

Sidharth Chauhan vs State(Govt Of Nct Delhi) Through Sho on 13 December, 2021

Author: Manoj Kumar Ohri

Bench: Manoj Kumar Ohri

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 2722/2021 & CRL.M.(BAIL) 986/2021,
CRL.M.As. 13268/2021, 13269/2021, 13545/2021, 14956/2021,
14957/2021, 15515/2021, 15516/2021

Reserved on : 2
Date of Decision : 1

IN THE MATTER OF:

SIDHARTH CHAUHAN

Through: Mr. Maninder Singh,
Advocate with Mr. R.
Mr. Niranjana Singh,
Mangal Sharma, Mr. S.
Rajpal and Mr. Rajiv
Pillania, Advocates.

Versus

STATE (GOVT. OF NCT OF DELHI) THROUGH SHO

Through: Ms. Neelam Sharma, A
State.
Mr. Ajay Laroia, Mr.
Gupta, Ms. Madhu Lar
Jainika Mohan, Mr. R
Kumar and Mr. Sandes
Advocates for compla

AND

BAIL APPLN. 2746/2021 & CRL.M.(BAIL) 995/2021

Signature Not Verified

Digitally Signed

By:SANGEETA ANAND

Signing Date:13.12.2021 BAIL APPLN. 2722/2021 & BAIL APPLN. 2746/2021

12:24:47

SIDHARTH CHAUHAN

Through: Mr. Maninder Singh,
Advocate with Mr. R.
Mr. Niranjan Singh,
Mangal Sharma, Mr. S
Rajpal and Mr. Rajiv
Pilania, Advocates.

Versus

STATE (GOVT. OF NCT OF DELHI) THROUGH
SHO

Through: Ms. Neelam Sharma, A
State.
Mr. Ajay Laroia, Mr.
Gupta, Ms. Madhu Lar
Jainika Mohan, Mr. R
Kumar and Mr. Sandes
Advocates for compla

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The above-noted bail applications have been filed under Section 438 Cr.P.C. on behalf of the applicant seeking anticipatory bail in FIR Nos. 97/2018 and 118/2018 both registered under Sections 406/420/409/120B IPC at Police Station Economic Offences Wing, Mandir Marg, New Delhi.

2. Since the applicant and respective counsels in both the bail applications are same and common arguments have been advanced in both the cases, the above-noted applications shall be disposed of vide a common judgment.

3. While BAIL APPLN. 2722/2021 pertains to FIR No. 97/2018 which was registered with respect to project "Estella", measuring 15.74 acres, housing 850 residential units in 16 towers, located in Sector-103, Gurugram, Haryana, the BAIL APPLN. 2746/2021 pertains to FIR No. 118/2018 registered with respect to project "NCR One", measuring 10.712 acres, housing total of 552 residential units in 10 towers and 5 executive floors, located in Sector-95, Gurugram, Haryana.

As per the allegations levelled in the FIR, while project "Estella" is being jointly developed by M/s Sidhartha Buildhome Pvt. Ltd. (hereinafter referred to as 'the accused Company') and Ansal Housing & Construction Ltd., project "NCR One" is being developed by M/s Sidhartha Buildhome Pvt. Ltd.

The applicant is stated to be the Managing Director of the accused Company, holding 97% shareholding in the share capital thereof.

4. Mr. Maninder Singh, learned Senior Counsel for the applicant, contended that no criminality is involved in the present cases, and rather, the dispute relates to delay in construction of flats. He submitted that both the FIRs pertain to the year 2018 and upon issuance of notices under Sections 91 and 41A Cr.P.C. by the Investigating Officer, the applicant has joined the investigation on more than 20 occasions and furnished all the documents sought by the Investigating Officer. He further submitted that the entire record relating to the construction of the projects is with the Investigating Officer and no custodial interrogation of the applicant is required.

5. Learned Senior Counsel, while challenging the conclusions of the Forensic Audit conducted by the Interim Resolution Professional (IRP), submitted that as per the Status Reports filed before the Sessions Court the total proceeds obtained by the accused Company from the homebuyers as well as the Banks, combined for both the projects, amount to approx. Rs.557 crores, whereas the valuation of both the projects is to the extent of Rs.566.33 crores. Thus, the conclusion in the Forensic Audit Report of the IRP, that funds to the tune of Rs.408 crores were diverted by the accused Company, is ill-founded. It was further submitted that the said Forensic Audit is also at variance from the audit conducted by the Oriental Bank of Commerce (now merged with PNB and hereinafter referred to as OBC) inasmuch as, the Forensic Audit conducted by OBC shows that an amount of Rs.62 crores out of the sanctioned loan amount was utilized in the construction of project "Estella", but the Forensic Audit conducted by the IRP shows that an amount of Rs.22.90 crores, out of the sanctioned loan of Rs.75 crores (the disbursed amount being Rs.65.42 crores) from PNB, was mis- utilized.

6. Learned Senior Counsel further submitted that the action of the Investigating Officer in not filing the charge sheets even after a lapse of more than three years since registration of the FIRs shows mala fides as according to the Status Report placed on record, entire documentary record has been collected. He also submitted that the reasons stated in the Status Report for seeking custodial interrogation of the applicant are misconceived.

7. It was next contended on behalf of the applicant that the ingredients of the offence of cheating are not made out in the present cases, as the applicant is still desirous of completing the projects and is ready to raise funds through sale of personal assets and assets of related entities. It was also contended that the projects could not be completed in time as the homebuyers had not paid the remaining balance amount.

8. In support of his submissions, learned Senior Counsel placed reliance on the decisions in Siddharth v. State of Uttar Pradesh and Another reported as 2021 SCC OnLine SC 615 and Aman Preet Singh v. C.B.I. Through Director reported as 2021 SCC OnLine SC 941.

9. Ms. Neelam Sharma, learned APP for the State, duly assisted by learned counsel for the complainant, vehemently opposed the bail applications. She stated that in the year 2010-11, the Directors of the accused Company placed advertisements in newspapers offering booking of the apartments in the aforesaid projects. It was promised that the possession of the apartments would

be handed over within 3 years with a further grace period of six months. Learned APP further submitted that the Flat Buyer Agreements pertain to the year 2012, when payments were also received by the accused Company. She also submitted that the initial promise to deliver the possession of flats within a maximum period of 42 months from the date of Flat Buyer Agreements (i.e., 31.01.2012 in "NCR One" and 04.09.2012 in "Estella"), was an intentional false promise, which induced the homebuyers to part with their money. The applicant collected 95% of the total consideration amount under the aforesaid Agreements from the buyers and further got loans sanctioned from Banks, and yet failed to hand over the possession of the flats in due time. It was further submitted that the present cases relate not only to delay in handing over of the possession of flats, but also to the fraudulent diversion of funds by the applicant through the accused Company to its other sister/group concerns. It was also contended that many homebuyers took loans from various Banks to make payment to the accused Company and were constrained as a result to pay heavy installments, without receiving the possession of the promised flats.

10. It was further submitted that the loans of the accused Company have been declared as NPA. So far, 80 victims have approached the Investigating Officer with respect to project "Estella", having invested approx. Rs.48.30 crores, while 60 victims have approached the Investigating Officer in respect of project "NCR One", having invested approx. Rs.26.59 crores.

11. It was also stated that on an application filed by the financial creditor/Punjab National Bank under Section 7 of the IBC, 2016, Corporate Insolvency Resolution Process (CIRP) was initiated against the accused Company and an IRP, namely Mr. Devendra Singh, was appointed vide order dated 04.03.2021 passed by the NCLT. Upon issuance of notice under Section 91 Cr.P.C. by the Investigating Officer, Mr. Devendra Singh, IRP had furnished his Report relating to the total flats booked and total funds collected by the accused Company under both the projects. In the said Report, it was stated that under project "Estella", the accused Company had booked 468 flats out of a total of 510 flats and collected Rs.276.06 crores from the homebuyers, whereas under project "NCR Green, Phase-2", 365 flats out of a total of 399 flats were booked and Rs.170.59 crores collected.

12. Learned APP also contended that the Forensic Audit conducted by the IRP would not only show that the proceeds collected from homebuyers were not invested in the projects, but also that the funds received from Banks were also misappropriated and illegally diverted to accounts of entities related to the accused Company and its Directors. She further submitted that the difference as to the siphoned-off amount in the audit report filed by the IRP and the audit conducted by OBC is on account of the fact that all relevant materials were not available at the time of Bank audit. The audit conducted by the IRP is much more comprehensive, in view of the additional materials which have come on record since then.

13. Lastly, she submitted that the present applicant has shown no regard for the Court-appointed IRP, as he not only threatened the employees and Key Managerial Personnel of the accused Company to not cooperate with the IRP, but also threatened the IRP himself, for which an application was filed by the IRP before the NCLT, besides a police complaint which was filed on 21.09.2021 with the SHO, Police Station Sushant Lok, Gurugram, Haryana.

14. In addition, learned counsels for the complainants submitted that the applicant has duped about 833 homebuyers and despite having surplus funds since the last 7-8 years, he has not invested any money in either of the projects since 2016. It was further submitted that only 40- 50% construction has been completed in project "Estella", even though some of the homebuyers have paid almost 95% of the sale consideration amount. It was also submitted that despite collecting excess amount from the homebuyers, the applicant further took loans from the Banks and the total outstanding liability of the applicant as on date is Rs.390.25 crores, against which he had given proposal to Committee of Creditors (COC) to infuse a paltry sum of Rs.30 crores, that too, in three instalments, over a long period of time, which has been rejected by the COC in its meeting held on 28.07.2021.

Reference was also made to the order dated 13.11.2019 passed by the Punjab and Haryana High Court in CRM-M-38926/2019 titled as Siddharth Chauhan v. Serious Fraud Investigation Office, to submit that while deciding the applicant's anticipatory bail application, it was observed that he is a manipulator and cannot be trusted. The said bail application was filed by the applicant in proceedings arising out of investigation conducted by the Serious Fraud Investigation Office (SFIO), in connection with which proceedings are pending before the Special Court, Gurugram.

Lastly, it was submitted that out of total area of 15.74 acres falling under project "Estella", the applicant fraudulently sold about 6 acres to Ansal Housing and Construction Ltd. and the accused Company collected payments towards External Development Charges (EDC) and Infrastructure Development Charges (IDC) from the homebuyers but did not deposit the same with concerned authorities, resulting in non-renewal of licenses.

15. In rebuttal, learned Senior Counsel submitted that a One-Time Settlement (OTS) proposal dated 05.04.2021 is pending consideration with OBC. To disprove the allegation of diversion of funds, reliance was placed on Government Approved Valuer Reports dated 16.06.2021 and CA certificates dated 19.06.2021. It was submitted that as per these documents, surplus amount received under project "Estella" is Rs.18.67 crores and that received under project "NCR Greens, Phase-II" is Rs.22 crores. Therefore, a total surplus amount of Rs.40.67 crores was received under the two projects, which is nowhere close to the amount estimated in the report of the IRP. Insofar as status of construction is concerned, it was submitted that PNB had got conducted a project valuation and as per the Report, more than 55% of the construction was complete in 2018, and the same is now about 70-75% complete.

It was also submitted that the selling of 6 acres of land to Ansal Housing and Construction Ltd. was in terms of the conditions of license, as also reflected in the Builder-Buyer Agreements.

With respect to the complaint filed by the IRP, learned Senior Counsel submitted that the same was a counterblast, filed in order to prejudice the NCLT.

16. I have heard learned counsels for the parties and have also perused the entire material placed on record.

17. At the cost of repetition, this Court notes that under project "Estella", the accused Company sold about 468 units/flats and received an amount of Rs.276.06 crores from the homebuyers. It further got sanctioned a loan of Rs.75 crores from OBC. For project "NCR One", an amount of Rs.170.59 crores was received by the accused Company towards 365 units/flats sold and further, a loan of Rs.54 crores was got sanctioned from the Punjab & Sind Bank. The applicant along with another Director, namely Randhir Singh Chauhan (i.e., father of the applicant), stood as personal guarantors. Eventually, both the term loans were declared as NPA in the year 2017.

18. It is apparent that total funds of Rs.338.06 crores were collected for infusion into project "Estella", even though the cost of the project was initially projected as Rs.248 crores and later revised to Rs.273 crores. Thus, the accused Company had surplus funds to the tune of Rs.65.06 crores under project "Estella".

Similarly, for project "NCR Green, Phase-2", a total sum of Rs.224.59 crores was collected for infusion in the project, while the estimated cost of construction was Rs.192.78 crores. In view of the same, it is discernible that excess amount to the tune of Rs.31.81 crores was secured under project "NCR Green, Phase-2".

From the aforesaid, it is deducible that the surplus funds collected by the accused Company, when combined for both the projects, amount to Rs.96.86 crores.

19. Initially, on 21.08.2017, joint complaints were received against the accused Company and its Directors from 28-30 complainants in respect of project "Estella" and from 24 complainants regarding project "NCR One". Subsequently, a total of 80 complainants have approached the Investigating Officer with respect to project "Estella" and 60 complainants have approached in connection with project "NCR One". The record of proceedings before the NCLAT in its order dated 31.03.2021 passed in Company Appeal (AT) (Insolvency) No. 270/2021 shows that as many as 550 claims of homebuyers had been received by the IRP, besides one claim of financial creditor/Punjab & Sind Bank, till that date.

20. After the term loan advanced by OBC turned NPA, an Auditor was appointed by the Bank for conducting the Forensic Audit of the accounts of the accused Company. On 16.07.2018, the auditor submitted its Report, where it was noted that Rs.152 crores were collected by the accused Company from homebuyers and Rs.203.9 crores were projected to be realized from the sale of about 244 flats which were unsold. In this backdrop, it was opined that funds were not infused by promoters for the completion of the projects, and that resulted in the projects remaining incomplete.

21. It has also come in the investigation that the accused Company did not deposit renewal fee with the Director, Town & Country Planning (DTCP), Haryana and consequently, the licenses for the two projects lapsed on 07.03.2015 and 18.03.2016 respectively. As the licenses were not got renewed from the DTCP, Haryana, neither of the projects are registered with the Haryana Real Estate Regulatory Authority. It has also come on record that as on 23.06.2021, the DTCP had issued notice to the accused Company with respect to default in payment of Rs.36.10 crores against EDC and Rs.4.29 crores against IDC, which are stated to be outstanding for project "Estella".

22. The Auditor appointed under the IBC proceedings had submitted a detailed transaction report of the accused Company, as per which, the applicant along with other Directors of the accused Company, has misappropriated an amount of Rs.408.74 crores out of the funds received for the aforesaid two projects. The observations made in the said Report were placed before the Court vide an Additional Status Report dated 17.09.2021. The observations are discussed below:-

i) Repayment of Overdraft Facility of Karnataka Bank - The accused Company had obtained an overdraft facility of Rs.20 crores from Karnataka Bank in the year 2016. Subsequently, the Company made a payment of Rs.15.15 crores to the Bank through another company i.e., M/s Millennium Diplomats Private Ltd. Considering that neither the Bank nor M/s Millennium Diplomats Private Ltd. has filed any claim before the IRP since initiation of the CIRP, it is suspected that the aforesaid amount of Rs.15.15 crores was utilized for releasing of properties of the applicant and two associate companies, rather than being used for construction of the projects.

In this regard, learned Senior Counsel referred to a No- Objection Certificate from Karnataka Bank and submitted that an amount of Rs.20 crores has been paid back to the Bank by the accused Company through M/s Millennium Diplomats Private Ltd., for which payment, shares in the land of village Fazilpur were given to M/s Millennium Diplomats Pvt. Ltd.

ii) Introduction of Fictitious Share Capital in FY 2014-15 - At the time of sanctioning of term loan by Oriental Bank of Commerce (now PNB), the promotor/applicant contribution was to be increased from Rs.30 crores to Rs.50 crores. To this end, the applicant was allotted 2 crore shares of Rs.10/- each on 26.02.2015. However, the balance receivable from the applicant was transferred to six related parties, from which no money was received during the said period. It is thus suspected that the applicant gave false certificate of introduction of capital to the Bank by way of book entries while there was no actual inflow of money into the Company, so that the loan could be obtained from the Bank.

iii) Mis-utilization of the Term Loans disbursed by PNB and PSB - The accused Company had got sanctioned term loans of Rs.75 crores and Rs.54 crores respectively, for its two projects namely "Estella" and "NCR Green, Phase-2". It has been found in the audit that the loan amounts were utilized for purposes other than for which they were got sanctioned. In case of term loan obtained from PSB, Rs.1.50 crores were paid to associates/sister concerns, Rs.3.29 crores were paid towards interest on the loan and Rs.5.98 crores were utilized towards the other project i.e., "Estella". Likewise, in case of term loan obtained from PNB, Rs.22.90 crores were mis-utilized, insofar as Rs.18.02 crores were paid to associates/sister concerns, Rs.2.85 crores were paid towards interest on the loan and Rs.2.03 crores were utilized towards the other project i.e., NCR, Sector-95.

iv) Transferring/Selling of Vehicles at an undervalued consideration - Since the initiation of CIRP, the company has transferred eight vehicles to related parties/others at throwaway prices. Apparently, the money was received in cash to hide the name of the beneficiary. For example, a Fortuner was sold in cash only for Rs.80,829/-. Out of the aforesaid eight vehicles, six were transferred on a single day.

v) Huge Balance Receivable - As per the documents analyzed, the accused Company had a balance of Rs.151.28 crores receivable from 289 parties on the date of initiation of CIRP. Out of the aforesaid balance receivables, Rs.109.32 crores were receivable from 10 related parties. To confirm the genuineness of the receivables shown in the books of accounts of the accused company, the auditor had sent balance confirmation letters however, no reply was received from any of the related parties. Letters were also sent to other parties, but most of them were returned undelivered.

vi) Fraudulent Excess Recovery of EDC and IDC from the Homebuyers - The accused Company had collected an excess of Rs.2.37 crores as excess money from the homebuyers in lieu of EDC and IDC.

vii) Falsification of Books of Accounts - The accused Company had recorded various journal entries resulting in setting off balances of debtors and creditors without routing the transaction through banking channels. It is opined by the IRP that transactions do not appear to be in ordinary course of business and the method adopted by the accused company has not been disclosed in financial statements or notes to accounts.

viii) Receipt of Material at Project Sites through Vehicles not fit for Transportation - On verification of purchase invoices, it came to the notice that material i.e., cement, steel etc. was received through motorcycle, scooter, motor car, bus, E-rickshaw etc. Almost 20% of the verified transactions took place in the aforesaid manner. Resultantly, the purchase transactions recorded in the books of accounts appear to be bogus.

ix) Investment in Subsidiary Companies - The accused Company had made investment in three subsidiary companies for a total of Rs.15.98 crores. The funds are opined to have been misused by the accused Company for the benefit of suspended Directors, promoters etc., as there is no record/documentary evidence of any return on the investment made or of the reasons for such investment.

x) Issuance of Receipts to Homebuyers without realization of money of Rs. 18.44 crores and discovered profile funding of Rs. 46.50 crores -The Auditor came across 51 instances where the accused Company had issued receipts (for booking and instalments), but against the same, no money was ever realized. The receipts were for Rs.18.44 crores and on the basis thereof various Banks had sanctioned loans in the name of homebuyers, to the tune of Rs.46.50 crores in total, and disbursed the amount directly to the accused Company.

xi) Payment for Personal Expenses of Suspended Board of Directors - It is stated that the accused Company paid huge amount of money towards expenses of directors such as lease rent of car owned by them, lease rent of their residential apartment, fixed assets for their home etc. It is further stated that this led to deterioration in the financial health of the company and amounts to diversion of funds.

xii) Other Miscellaneous Observations leading to Outflow of Funds - The Auditor noted various instances which resulted in outflow of money to the tune of Rs.13.01 crores approximately and the same have been opined as appearing to be fictitious.

23. A plain reading of the above Forensic Audit report would show that the applicant not only collected surplus amounts from the homebuyers, but also obtained loans from Banks over and above. Out of the total funds accumulated, interest-free advances were given to associates/sister concerns of the accused Company, instead of investing them in the projects.

24. It is borne out from the material placed on the record that an application was filed before the NCLT on behalf of the IRP, in which it was stated that one Harish Gupta, Head Projects of the accused Company, had sent him an E-mail dated 26.08.2021, wherein he stated that he had received WhatsApp voice calls from the applicant forcing him to create complications and hurdles at both the sites, besides threatening him. Excerpt from the relevant email is reproduced hereunder:

"...I am informing you that I have received whatsapp voice calls on 23.08.2021 (Monday) in the day time one around 12:00 noon and another at 02:30 PM. As you are aware that I am working as Head - Projects for both the project sites of the company NCR & Estella situated at Sector 95 and Sector 103, Gurugram respectively. In the whatsapp voice conversation Mr. Sidharth Chauhan forcing me to create complications and hurdles at both the sites in which IRP has initiated the construction work for completion of the projects and also threatened me that if I do not work as per his order then he can use the other means to stop the work by sending his number of persons there."

25. Similarly, one Ravi Kumar Singh, who has been working in the CRM department of the accused Company, had also informed the IRP through email dated 28.08.2021 that he was extended life threats by the applicant. It was further informed that he was abused by the applicant and directed not to provide any information to IRP's team/Auditor. The email sent by Ravi Kumar Singh reads as follows:

"...On 23.08.2021 when I was coming out from accounts department, the room which is adjacent to Mr. Sidharth Chauhan, CMD's Room, Mr. Dharam Chand Yadav who is Director in the Company asked me to come to CMD's Room then from his phone he called Mr. Sidharth Chauhan through whatsapp voice call and handover the phone to me.

Over the phone call the CMD was asking how dare you have given confidential information of CRM Data to IRP Team and to the Auditor and provided data of profile funding without my directions and listening to me with shouting and abusive tone. I replied that my reporting is to Mr. Devendra Singh, IRP and whatever information he sought and is available in company record I provided. Further he told me that don't try to be over smart and asked from which route you are coming to office I replied that I travel metro to my residence, he straightly threatened me that "main tere andar itna peetal utaar dunga tu kisi layak nhi rahega"

and he continuously abused and threatened me and directed me not to provide any information."

26. Further, the IRP himself had received a threatening call from the applicant on 18.09.2021 at 01:08 pm on his mobile. In the said conversation, the applicant is stated to have used threatening words to the following effect:-

"If you visit the Gurgaon Office of SBPL, then your children will be regretful of the fact that their father is no more".

27. In this backdrop, a police complaint dated 21.09.2021 was filed by the IRP with the SHO, Police Station Sushant Lok, Gurugram, Haryana, a copy of which has been placed on record. In the said complaint, it was further stated that one Mr. Birpal, alongwith two other persons, was sent by the applicant to the office of SBPL, Gurugram to intimidate the IRP as well as the Project Head, CRM Manager.

28. With respect to the application filed by the IRP before the NCLT under Section 19(2) read with Section 70 read with Section 60(5) of the IBC, in which details of the events that had transpired were mentioned, it has been informed that on 24.09.2021, the NCLT has passed orders restraining the present applicant from engaging in direct conversation by any means with any of the employees of the accused Company without prior consent of the IRP. The applicant has further been restrained from taking any action or posing any danger to the life of the IRP.

29. In the Status Reports placed on record and during the course of submissions, it has been repeatedly stated that though sufficient documents have come on record which implicate the applicant, investigation is still pending in order to unearth the details of funds diverted by him, for which custodial interrogation is required.

30. In the facts of the case, reliance placed by the applicant on the decisions in Siddharth (Supra) and Aman Preet Singh (Supra) is of no consequence as in those cases, investigation was complete and the issue was whether the accused was required to be arrested before or after filing of the charge sheet.

31. Before proceeding further, I deem it apposite to reproduce a noteworthy observation made by the Supreme Court in State Rep. by the C.B.I. v. Anil Sharma reported as (1997) 7 SCC 187:-

"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he is interrogated."

(emphasis added)

32. A subsequent observation in *Nimmagadda Prasad v. Central Bureau of Investigation* reported as (2013) 7 SCC 466 is also referred to, before adverting to the facts of the present case:

"25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

33. The present case involves allegations of inducement of about 833 homebuyers to invest in housing projects, on a promise of time-bound delivery of possession, and subsequent misappropriation and diversion of money collected from them and funds obtained from Banks. The case is not simpliciter of delay in construction. The homebuyers had paid money out of their life savings and/or obtained loans from Banks, subsequent to which possession of the promised flats was not delivered. The investigation/audits conducted by various authorities further reveal that the money collected from the homebuyers as well as the loans taken from the Banks were not utilized appropriately in the construction of the two projects.

34. It is noted that the RERA, Haryana had appointed a Local Commissioner to ascertain the status of construction of project "Estella", whose report dated 12.04.2019 shows that the project as of 2019 was not likely to be completed soon. It is relevant to reproduce the conclusion arrived at by the Local Commissioner, which was as under:-

"The project to be developed by Sidhartha Buildhome is physically inspected, it is observed that around 40-50 labour were working on site and the work progress is based upon actual construction at site and it is submitted that the overall progress of the project is 45-50 per cent only. The work progress in tower A is 50-50 per cent only. The work progress of complainant unit is approximately 55-60 per cent only.

Sd/-12.04.2019 Engineer Executive"

35. An audit was conducted by OBC as well, which found non- utilization of term loan advanced in the construction of the project. Later, a detailed Forensic Audit was conducted by the IRP, which found misappropriation and diversion of funds to the tune of Rs. 408.74 crores. Though it was stated that there is variance in the two reports as to the amounts alleged to have been diverted, I find force in the submission of learned APP for the State that at the time when the audit was carried out by the Bank, entire material was not available, which has subsequently been collected during investigation and was available at the time of Forensic Audit conducted by the IRP.

36. Even though the applicant's case is that an OTS is pending before PNB (earlier OBC), it is noted that as per Minutes of Meeting of 8th COC meeting dated 17.08.2021, the IRP was apprised by the representative of PNB that even though the applicant had met the competent authority regarding settlement, no settlement proposal on his behalf was pending with the Bank.

37. It is further noted that as per the complainants, estimated cost of completion of both the projects as on date is approx. Rs.157.61 crores. Per contra, estimated cost of completion of both the projects, in terms of the preliminary proposal given by the applicant to the IRP vide email dated 27.07.2021, is approx. Rs.135 crores. Without commenting on the propriety of either claim, it is noted that in addition to his estimation of the cost of completion of the projects, the applicant has admitted that the amount payable to Banks is Rs.97.50 crores plus unapplied interest after March, 2018. Yet, he is stated to have proposed before the Committee of Creditors to infuse only about Rs.30 crores, which offer has reportedly been rejected. Suffice it to say that the applicant, by not making a reasonable offer of settlement, has not only misled this Court and merely bought time, but has further abused the concession of interim protection granted to him vide order dated 05.08.2021 by threatening and intimidating the witnesses. He has gone a step further by threatening the Court-appointed IRP Mr. Devendra Singh who was constrained to file an application before NCLT as well as a complaint with the police. The observations made against the applicant in the order dated 13.11.2019 by the Punjab and Haryana High Court that he is a manipulator and cannot be trusted, assume great significance in the facts noted hereinabove.

38. This Court appreciates that there is a qualitative difference between interrogation of the accused while in custody and while he is enjoying protection against arrest. In the present case, it appears that the applicant has been attempting to mislead the Court in the name of efforts at settlement, instead of making any serious effort at addressing claims of the aggrieved homebuyers, while also tampering with the evidence and threatening the witnesses. Under these circumstances, his custodial interrogation is deemed necessary.

39. Notably, the grant of anticipatory bail in a case of such large magnitude is further likely to have an adverse impact not only in the progress of the case, but also on the trust reposed by the society in the criminal justice system. This Court also cannot discount the fact that in case the applicant is granted the concession of anticipatory bail, he may again tamper with the evidence/witnesses and/or threaten them, as has been the case in the past.

40. After due consideration of the material placed on record and the submissions of the counsels for the parties, this Court is of the firm opinion that prima facie, the applicant, being the only promoter and having 97% shareholding of the accused Company, has misappropriated and siphoned-off funds collected from the homebuyers as well as the Banks. The magnitude of misappropriation and gravity of the offence also necessitate his custodial interrogation, to unearth the money trail of the siphoned-off amounts and to prevent him from attempting to tamper with the evidence and threaten the witnesses. He already has shown scant regard for the Court orders by threatening the witnesses while on interim protection.

41. Consequently, the interim protection granted to the applicant is withdrawn forthwith and the bail applications are dismissed, alongwith the pending applications.

MANOJ KUMAR OHRI, J DECEMBER 13, 2021 ga [Click here to check corrigendum](#), if any