

ITEM NO.5

Court 4 (Video Conferencing)

SECTION PIL-W

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

Writ Petition (Civil) No.1216/2020

ASHWINI KUMAR UPADHYAY

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

WITH W.P.(C) No.1226/2020 (X)

W.P.(C) No.1403/2020 (X)

W.P.(C) No.175/2021 (X)

Date : 04-10-2021 These petitions were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MRS. JUSTICE B.V. NAGARATHNA

For Petitioner(s) Mr. Vikas Singh, Sr. Adv.
Mr. Ashwini Kumar Upadhyay, Adv.
Mr. Ashwani Kumar Dubey, AOR
Mr. Pankaj Dubey, Adv.
Mr. Kapish Seth, Adv.
Mr. Mayank Nagar, Adv.

WP 1226/2021 Mr. Anupam Lal Das, Sr. Adv.
Mr. Ashwini Kumar Upadhyay, Adv.
Mr. Ashwani Kumar Dubey, AOR
Mr. Pankaj Dubey, Adv.
Mr. Kapish Seth, Adv.
Mr. Mayank Nagar, Adv.

WP 1403/2020 Ms. Maneka Guruswamy, Sr. Adv.
Mr. Ashwini Kumar Upadhyay, Adv.

Mr. Ashwani Kumar Dubey, AOR
Mr. Pankaj Dubey, Adv.
Mr. Mayank Nagar, Adv.

WP 175/2021

Mr. Arijit Prasad, Sr. Adv.
Mr. Ashwini Kumar Upadhyay, Adv.
Mr. Ashwani Kumar Dubey, AOR
Mr. Pankaj Dubey, Adv.
Mr. Mayank Nagar, Adv.

For Respondent(s)

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

- 1 A batch of petitions has been filed under Article 32 of the Constitution raising the grievance that in the absence of a uniform or model builder-buyer agreement and agent-buyer agreement, flat purchasers are left to the mercy of developers in respect of the terms and conditions which are imposed at the time of entering into such agreements. Flat purchasers, it is submitted, are left to be exploited as a result of one-sided agreements and conditions which protect the interest of developers. A direction has accordingly been sought to the Union government to frame a model builder-buyer agreement and model agent-buyer agreement to infuse transparency and fairness, as well as to enhance the purpose and object of the Real Estate (Regulation and Development) Act 2016.
- 2 Mr Vikas Singh, learned senior counsel appearing on behalf of the petitioner in WP (C) No 1216 of 2020 and Dr Menaka Gurusamy and Mr Anupam Lal Das, learned senior counsel appearing on behalf of the petitioners in the companion writ petitions have drawn the attention of the Court to the provisions of the RERA. Section 41 which forms a part of Chapter VI provides for the establishment of a Central Advisory Council by the Union government. Section 42 provides for the functions of Central Advisory Council. Among other functions, the Council has to advise and recommend to the Central Government (i) on all matters concerning the implementation of the Act; (ii)

on major question of policy; (iii) towards protection of consumer interest; (iv) to foster the growth and development of the real estate sector; and (v) on any other matter as may be assigned to it by the Central Government. Under sub-Section (2), the Central Government is vested with the rule making power so as to give effect to the recommendations of the Central Advisory Council on the matters as provided under sub-Section (1). The Act provides for sufficient enabling powers for the Central Government to frame model agreements which will sub-serve the public interest in ensuring that buyers of real estate are not exploited by the framing of standard form agreements.

- 3 In the circumstances, we are inclined to issue notice in Writ Petition (C) No 1216 of 2020. In the companion writ petitions, besides seeking the above relief, reliefs have also been sought against the developers, such as the payment of compensation for delay. In WP(C) No 1403/2020, the reliefs which have been, *inter alia*, sought include a direction to the builder to compensate the petitioners on account of the delays which have taken place. Similar reliefs have also been sought in WP(C) No 175/2021. In the exercise of the jurisdiction under Article 32 of the Constitution, this Court will not be in a position to scrutinize the individual facts relating to each of the agreements and to grant compensation particularly when alternative remedies are available under the Consumer Protection Act. Hence, insofar as prayer (c) is concerned, we are not entertaining the petitions, but leave it open to the petitioners to pursue their remedies against the builder/developer before the competent forum in accordance with law. The companion petitions may accordingly be amended within two weeks.
- 4 Issue notice, returnable in four weeks.
- 5 Dasti, in addition, is permitted.
- 6 Liberty to serve the Central Agency.

7 List the petitions on 8 November 2021.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Court Master