2025 LiveLaw (SC) 574

IN THE SUPREME COURT OF INDIA

SURYA KANT; J., N. KOTISWAR SINGH; J.

Petition(s) for Special Leave to Appeal (C) No(s).7649/2023,29-04-2025

HIMANSHU SINGH & ORS. *versus* **UNION OF INDIA & ORS.**

Constitution of India, Article 136 - Tripartite Agreement - Subvention Scheme - Homebuyers alleged collusion between builders, banks, and Housing Finance Companies (HFCs) in subvention schemes, where builders promised to pay EMIs until possession but defaulted, leaving buyers liable for EMIs despite incomplete projects. Held, a *prima facie* "unholy nexus" existed between builders, banks, and HFCs, indicating a systematic failure by statutory and government authorities to perform their duties. The Court noted circumvention of the regulatory framework by banks and HFCs, with coercive actions taken against homebuyers despite incomplete units and no valid offer of possession. The Supreme Court directed the Central Bureau of Investigation (CBI) to register seven Preliminary Enquiries to thoroughly investigate the alleged collusion, ascertain the modus operandi, and identify any criminality involved. *(Paras 1, 2, 17)*

[Arising out of impugned final judgment and order dated 14-03-2023 in WP(C) No. 1225/2021 passed by the High Court of Delhi at New Delhi]

Appearance: Senior Advocate Sanjeev Sen (for HDFC Bank); ASG Aishwarya Bhati (for CBI); Advocates Anshul Gupta, Aditya Parolia, Piyush Singh and Eshna Kumar (for homebuyers)

O R D E R

1. This batch of cases, comprising more than 170 petitions have been filed by over 1200 homebuyers/borrowers. They have raised an issue of paramount importance re: the systematic failure of statutory and government authorities to discharge their functions, circumvention of regulatory framework by Banks and Housing Financial Corporations, and the resultant illicit benefits said to have been drawn by builders/developers at the cost of the homebuyers, who are now bearing the brunt of such failures.

2. The common background of each of these matters, as noted by this Court on 04.03.2025 also, is that the builders/developers advertised the 'subvention schemes' assuring payment of the EMI/pre-EMI(s) of the home-loans taken by the homebuyers to purchase the units in their projects till a specified cut-off date or till the date of delivery of possession. The scheme was implemented in most cases by taking loans through a tripartite agreement among the bank/financial institution, homebuyer(s), and the builder/developer. While these projects were launched in the years 2013-2015, most of the builder/developers started defaulting in payment of EMIs in the years 2018-2019. Resultantly, the banks began to demand payments from the homebuyers, and consequential failure to make the payments led to the coercive actions against the homebuyers, despite the units being incomplete and there being no occasion to offer possession.

3. Some of the aggrieved homebuyers approached the High Court of Delhi, and having failed to get the desired relief, they have approached this Court under Article 136, while some others have invoked the writ jurisdiction of this Court for similar reliefs.

4. When the matter came up for hearing on 05.11.2024, this Court directed the parties to furnish the detailed information relating to the following aspects:

"*(i) The status and details of the payments made by the builder-cum-developers to the financial* *institutions or such payments made by the home-buyers to the financial institutions/builder-cum-developers.*

(ii) The date of offering possession to the home-buyers, where the project is stated to have been completed.

(iii) The current status of completion of the project, including the details of the Completion Certificate and other statutory certificates granted by the prescribed authorities, along with details of the possession given or offered to the home-buyers.

(iv) The status of recovery from the home-buyers, namely, whether they have made EMI payments to the banks or not.

(v) The amenities advertised by the builder-cum-developers at the time of launching the project and the status re: completion thereof.

(vi) The status as to whether the builder-cum-developers has undergone CIRP (under IBC) or any other coercive or non- coercive recovery procedure, and the stage of such proceedings.

(vii) Whether the home-buyers have received any relief or remedial order from the statutory authorities like Real Estate Regulatory Authority (RERA). If so, the details of such orders be also furnished."

5. On receipt of that information, this Court, on 04.03.2025, *prima facie* found that there was some unholy nexus between the banks/Housing Financial Corporations on one hand and the builder- cum-developers on the other. It was in this context that the Central Bureau of Investigation was asked to be represented on the next date of hearing. On 18.03.2025, learned Additional Solicitor General of India, along with some officers of the CBI, was present in Court. They were requested to suggest the manner in which the CBI would proceed with the inquiry or investigation into the issues that were briefly formulated in our previous order. With a view to have qualitative assistance to unearth the truth behind the challenges laid by the homebuyers/borrowers, we also requested Mr. Rajiv Jain, adv. (former Director, Intelligence Bureau and former member of the National Human Rights Commission) to assist this Court as an Amicus Curiae. He was also requested to submit a brief note with respect to the future course of action.

6. In deference to the order dated 18.03.2025, learned Amicus Curiae has after deep analysis, submitted a self-explanatory report identifying (i) the builder-cum-developers; (ii) the banks and HFCs; and the approximate loan amount secured by them through the subvention schemes. The aforesaid note reveals that; (a) one of the builder-cum-developers, Supertech Limited, has over 21 projects in six cities; (b) it entered into tripartite agreements under the subvention scheme with 19 different banks/HFCs, concerning approximately 800 aggrieved homebuyers before us; (c) of the 19 banks/HFCs, 8 institutions, namely, Indiabulls Housing Finance Limited, Punjab National Bank Housing Finance Limited, Dewan Housing Finance Limited, HDFC Housing Finance Limited, ICICI Bank Limited, India Infoline Housing Finance Limited, L&T Housing Finance Limited, and Aditya Birla Housing Finance Limited, figure in most of the 21 projects of Supertech Ltd.; and (d) the rest of 11 banks/HFCs and funding of some projects by them are also duly mentioned in the report. Learned Amicus Curie has further recommended that the underlying nexus between Supertech Ltd. and these 8 banks deserves to be investigated on priority. The report further reveals that Supertech Ltd. alone has secured loans worth approximately Rs.5,157.86 crores since 1998. In this respect, the learned amicus has opined that the concerned agency should also examine the nexus of Supertech Ltd. with such other banks, namely, Corporation Bank, IDBI Bank, Punjab and Sind Bank, India Bank, and Punjab National Bank, who have extended separate loans of large amounts to the former.

7. The details of the other builder-cum-developers and the financial institutions with whom there were tripartite agreements, have been executed are also highlighted in the note submitted by the learned Amicus.

8. The learned Amicus Curiae has, in conclusion, made the following consolidated recommendations as to how to proceed further in the matter:

"39. In view of the above, it is imperative to reach a fair, just and equitable resolution; hence, an appropriate framework for this purpose needs to be evolved. To proceed further in the matter, this Hon'ble Court should consider thorough investigation in the matter. While some recommendations have been indicated in the contextual paragraphs above, following are the consolidated recommendations: -

a. *The CBI be directed to initiate Preliminary Enquiries (PE) in this batch of cases to investigate the alleged collusion of Banks and builders/developers, etc. It has an all-India jurisdiction and the expertise to handle such cases.*

b. *Since a large number of Banks and builders/developers are involved in this batch of petitions, the CBI may initiate multiple PEs based on territorial and / or thematic considerations.*

c. *The PEs should be prioritised in the following order: on Supertech Ltd., on projects in the NCR region, on the remaining projects.*

The CBI should immediately initiate a PE on the case relating to Supertech Ltd. (refer para 32 above). The enquiry should encompass the alleged underlying nexus between Supertech Ltd. and the above mentioned 8 Banks / HFCs (who have extended subvention loans in most of the projects) should be investigated by the concerned agency in priority. In addition, the agency should also examine the nexus, if any, with the 3 other Banks and their relevant related entities who have extended large amounts of separate loans to Supertech Ltd., including Corporation Bank, IDBI Bank and Punjab & Sind Bank. The agreements of Supertech Ltd. with the Lessees and developers should also be examined.

d. *The CBI should thoroughly investigate the functioning of builders, and a forensic audit may be directed for this purpose. (Refer para 24 above).*

e. *The CBI should also examine the Joint Development Agreements (between the Lessee and developer) so that the entity which is liable to carry out the obligations and commitments of the builder to the Banks is identified and the homebuyers can have protection from the financial duress they are being put into. Noticeably, the Tripartite Agreement of Axis Bank, referred to hereinabove, specifically reserves the right to proceed against the builder/developer. (Refer para 28 above).*

f. *In the light of the issues highlighted hereinabove, the lukewarm stand of RBI and the apparent disdain of Banks/HFCs for RBI/NHB Regulations, the CBI should also enquire into the following with respect to each Bank:-*

i. *Whether the Banks disbursed amounts to builders/developers in contravention of Directions/Guidelines of the RBI/NHB prohibiting upfront disbursal disconnected with stages of construction and also the construction linked payment plans and correlation, if any, between direct and upfront disbursals by the Banks (of loans sanctioned to homebuyers-borrowers) to builders/developers and the stages of construction of different projects.*

ii. *If such disbursals had been made, then under whose authorization and with whose involvement.*

iii. *Whether the amounts were in fact disbursed to the builder and not to any third party on their behalf. The said aspect may require a forensic audit of the Banks.*

The manner in which tripartite/quadripartite loan agreements (which appear to be in a standard format for respective Banks) were formulated by different Banks and extended to customers, i.e., Board Resolutions/actions of key managerial personnel sanctioning it. Pertinently, the RBI has *maintained that "innovative housing loans" are an instrument on the operational side of Banks who have independence on how to formulate them.*

iv. *Some Banks also entered into separate bilateral agreements with builders/developers on the subvention scheme. These also need to be investigated.*

v. *The policies formulated by Banks/HFCs on making customers aware of the risks associated with subvention plans and outright/bulk disbursals by Banks to builders may be directed to be produced. It needs to be inquired if the operational branches of Banks cautioned the borrowers accordingly.*

vi. *Further, information may also be called regarding steps, if any, taken by Banks to recover the loan amounts from the builders/developers. (Refer para 19 above).*

g. *Directions be issued to authorities like the RBI, NHB, NOIDA Authority, Greater Noida Authority, Yamuna Expressway Development Authority, to appoint a Nodal Officer each to respond to queries of the CBI and to coordinate accordingly.*

h. *The CBI will require additional resources to undertake this huge task. Hence, a team of officers headed by a Gazetted officer each from the concerned states like UP and Haryana should be sent on deputation by the state Police to the CBI. They will be involved in the PEs under the supervision of the CBI officers.*

i. *The CBI be directed to submit relevant information to the amicus curiae.*

j. *The RBI be directed to examine the case of a borrower each of a half a dozen different Banks who had opted for the subvention scheme to check whether the Banks complied with the provisions of extant RBI Guidelines/Circulars, particularly relating to disbursal of loan amounts based on stage of construction and suitable cautioning of borrowers by Banks about the potential pitfalls of innovative home loan schemes. (Refer para 14 above).*

The NHB be directed to submit its report in the matter and also to examine the case of a borrower each of a half a dozen different HFCs who had opted for the subvention scheme to check whether the Banks complied with the provisions of its extant Circulars, particularly relating to disbursal of loan amounts based on stage of construction, suitable cautioning of borrowers by Banks about the potential pitfalls of innovative home loan schemes, Board approval for the schemes, etc. (Refer para 17 above).

k. *All the parties be reminded to submit their reports as ordered vide Order dated 5.11.2024 of this Hon'ble Court.*

l. *All the parties and the CBI be directed to send a copy of each of their reports being submitted to the court directly to the amicus curiae.*

m. *Since there are a large number of petitions, all the parties having common Banks as Respondents should appoint a Nodal Advocate who can coordinate the submissions.*

n. *Interim protection to homebuyers to continue as per earlier orders."*

9. Mr. Ram Singh, Superintendent of Police, Central Bureau of Investigation, EO-1, New Delhi has also submitted a proposal by way of an affidavit. It is pointed out that there are 174 petitions filed by 1205 homebuyers–petitioners, who had approached the Court with the following directions:

(i) The banks/financial institutions to charge EMI/pre-EMI from the builders-cum-developers and not from the homebuyers;

(ii) The banks/financial institutions to refund the already recovered amount to the homebuyer and recover it from the developers; and

(iii) the RBI to take strict action against the banks.

10. In his affidavit, the Superintendent of Police, CBI has explained that there are in total 40 builder-cum-developers who are involved in these matters, out of whom the largest number of petitioners (799) pertain to Supertech Ltd. The CBI has, thereafter, proposed that Preliminary Enquiries be undertaken, underlining that with the information available as of now being limited, commission of cognizable offence on the part of the builders and financial institutions is not clear. It is suggested that, with a view to arrive at a finding as to what actually transpired; what was the exact *modus operandi* of the builders; if and how they colluded with the financial institutions; and what was the exact criminality on the part of the builders or the financial institutions, it is necessary that 7 Preliminary Enquiries are registered and taken forward. The affidavit explains the details of the proposed 7 Preliminary Enquiries as follows:

9. … … …

a) Since, out of 174 SLPs filed by 1205 petitioners, 84 SLPs filed by 799 petitioners pertain to one builder group i.e. M/s. Supertech Ltd. and there are multiple projects of M/s Supertech Ltd. located in 8 different cities. It is propsoed that 01 Preliminary Enquiry may be initiated against the builder M/s Supertech Ltd. projects which is impleaded in these 174 SLPs.

b) For rest of the builders, the maximum number of projects of the respondent builders are in NCR region i.e. Noida, Greater Noida, Gurugram, Yamuna Expressway and Ghaziabad. As, there would be separate development authority for each city, it is proposed to register 05 Prelimiary Enquiries, 1 each for the projects falling under one development authority i.e., Noida, Greater Noida, Yamuna Expressway, Gurugram and Ghaziabad.

c) For the projects of the respondent builders except M/s Supertech Ltd. falling outside NCR region i.e., Mumbai, Bangalore, Kolkata, Mohali and Allahabad, it is proposed that 01 Preliminary enquiry may be registered for all such projects.

11. *That thus, in total 07 Preliminary Enquiries are being proposed to be registered with a prayer that 03 months' time period may kindly be provided to submit the reports."*

The CBI has also requested to provide some staff on deputation. Keeping in view the fact that majority of the projects are in NCR, in the States of Uttar Pradesh and Haryana, a request has been made to deploy some police officials from both the States. In addition, it is recommended to appoint a Nodal Officer in the rank of Deputy Secretary to Government of India by the Government Development Authorities in the cities of NOIDA and Gurugram so that the required documents can be provided to the Investigating Agency without any wastage of time. It is further recommended that Nodal Officers in the rank of Deputy Secretary should also be appointed by (i) the Ministry of Housing and Urban Affairs; (ii) RERA, U.P.; and (iii) RERA, Haryana to secure the requisite assistance in the course of the Preliminary Enquiries, and further investigation. A similar suggestion has been made with respect to appointment of a Nodal Officer by the Reserve Bank of India for better coordination and providing the desired information.

12. The affidavit also rightly points out that three Chartered Accounts, well-conversant with the process of forensic auditing, as may be recommended by the Institute of Chartered Accountants of India, be also associated to assist the CBI in this matter.

13. We find that the consolidated recommendations made by learned Amicus Curiae and the suggestions given by CBI to commence with 7 Preliminary Enquiries for the time-being are in tandem. While we propose to issue directions from time to time, pursuant to various recommendations made by the learned Amicus Curiae, as of now, we direct the Central Bureau of Investigation to register seven Preliminary Enquiries, in the manner as suggested in the affidavit filed on its behalf. To be specific, the scope of these Preliminary Enquiries shall be as per paragraph 9 of the CBI's affidavit (reproduced above), namely;

(i) One Preliminary Enquiry in respect of the projects launched by M/s Supertech Ltd;

(ii) One Preliminary Enquiry each (total five) in respect of projects in NCR in different areas, namely, NOIDA, Greater NOIDA, Yamuna Expressway, Gurugram, and Ghaziabad; and

(iii) One Preliminary Enquiry in respect of the projects outside of NCR, in which M/s Supertech Ltd. is not a builder/developer.

14. Keeping in view the requirement of staff as expressed by the CBI in its affidavit, we also deem it appropriate to issue the following directions:

(a) The Directors General of Police of the States of U.P. and Haryana are directed to shortlist at least 12 and 5 Deputy Superintendent of Police respectively, 20 and 7 Inspectors respectively of their State Police, and 30 and 10 Head Constables/Constables, including at least 10 and 3 women police constables, from their respective State police and forward the same to CBI within a week. The lists of these shortlisted police officers shall be forwarded to the Director, Central Bureau of Investigation, who shall, after making necessary enquiries, be free to shortlist the suitable police officers as per the requirement explained in paragraph 11 of the CBI's affidavit. Thereupon, the Director, Central Bureau of Investigation will constitute the requisite Special Investigation Teams involving CBI Officials as well as those taken from the States' police on deputation, besides the other experts.

(b) The Chief Executive Officer(s)/Chief Administrator(s)/Managing Director(s) of Greater NOIDA Authority, NOIDA Authority, Yamuna Expressway Industrial Development Authority, Ghaziabad Development Authority, Haryana Shahari Vikas Pradhikaran, and Haryana State Industrial and Infrastructural Corporation are directed to notify one Nodal Officer from amongst their senior most officers within one week and send their particulars to Director, CBI. The aforesaid Authorities are further directed to ensure that the requisite information and required documents are made available to the CBI/SIT for compliance with the directions issued hereinabove. These Nodal Officers shall remain available to provide the desired assistance during the course of enquiry/investigation.

(c) The Secretary, Ministry of Housing and Urban Affairs is directed to appoint a Nodal Officer in the rank of Deputy Secretary of the Ministry and forward his particulars to Director, CBI. The Nodal Officer shall, in turn, provide the requisite information and assistance to the CBI/SIT.

A similar Nodal Officer is directed to be appointed by the Real Estate Regulatory Authority, U.P. and Real Estate Regulatory Authority, Haryana at Gurugram. The Chairpersons of these Authorities are directed to do the needful within one week, and send the requisite information to the Director, CBI. (g) The Reserve Bank of India is also directed to appoint a Nodal Officer from the Department of Supervision and inform the Director, CBI, who shall extend full assistance to the CBI/SIT during enquiry/investigation.

15. The President, Institute of Chartered Accountants of India is directed to deploy three Chartered Accountants, who are well conversant with the process of forensic audit, and place them at the disposal of CBI to assist the Bureau/SIT in the matter of subject enquiry/investigations. The details of the remuneration to be paid to these Chartered Accounts be forwarded to this Court so that an appropriate order in that regard can be passed on the next date of hearing.

16. There may, nevertheless, be some unforeseen circumstances warranting different kinds of logistical support to the Investigating Agencies by the concerned State Governments, especially the States of U.P. and Haryana. The Chief Secretaries and Directors General of Police of both the States are accordingly directed to extend full cooperation and provide any type of logistic support as may be required by CBI/SIT constituted above.

17. An interim status report shall be submitted by the CBI on the next date of hearing.

18. We acknowledge and place on record our appreciation for the outstanding assistance rendered by learned Amicus Curiae. Knowing the fact that there are above 170 special leave petitions/writ petitions, involving so many builders-cum-developers and financial institutions and over 1200 homebuyers, besides half a dozen government developmental authorities and other regulatory authorities, we, as of now, direct to provide the following honorarium and assistance to the learned Amicus Curiae:

(a) The learned Amicus Curiae may engage at least one AOR and one assisting counsel of his choice, who shall each be paid an honorarium of Rs.50,000/- per month;

(b) The learned Amicus Curiae may also engage a Law Clerk, who shall be paid an honorarium of Rs.40,000/- per month;

(c) The learned Amicus Curiae shall be entitled to an honorarium of Rs.5 lakhs per month, which shall be reviewed in due course of time; and

(d) The learned Amicus Curiae shall also be entitled to full secretarial assistance and office expenses.

19. We find from the record that the Corporation Bank, alone, has released a loan of Rs.2477.54 crores. Consequently, we direct the Corporation Bank to make payment of the honorarium and all other expenses and payments, as sanctioned above, to the learned Amicus Curiae and his staff, w.e.f. 01.03.2025. The payments shall be made on/before 7th day of the calendar month. The Corporation Bank shall, in this regard, create a separate corpus and submit a proposal for proportionate sharing of such expenses with other banks. Appropriate directions in this regard will be issued on the next date of hearing.

20. We make it clear that the payments as directed above shall eventually be borne by the developer-cum-builders.

21. Post the matters on 22.07.2025. The Registry is directed to provided soft copies of all the petitions/I.A.s/M.A.s, filed so far in these matters, to the learned Additional Solicitor General of India for onward transmission to CBI. We request the learned Amicus Curiae also to give a soft copy of his note submitted in Court to Ms. Aishwarya Bhati, learned ASG.

22. Issue notice in all such tagged matters in which notice has not been issued so far, returnable on 22.07.2025.

23. Issue notice on all impleadment/intervention applications, returnable on 22.07.2025.

24. Dasti, in addition, is permitted.

<u>I.A. Nos.86336 & 86346/2025 in SLP(C) No.22576/2023</u>

25. Issue notice on these IAs.

26. Meanwhile, the residential unit in the project in question shall be kept reserved for the applicant(s).

<u>I.A. Nos.1029 & 1045/2025 in SLP(C) No.7649/2023</u>

27. Let a show cause notice be issued as to why Contempt of Court proceedings be not initiated, keeping in view the averments made in the application, returnable on

13.05.2025.

SLP(C) No.11931/2023 & SLP(C) No.10173/2023

28. Learned counsel for the petitioners seek and are permitted to withdraw these special leave petitions. The special leave petitions, accordingly, dismissed as withdrawn.