision before the State Government under Section 41 of U.P. Urban Planning Development Act, 1973.

14. During course of hearing, the court asked the parties to reach to some amicable settlement, which may balance the rival claims/interests. We suggested to the parties that they may agree to execution of sub lease deeds, at least for the plots, which according to NOIDA, are eligible for release in favour of the Developer. We also suggested to the Developer to deposit some more amount to facilitate the release of some more flats.

15. Sri Anurag Khanna, learned counsel appearing for the Developer/Builder, in response to the said suggestion, agreed to deposit an additional sum of Rs. 25,000,0000/- within one month. He further submitted that upon deposit of said amount, as per the calculation provided by the Development Authority, at least 50 more flats would stand released. This would benefit 50 more home buyers and is likely to cover all the petitioners.

16. Sri Shivam Yadav, learned counsel for the respondent-Development Authority, does not dispute that as per the demand, the proportional number of flats, corresponding to the deposit, would be fifty in number. Accordingly, he agreed that upon deposit of additional sum of Rs. 25,000,0000/- by the Developer, the Development Authority would release 50 additional flats.

17. Sri Shivam Yadav, learned counsel for the respondent-Development Authority, fairly states that since 25% of the amount has already been deposited in terms of Government Order and the Developer is ready to deposit additional amount of Rs. 25,00,000/-, therefore there would be no impediment in granting occupancy certificate and other necessary permissions in favour of the Developer, in respect of the two projects i.e. Grand Omaxe and Forest Spa. He states that the said exercise would be carried out within four weeks from today in terms of the government order.

18. Sri Amit Saxena, learned Senior Counsel appearing for the AOA and Sri Naman Agrawal, learned counsel appearing for the Home Buyers in the present writ petition, submits that they have no objection if the Developer deposits the said amount and proportional number of additional flats is released to at least commence with the process of execution of sub-leases, which admittedly is in the interest of all the parties. They, however, submitted that the matter be kept pending, so that status report is submitted on the next date regarding steps taken in the meanwhile.

19. As we find that the aforesaid measures would revive the stalled projects, which parties agree to be beneficial to all, while keeping the matter pending, we issue the following directions:-

a) On deposit of Rs. 25,000,0000/- by the Developer/ Builder within two weeks from today, 50 additional flats, apart from 170 flats, would stand released.

b) The list of home buyers alongwith date of Buyer Builder Agreement/Date of Allotment as provided by the Developer along with supplementary affidavits would form the basis for execution of sub lease deeds in respect of the flats which have already been released or would stand released in terms of the instant order.

c) The list provided by the AOA containing names of transferees/successors/joint owners would also be taken into account while ascertaining the persons in whose favour sub-lease deeds are to be executed.

20. The interim order passed on 23.03.2018 would stand modified, accordingly.

21. In case any dispute arises between the home buyers regarding entitlement to sub-lease in terms of instant order, the Chief Executive Officer of the NOIDA Authority will decide the

same within one week, keeping in mind the Date of Allotment/  
Date of Builder Buyer Agreement and other relevant aspects.

22. It is further provided that, in case any home buyer does not complete the formalities for extension of sub-lease within two weeks from the date he is informed, the next person in the list would be given chance to obtain sub-lease.

23. The instant arrangement will be without prejudice to the rights and contentions of the parties on merits.

24. Let a status report be submitted by the respondent-Development Authority supported by affidavit of a responsible officer by the next date.

25. List in the 2<sup>nd</sup> week of July, 2025.

**Order Date :- 29.5.2025**

Ruhi H.

**(Anish Kumar Gupta, J.) (Manoj Kumar Gupta, J.)**