IN THE HIGH COURT OF KARNATAKA AT BENGALURU

R

DATED THIS THE 21st DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.31006 OF 2025 (GM - RES)

C/W

WRIT PETITION No.20063 OF 2022 (GM - RES)
WRIT PETITION No.25722 OF 2022 (GM - RES)
WRIT PETITION No.4968 OF 2024 (GM - RES)
WRIT PETITION No.27587 OF 2024 (GM - RES)
WRIT PETITION No.34702 OF 2024 (GM - RES)

IN WRIT PETITION No.31006 OF 2025

BETWEEN:

OZONE URBANA INFRA DEVELOPERS PVT. LIMITED,
A PRIVATE LIMITED COMPANY INCORPORATED
UNDER THE PROVISIONS OF THE INDIAN COMPANIES ACT,
HAVING ITS REGISTERED OFFICE AT:
NO.38, ULSOOR ROAD,
BENGALURU – 560 042.
REPRESENTED BY ITS MANAGING DIRECTOR
SHRI. VASUDEVAN SATHYAMOORTHY.

... PETITIONER

(BY SRI M.S.SHYAM SUNDAR, SR.ADVOCATE A/W
DR.VANDANA P.L., ADVOCATE)

AND:

1 . THE DIRECTORATE OF ENFORCEMENT,
BANGALORE ZONAL OFFICE,
BMTC BUILDING, SHANTHINAGAR,
KH ROAD, BENGALURU
REPRESENTED BY ITS
AUTHORIZED OFFICER.
VISHAL ARYA
DIRECTOR OF ENFORCEMENT.

2. PRASANJEET GHOSH
AGED ABOUT 30 YEARS
S/O AJAY KUMAR GHOSH
RESIDING AT MANGALAM ECSTASY
TOWER-2, FLAT 904
HANS SATSANG ASHRAM ROAD
BENGALURU – 560 049.

3. SANJEEVA C.,
AGED ABOUT 50 YEARS
RESIDING AT 1/3, PROMOD NILAYA
2ND FLOOR, 13TH CROSS
8TH SUDINDHARANAGAR MAIN
MALLESHWARAM
BENGALURU – 560 003.

4. MANISHA GUPATA
AGED ABOUT 38 YEARS
D/O N.G.GUPTA
RESIDING AT SLS SYMPHONY
NO.223, 2ND CROSS
BHUVANESWARI NAGAR
BENGALURU – 560 024.

5. HARMANJIT GILL
AGED ABOUT 49 YEARS
S/O LATE INDERJIT SINGH GILL

RESIDING AT 41 SIGNALS VIHAR
MHOW MADHYA PRADESH – 453 442.

6. MALATI HARISH
AGED ABOUT 56 YEARS
W/O HARISH VENKATESHWARAN
RESIDING AT 94 NARMADA
3RD FL. NARAYANA GURU CHS
P.L.LOKHANDE MARG, CHEMBUR
MUMBAI – 400 089.

7. RAVI SWAMINATHAN
AGED ABOUT 54 YEARS
RESIDING AT NO.10-540, 32
JALAN BUKIT HO SWEE
SINGAPORE – 160 032.

8. JAYATHEERTHA JOSHI
AGED ABOUT 47 YEARS
S/O MR.JOSHI, RESIDING AT F-302
SLV SPLENDOUR
HARINAGAR CORSS, KOTHANUR MAIN ROAD
KONANAKUNTE
BENGALURU – 560 062.

9. MADHURA JAYATHEERTHA JOSHI
AGED ABOUT 42 YEARS
W/O JAYATHEERTHA JOSHI
RESIDING AT F-302 SLV SPLENDOUR
HARINAGAR CROSS
KOTHANUR MAIN ROAD
KONANANKUNTE
BENGALURU – 560 062.

10. VISHNU KIRAN CHIRALA
AGED ABOUT 49 YEARS
S/O HANUMANTHA RAO CHIRALA
RESIDING AT PLOT NO.122, ESWAR VILLA

NIZAMPET ROAD
HYDERABAD – 500 090.

11. PADMAJA ESSWARAPRAGADA
AGED ABOUT 44 YEARS
W/O VISHNU KIRAN CHIRALA
RESIDING AT PLOT NO.122, ESWAR VILLA
NIZAMPET ROAD, HYDERABAD – 500 090.

12. GOURVENDU SAXENA
AGED ABOUT 42 YEARS
S/O JITENDRA BABU SAXENA
RESIDING AT 23-24
TIRUPATI VIHAR IZZATNAGAR
BAREILLY UP – 243 122
REPRESENTED THROUGH
GPA HOLDER SHUBHRENDU SAXENA

13. KUMARAVEL KANDASAMI
AGED ABOUT 48 YEARS
S/O P.KANDASAMI
RESIDING AT 1560 FOUR OAKS CIR
SAN JOSE, CA 95131

14. TR DEEPAK
AGED ABOUT 54 YEARS
S/O LATE T.S.RAJESHEKAR
RESIDING AT D.NO.531, 5TH MAIN
7TH CROSS ROAD, K.S.TOWN
BENGALURU – 560 060.

15. REDDIPALLI ANILKUMAR
AGED ABOUT 42 YEARS
S/O R.KRISHNA REDDY
RESIDING AT D.NO.4/10C
REDDYPALLI (VILLAGE)
RODDAM MANDAL
SRI SATYASAI DISTRICT

ANDHRA PRADESH
PINCODE – 515 123.

16. M.SHANTI REDDY
AGED ABOUT 38 YEARS
W/O REDDIPALLI ANILKUMAR
RESIDING AT D.NO.4/10C
REDDYPALLI (VILLAGE)
RODDAM MANDAL
SRI SATYASAI DISTRICT
ANDHRA PRADESH
PINCODE – 515 123.

17. DHARMENDRAN PALANI SWAMY
AGED ABOUT 47 YEARS
S/O PALANI SWAMY
RESIDING AT FLAT NO.AQ203
WHITE MIST, BRIGADE OMEGA
1ST BLOCK BSK 6TH STAGE
BENGALURU – 560 062.

18. NAGARATHNA DHARMENDRAN
AGED ABOUT 44 YEARS
S/O DHARMENDRAN PALANI SWAMY
RESIDING AT FLAT NO.AQ203
WHITE MIST, BRIGADE OMEGA
1ST BLOCK, BSK 6TH STAGE
BENGALURU – 560 062.

19. SHAILA MANOHAR
W/O MANOHAR C.R.,
AGED ABOUT 47 YEARS
R/O 37, 38TH CROSS
EAST END ROAD
JAYANAGAR 9TH BLOCK
BENGALURU – 560 069.

20. ERROL JOHN NORONHA

S/O LATE SH.RONALD NORONHA
R/O HOUSE OF HIRANANDANI
CALGARY B 103, DEVANAHALLI
BENGALURU – 562 110.

21. RAJU SADHWANI
AGED ABOUT 71 YEARS
S/O KISHINCHAND SADHWANI
R/O 2311, 1 CROSS BDA LAYOUT
HAL 3RD STAGE EXTN., OPP.KEMP FORT
AIRPORT ROAD
BENGALURU – 560 017.

RESPONDENT NOS.2-21 ARE IMPLEADED VIDE COURT ORDER DATED 04.03.2026

... RESPONDENTS

(BY SRI K.ARVIND KAMATH, ASG A/W
MS.ANUPARNA BORDOLOI, CGC FOR R-1;
SRI AKASH BANTIA, ADVOCATE FOR R-2 TO 18;
SRI REYNOLD D.SOUZA, ADVOCATE FOR R-19;
SRI A.VELAN, ADVOCATE A/W
SRI SATHIES KUMAR AND SRI NAVPREET KAUR, ADVOCATES FOR R-20 AND R-21)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 528 OF BNSS, 2023 PRAYING TO DECLARATION THAT REGISTRATION OF CASE UNDER PREVENTION OF MONEY LAUNDERING ACT BY THE RESPONDENT IN ED CASE ECIR/BGZO/01/2025 VIDE ANNX-H7 TO THE WRIT PETITION AND ALL FURTHER PROCEEDINGS THEREOF ARE WHOLLY ILLEGAL; RESULTANTLY ISSUE AN APPROPRIATE WRIT OR ORDER TO QUASHING THE ECIR/BGZO/01/2025 VIDE ANNEXURE-H7 TO THE WRIT PETITION AND ALL FURTHER PROCEEDINGS THEREOF INCLUDING THE IMPUGNED ORDER OF PROVISIONAL ATTACHMENT DATED 04.10.2025 VIDE ANNEXURE-J TO THE WRIT PETITION ISSUED BY THE RESPONDENT ENFORCEMENT DIRECTORATE.

<u>IN WRIT PETITION No.20063 OF 2022</u>

<u>BETWEEN</u>:

1 . MR. VASUDEVAN
MANAGING DIRECTOR,
M/S.OZONE URBANA INFRA DEVELOPERS PVT. LTD.,
HAVING ITS CORPORATE OFFICE AT
NO. 38, ULSOOR ROAD,
BENGALURU – 560 042.

2 . MR.SAI PRASAD
DIRECTOR,
M/S.OZONE URBANA INFRA DEVELOPERS PVT. LTD.,
HAVING ITS CORPORATE OFFICE AT NO. 38,
ULSOOR ROAD,
BENGALURU – 560 042.

3 . SHRI. SHEKAR
CEO, DIRECTOR,
M/S. OZONE URBANA INFRA DEVELOPERS PVT. LTD.,
HAVING ITS CORPORATE OFFICE AT NO. 38,
ULSOOR ROAD, BENGALURU – 560 042.

... PETITIONERS

(BY SRI M.S.SHYAM SUNDAR, SR.ADVOCATE A/W
DR.VANDANA P.L., ADVOCATE)

<u>AND</u>:

1 . SHRI. PADMANABHA
S/O BASAPPA,
AGED ABOUT 45 YEARS,
PROPRIETOR OF JAGAJYOTHI EARTH MOVERS,
RAJAJI NAGAR,
BENGALURU – 560 010.

2 . STATE BY ULSOOR P.S.,
REPRESENTED BY HCGP,

HIGH COURT OF KARNATAKA,
BENGALURU – 560 001.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, SPP-I FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO QUASH THE PRIVATE COMPLAINT AND THE ENTIRE PROCEEDINGS IN P.C.R.NO.54725/2022 FOR THE OFFENCES PUNISHABLE UNDER SECTION 420, 341, 323, 504, 506 READ WITH SEC 34 OF THE INDIAN PENAL CODE, 1860 ARRAIGNING THE PRESENT PETITIONERS AS THE ACCUSED NO.1 TO 3 RESPECTIVELY, PENDING ON THE FILES OF THE HON'BLE X ADDL. CHIEF METROPOLITAN MAGISTRATE COURT AT BANGALORE VIDE ANNEXURE-A AND B.

IN WRIT PETITION No.25722 OF 2022

BETWEEN:

SHRI VASUDEVAN SATHYAMOORTHY
S/O SHRI V.SATHYAMOORTHY
AGED ABOUT 54 YEARS
MANAGING DIRECTOR OF
M/S.OZONE URBANA INFRA
DEVELOPERS PVT. LIMITED
NO.38, ULSOOR ROAD
BENGALURU – 560 042.

... PETITIONER

(BY SRI M.S.SHYAM SUNDAR, SR.ADVOCATE A/W
DR.VANDANA P.L., ADVOCATE)

AND:

THE DIRECTORATE OF ENFORCEMENT
BANGALORE ZONAL OFFICE
BMTC BUILDING, SHANTHINAGAR

K.H.ROAD, BENGALURU
REPRESENTED BY ITS
AUTHORIZED OFFICER.

... RESPONDENTS

(BY SRI K.ARVIND KAMATH, ASG A/W
MS.ANUPARNA BORDOLOI, CGC)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., DECLARE THAT REGISTRATION OF CASE UNDER PREVENTION OF MONEY LAUNDERING ACT BY THE RESPONDENT IN ED CASE ECIR/BGZO/70/2022 INCLUDING THE SUMMONING UNDER SECTION 50 OF PMLA VIDE ANNEXURE -A TO THE WP ON BASIS OF SUCH PREDICATE CASES THAT HAVE BEEN STAYED BY THIS HON'BLE COURT; QUASH ALL THE PROCEEDINGS TAKEN UP BY THE RESPONDENT ED AGAINST THE PETITIONER AND HIS COMPANY IN ED CASE ECIR/BGZO/70/2022 INCLUDING THE SUMMONING UNDER SECTION 50 OF PMLA VIDE ANNEXURE-A TO THE WP.

IN WRIT PETITION No.4968 OF 2024

BETWEEN:

1 . MR.VASUDEVAN SATHYAMOORTHY
(CHAIRMAN AND MANAGING DIRECTOR)
OZONE URBAN INFRA DEVELOPERS PVT. LTD.,
AGED ABOUT 56 YEARS,
RESIDING AT NO.32,
NORRIS ROAD, RICHMOND TOWN
BENGALURU – 560 025.

2 . MR.SATHYAMOORTHY SAI PRASAD
DIRECTOR
OZONE URBAN INFRA DEVELOPERS PVT. LTD.,
AGED ABOUT 58 YEARS,

RESIDING AT NISHANTH PRIME APARTMENTS
PRIME STREET, RICHMOND TOWN
OPP. HOCKEY STADIUM MUSEUM ROAD
BENGALURU – 560 025.

3 . PRIYA VASUDEVAN
W/O SHRI VASUDEVAN SATHYAMURTHY
AGED ABOUT 51 YEARS,
RESIDING AT NO.32, NORIS ROAD
RICHMOND TOWN
BENGALURU – 560 025.

4 . MR.S.BAASKARAN
AGED ABOUT 55 YEARS
HAVING REGISTERED OFFICE AT
NO.38, ULSOOR ROAD
BENGALURU – 560 042.

5 . MR.SRINIVASAN GOPALAN
AGED ABOUT 60 YEARS,
RESIDING AT NO.34, G2,
SONA PALACE APARTMENT
NORRIS ROAD, RICHMOND TOWN
BENGALURU – 560 025.

... PETITIONERS

(BY SRI M.S.SHYAM SUNDAR, SR.ADVOCATE A/W
DR.VANDANA P.L., ADVOCATE)

AND:

1 . STATE BY DEVANAHALLI P.S.,
REPRESENTED BY HCGP
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

2 . SMT.BHAVANASADHVANI
AGED ABOUT 68 YEARS,

RESIDING AT 3RD STAGE
OPPOSITE TO AXTON,
RED FORT ROAD, HAL
BENGALURU – 562 110.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, SPP-I, FOR R-1;
SRI A.VELAN, ADVOCATE A/W
SRI SATHIES KUMAR, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO QUASH THE COMPLAINT AND FIR IN CRIME NO. 19/2024 DATED 31/01/2024 OF RESPONDENT DEVANAHALLI POLICE STATION PENDING ON THE FILE OF HON'BLE CJ AND JMFC, DEVANAHALLI, BANGALORE RURAL DISTRICT, FOR THE ALLEGED OFFENCES UNDER SEC. 406, 420, READ WITH SECTION 149 AND UNDER SECTION 15 OF THE KARNATAKA OWNERSHIP FLATS (REGULATION OF THE PROMOTION OF CONSTRUCTIONS SALE MANAGEMENT AND TRANSFER) ACT, 1972 ARRAIGNING THE PRESENT PETITIONERS AS ACCUSED NO. 1 TO 5 RESPECTIVELY (VIDE ANNEXURE-B AND A).

IN WRIT PETITION No.27587 OF 2024

BETWEEN:

1 . MR.VASUDEVAN SATHYAMOORTHY
(CHAIRMAN AND MANAGING DIRECTOR)
OZONE URBAN INFRA DEVELOPERS PVT. LTD.
AGED ABOUT 56 YEARS,
RESIDING AT NO.32
NORRIS ROAD, RICHMOND TOWN,
BENGALURU – 560 025.
COMPANY INCORPORATED UNDER
THE COMPANIES ACT 1956.

2 . MRS.SATHYAMOORTHY SAI PRASAD
DIRECTOR,
OZONE URBAN INFRA DEVELOPERS PVT. LTD.,
AGED ABOUT 50 YEARS,
RESIDING AT NISHANTH PRIME APARTMENTS,
PRIME STREET, RICHMOND TOWN,
OPP. HOCKEY STADIUM, MUSEUM ROAD,
BENGALURU – 560 025.
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956.

3 . DURBHAKULA VAMSI SAI
OZONE URBAN INFRA DEVELOPERS PVT. LTD.
AGED ABOUT 50 YEARS,
RESIDING AT NISHANTH PRIME APARTMENTS,
PRIME STREET, RICHMOND TOWN,
OPP. HOCKEY STADIUM, MUSEUM ROAD,
BENGALURU – 560 025.
COMPANY INCORPORATED UNDER
THE COMPNAY ACT, 1956.

... PETITIONERS

(BY SRI M.S.SHYAM SUNDAR, SR.ADVOCATE A/W
DR.VANDANA P.L., ADVOCATE)

AND:

1 . STATE OF KARNATAKA
REPRESENTED BY HGCP
HIGH COURT OF KARNATAKA,
BENGALURU – 560 001.

2 . SHASHIKANTA GUPTHA
S/O SANTHOSH KUMAR GUPTHA,
AGED ABOUT 39 YEARS,
RESIDING AT NO.101, SRI RAM APARTMENT,
BHATIYA ROAD, ULLASA NAGAR , THANE CITY,
MAHARASHTRA – 421 004.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, SPP-I FOR R-1;
SRI S.K.RAVI, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 528 OF BNSS, 2023 (482 OF CR.P.C.,) PRAYING TO ISSUE APPROPRIATE WRIT AND ORDER OR DIRECTION QUASHING THE COMPLAINT DATED 28.09.2024 LODGED BY THE R-2, THE RESULTANT FIR IN CRIME NO. 161/2024 OF DEVANAHALLI POLICE STATION FOR THE ALLEGED OFFENCES UNDER SEC 406, 420 IPC NOW PENDING BEFORE THE HON'BLE CJ AND JMFC, DEVANAHALLI, BENGALURU RURAL, VIDE ANNEXURE B AND A ARRAIGNING THE PETITIONER AS ACCUSED NO. 2, 3 AND 4 RESPECTIVELY.

IN WRIT PETITION No.34702 OF 2024

BETWEEN:

1 . M/S. OZONE URBANA INFRA DEVELOPERS PVT. LTD.,
CIN: U45209KA2006PTC038236
THROUGH ITS MANAGING DIRECTOR
HAVING ITS CORPORATE OFFICE
AT NO.38, ULSOOR ROAD
BENGALURU – 560 042.

2 . MR.VASUDEVAN SATHYAMURTHY
S/O SATHYAMURTHY VISHWANATHAN
AGED ABOUT 60 YEARS
DIRECTOR, OZONE URBAN INFRA
DEVELOPERS PVT. LTD.,
RESIDING AT NO. 32, NORRIS ROAD
RICHMOND TOWN
BENGALURU – 560 025.

3 . PRIYA VASUDEVAN
W/O VASUDEVAN SATHYAMURHTY
AGED ABOUT 55 YEARS

RESIDING AT NO.32,
NORRIS ROAD
RICHMOND TOWN
BENGALURU – 560 025.

4 . MR. SATHYA MOORTHY SAI PRASAD
S/O VELLORE SATHYA MOORTHY
DIRECTOR, OZONE URBANA INFRA
DEVELOPERS PVT. LTD.,
RESIDING AT NO. 103
NISHANTH PRIME APTS, 5
PRIME STREET, RICHMOND TOWN
MUSEUM ROAD
BENGALURU – 560 025.

5 . BHASKARAN
S/O SHRI A V SUBAMANYA
AGED ABOUT 54 YEARS
HAVING ITS CORPORATE OFICE AT 38
ULSOOR ROAD
BENGALURU 560 042

... PETITIONERS

(BY SRI M.S.SHYAM SUNDAR, SR.ADVOCATE A/W
DR.VANDANA P.L., ADVOCATE)

AND:

1 . STATE OF KARNATAKA BY
BENGALURU CITY CCB POLICE
REPRESENTED BY HCGP
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

2 . MR. ERROL JOHN NARHONA
AGED ABOUT 59 YEARS
HAVING ADDRESS AT
OZONE URBANA BUYERS ASSOCIATION

NO.B 103, CALGARY HOUSE OF HIRANANDANI
DEVANAHALLI
BENGALURU – 562 110.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, SPP-I FOR R-1;
SRI A.VELAN, ADVOCATE A/W
SRI SATHIES KUMAR, ADVOCATE FOR R-2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO ISSUE AN APPROPRIATE WRIT, ORDER OR DIRECTION QUASHING THE COMPLAINT DATED 18.10.2024 AND FIR CRIME NO. 77/2024 OF RESPONDENT CCB POLICE STATION FOR THE ALLEGED OFFENCES PUNISHABLE UNDER SECTION 406, 409, 420, 120(B), READ WITH SECTION 34 OF IPC AND SECTION 9 OF KPID ACT ARRAIGNING THE PRESENT PETITIONERS AS ACCUSED NO. 1 TO 4 AND 10 RESPECTIVELY PENDING THE FILE OF HON'BLE PRINCIPAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE (CCH1) (ANNEXURES - B AND A TO THE PETITION).

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioners in all these cases are the Company/Ozone Urbana Infra Developers Private Limited ('the Company' for short) and its office bearers. The respondents - complainants are primarily home buyers who have registered complaints before the jurisdictional Police.

2. Before embarking upon narration of facts, I deem it appropriate to notice the protagonists in each of the petitions. Writ Petition No.31006 of 2025 is filed by the Company. The respondent No.1 is the Directorate of Enforcement and respondents 2 to 21 are home buyers; Writ Petition Nos.34702, 27587, 4968 of 2024 are filed by the Company and its office bearers; Writ Petition No. 25722 of 2022 is filed by the Chairman and Managing Director of the Company; and Writ Petition No. 20063 of 2022 is filed by the Company and its office bearers. Respondent No. 2 in Writ Petition No.34702 of 2024 is Ozone Urbana Buyers Welfare Association; respondent No.2 in Writ Petition No.27587 of 2024 is one Sashikanth Gupta, a home buyer; respondent No.2 in Writ Petition

No.4948 of 2024 is one Smt. Bhavanasadhvani, also a home buyer; respondent in Writ Petition No.25722 of 2022 is the Directorate of Enforcement and respondent No.1 in Writ Petition No.20063 of 2022 is one Padmanabha.

3. Facts, in brief, germane are as follows: -

The Company - Ozone Urbana Infra Developers Private Limited is said to be a real estate builder and developer involved in developing a township called "Ozone Urbana". The development Ozone Urbana contemplated 12 projects consisting of variety of properties – single unit houses, low and mid rise units, high rise apartments and surrounding infrastructure amenities for which lands came to be acquired between 2006 and 2007 and the construction commenced in the year 2012. It is this project that forms the fulcrum of the *lis*. The parties to the *lis* are Vasudevan Sathamoorthy, Promoter, Chairman and Managing Director of the Company; Priya Vasudevan – wife of Vasudevan Sathyamoorthy; Sathyamoorthy Sai Prasad, Director of the Company; Shekar, Chief Executive Officer and Director of the Company; and Srinivasan Gopalan and other Directors. The respondents in most of the petitions are the *de facto* complainants who are home buyers; in one of the case is Ozone Urbana Buyers Welfare Association. Apart from the *de facto* complainants the respondents are either the jurisdictional police or the Directorate of Enforcement. Since the issue commences from a petition filed in the year 2022, I deem it appropriate to begin the narration yearwise.

4. **Facts in Writ Petition No.20063 of 2022:**

4.1. The complainant – respondent No.1 in the case at hand is the proprietor of a company by the name J.J. Earth Movers. A private complaint is filed invoking Section 200 of the Cr.P.C. against few of the accused in this and other companion cases who are the petitioners herein. These accused are the office bearers of the Company. The allegation is that the accused had approached the complainant for excavation and civil works and had handed over 12 projects to the complainant between the years 2013 to 2019-2020 for a sum of ₹4,40,50,000/-. It is the case of the complainant herein that despite completing the project in time, the accused made a payment of ₹2,49,00,000/- only and the remaining is not paid.

4.2. The accused are said to have dragged the payment on account of COVID-19 for over two years and therefore, the complainant was constrained to approach H.A.L. Police Station for registering the complaint but they refused to register the complaint. It is then the complainant approaches the learned Magistrate in P.C.R.No.54725 of 2022 who refers the matter for investigation under Section 156(3) of the Cr.P.C. The subject petition is preferred calling question the entire proceedings in P.C.R.No.54725 of 2022. A coordinate Bench of this Court on 21-10-2022 grants an interim order of stay of investigation and all further proceedings in P.C.R.No.54725 of 2022. The said interim order is in subsistence even today.

5. **Facts in Writ Petition No.25722 of 2022:**

5.1. The complainant - respondent in the case at hand is the Directorate of Enforcement and the petitioner is the Chairman and Managing Director of the Company. The Company had undertaken the construction of residential projects forming part of it's project titled Ozone Urbana. Due to delay in completion of the project and handing over possession of the residential units, several homebuyers initiate criminal proceedings against the Company, its Directors, including its Chairman and Managing Director, and other officials of the Company.

5.2. One such proceeding arose from an FIR registered in Crime No.183 of 2021 on 21-12-2021 for the offences punishable under Sections 403, 406, 420 and 120B of the IPC. The allegation in the said crime is that the complainant and his wife, being homebuyers, had booked a flat in Ozone Urbana by obtaining a housing loan, the amount of which was being directly disbursed to the Company. Though the Company had undertaken to complete the construction and deliver possession, the Company failed to deliver possession of the flat. On this score, Crime No.183 of 2021 is registered for the aforementioned offences.

5.3. Another proceeding is instituted by filing a private complaint under Section 200 of the Cr.P.C. by about 128 homebuyers in PCR No.20 of 2022 on 06-04-2022 alleging that the petitioner and other accused had induced the homebuyers to purchase units in Ozone Urbana, collected substantial amounts towards the sale consideration and obtained direct disbursement of home loans in favour of the Company. Despite the receipt of nearly 95% of the sale consideration, the construction is said to have not been completed. The accused persons, by delaying the construction, are alleged to have held up the hard-earned money of the complainants and failed to honour their obligations under the subvention schemes, tripartite agreements, buy-back option, etc. The funds received for the project Ozone Urbana were also diverted to other projects and sister concerns of the Company. All these acts constituted the offences punishable under Sections 406, 409, 417, 418, 420 and 120-B read with Section 34 of the IPC and Section 9 of the Karnataka Protection of Interest of Depositors in Financial Establishments Act, 2004 ('KPIDFE Act' for short). The concerned Court, by order dated 26-05-2022, referred the complaint for investigation under Section 156(3) of the Cr.P.C., pursuant to which an FIR in Crime No.143 of 2022 comes to be registered on 17-07-2022 for the aforementioned offences.

5.4. On the predicate offence being registered in Crime No.183 of 2021 and Crime No.143 of 2022 an Enforcement Case Information Report ('ECIR' for short) in ECIR No.BGZO/70/2022

(‘2022 ECIR’ for short) is registered on 12-12-2022 by the Directorate of Enforcement. In connection with the said ECIR, summons under Section 50 of the Prevention of Money Laundering Act, 2002 (‘Act’ for short) come to be issued to the petitioner on 20-12-2022. Challenging the proceedings, initiated by the Directorate of Enforcement, arising from the 2022 ECIR and the summons issued thereafter, the petitioner is before this Court in the subject petition. A coordinate Bench of this Court on 22-12-2022, grants an interim order staying the summons issued by the Directorate of Enforcement, which is subsisting even today.

6. **Facts in Writ Petition No.4968 of 2024:**

6.1. The *de facto* complainant – respondent No.2 in the case at hand is a home buyer named one Smt. Bhavanasadhvani. A complaint comes to be filed for several offences including cheating and criminal breach of trust by the complainants who are Senior Citizens. The said complaint becomes a crime in Crime No.19 of 2024. The allegation in the complaint is that the office bearers of the Company had entered into a sale agreement with the complainants for purchase of a flat in their township named “Ozone

Urbana Pavilion". An amount of ₹64,52,418/- was said to have been made in full as demanded by the Company. However, no flat was handed over within the time stipulated, as the construction was not completed and required certificates, permissions and licences were not taken from the authorities. While booking the flat two cheques were issued for ₹3,00,000/- and ₹2,81,275/- by the complainants. Whenever the complainants made enquiries regarding the status of construction of the apartments, the complainants were given only excuses without any proper response. 10 years pass by after the initial booking for the apartment and full payment of the amount. Despite this, there was no hope of getting the flat.

6.2. Then the complainants invoked two jurisdictions - one before the Real Estate Regulatory Authority ('RERA' for short) and the other by registering the subject crime for the offences punishable under Sections 406, 420 and 149 of the IPC. In the case at hand, the company was not made a party but office bearers were. Aggrieved by the registration of crime in Crime No.19 of 2024 the subject petition is preferred. A coordinate Bench of this Court on 19-02-2024, grants an interim order of stay of further investigation in Crime No.19 of 2024, which is subsisting even today.

7. **Facts in Writ Petition No.27587 of 2024:**

7.1. The *de facto* complainant – respondent No.2 in the case at hand is also a home buyer. It is the case of the complainant that he was induced into purchasing a flat in the project "Ozone Urbana Avenue" developed by the Company through social media advertisements promising quality plots with requisite facilities. The complainant had approached the Company in the year 2017 and paid an advance towards the purchase of the flat. A sale agreement is subsequently entered into in the year 2018, pursuant to which the complainant obtains a bank loan and pays the entire sale consideration. It is the case of the complainant that development of the allotted flat was not completed within the time and later on enquiry it is learnt that the Company had sold the flat to a third person despite taking the entire consideration from the hands of the complainant. The total amount that was taken by the Company from the complainant in the subject petition for purchase of the flat is said to be ₹1,32,10,000/-. The constructed flat is not handed over to the complainant nor is the amount returned which was taken way back in the year 2017. The further allegation is that the license to continue with the development of the project given to the Company itself was withdrawn. Therefore, the complainant registers the complaint against the petitioners which becomes a crime in Crime No.161 of 2024 for the offences punishable under Sections 406 and 420 of the IPC. The subject petition is preferred seeking quashment of the said crime and an interim order of stay of investigation in Crime No.161 of 2024 is granted by the coordinate Bench on 27-02-2025. The same is subsisting even today.

8. **Facts in Writ Petition No.34702 of 2024:**

8.1. The 2nd respondent who is the complainant, is the President of Ozone Urbana Buyers Welfare Association. A complaint comes to be registered on 18-10-2024 alleging that the members of the complainant's Association had purchased flats and plots in Company's project named Ozone Urbana Township which commenced in the year 2012 with projection of 1800 units and was promised completion by 2017. The project remains substantially incomplete as only 49% of the construction has taken place to-date. The home buyers are said to have been lured through subvention schemes. The Directors and officials of the Company are also said to have induced the complainants through representations of timely possession and facilitated loans from banks and housing finance companies through tripartite agreements, sub-vention schemes and buy-back schemes. It is alleged that, in collusion with the officials of the Company, the banks released substantial portions of the loan amounts to the Company, in some cases up to 90%, without adequately verifying the progress of construction, the title, or the financial position of the project. The Company is also alleged to have assured the buyers that it would bear the pre-EMI/EMI payments until handing over the possession. However, the Company subsequently stopped making such payments, resulting in the home buyers being compelled to bear the EMI payments.

8.2. The complainant narrates that today there is neither the home nor the money and the banks have initiated proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (‘SARFAESI Act’ for short) for non-payment of the loan amounts. Several other allegations including offences under Section 9 of the KPIDFE Act are also alleged against the petitioner. This forms the fulcrum of the crime in Crime No.77 of 2024 for the offences punishable under Sections 406, 409, 420, 120B and 34 of the IPC and Section 9 of the KPIDFE Act. Owing to the fact that all other proceedings are stayed, this Court granted an interim order of stay of investigation in Crime No.77 of 2024 on the score that initiation of proceedings under Section 9 of the KPIDFE Act cannot be laid against the accused – petitioners herein since they are developers and not a financial institution as provided under the KPIDFE Act.

9. **Facts in Writ Petition No.31006 of 2025:**

9.1. The last of the case filed is Writ Petition No.31006 of 2025. What is sought in the case at hand is quashing of an ECIR bearing No.ECIR/BGZO/01/2025 ('2025 ECIR' for short) registered by the Directorate of Enforcement in the year 2025 and the subsequent Provisional Attachment Order ('PAO' for short) issued under Section 5(1) of the Act. The 2025 ECIR is registered by the Directorate of Enforcement based upon five crimes which are Crime Nos.183 of 2021; 19 of 2024; 77 of 2024; 161 of 2024 and 271 of

2024. Of these five crimes, Crime Nos.19 of 2024; 77 of 2024 and 161 of 2024 are challenged in the companion petitions i.e., W.P.Nos.4968 of 2024; 34702 of 2024 and 27587 of 2024, which are stayed by this Court. Crime No.183 of 2021 comes to be quashed by a co-ordinate Bench of this Court in Crl.P.No.245 of 2022 vide order dated 07-03-2024, on account of settlement between the parties before the RERA and Crime No.271 of 2024 arising out of a private complaint in P.C.R.No.8537 of 2024 is quashed by a co-ordinate Bench of this Court in W.P.No.27473 of 2024 vide order dated 23-09-2024 on account of lack of jurisdiction by the concerned Court to entertain the complaint. However, the private complaint still remains.

9.2. Subsequently upon registration of the 2025 ECIR the Directorate of Enforcement conducts search and seizure proceedings on 01-08-2025 and 02-08-2025. During the search and seizure proceedings digital devices and books of account are gathered from the residence and office premises of the Company and its office bearers. On 04-08-2025 summons are issued under Section 50 of the Act to the petitioner.

9.3. In the interregnum, several proceedings are instituted before the Apex Court in SLP(C)No.7649 of 2023. The said case was filed by homebuyers, who claimed that they were being forced by banks to pay EMI's without having obtained possession of flats due to delay by the builders and developers. Several similar cases come to be filed before the Apex Court by similarly aggrieved home buyers against various builders and developers and also against the banks and housing finance companies, all of which are tagged to the afore-mentioned case. A case is also said to have been filed by home buyers of the Company which is tagged to the aforesaid case. Between 2023 to 2026 several orders and directions are issued by the Apex Court in the said case leading to registration of an FIR by the CBI in FIR No.RC2192025E0031 for the offences punishable under Sections 420 read with 120B of the IPC and Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 ('PC Act' for short).

9.4. This CBI FIR is then added to the 2025 ECIR by way of an addendum dated 25-09-2025. The PAO is then issued under

Section 5(1) of the Act by the Directorate of Enforcement on 04-10-2025, attaching the properties belonging to the Company, Mr. Vasudevan Sathyamoorthy and Mrs.Priya Vasudevan. On the same date a press release is also issued stating that Rs.423.38 Crores is attached in connection with the investigation against the Company. Challenging the registration of the 2025 ECIR and the issuance of the subsequent PAO, the petitioner is before this Court in the subject petition.

10. Heard the learned Senior Counsel Sri M.S. Shyam Sundar for learned Counsel Smt. Vandana P.L. appearing for the petitioners in all the petitions; the learned Additional Solicitor General Sri K. Arvind Kamath along with the learned Central Government Counsel Ms. Anuparna Bordoloi, appearing for the respondent – Directorate of Enforcement in Writ Petition Nos.25722 of 2022 and 31006 of 2025; learned Special Public Prosecutor – I , Sri B.N. Jagadeesha appearing for the respondent – State in Writ Petition Nos.20063 of 2022, 4968 of 2024, 27587 of 2024 and 34702 of 2024; learned Counsel Sri A. Velan appearing for the respondent No.2 in Writ Petition Nos.4968 of 2024 and 34702 of 2024 and

respondent Nos.20 and 21 in Writ Petition No.31006 of 2025; learned Counsel Sri Akash Bantia appearing for respondent Nos.2 to 18 in Writ Petition No.31006 of 2025; learned Counsel Sri Renoyld D'zouza appearing for the respondent No.19 in Writ Petition No.31006 of 2025 and learned Counsel Sri S.K. Ravi appearing for the respondent No.2 in Writ Petition No.27587 of 2024. The respondent No.1 in Writ Petition No.20063 of 2022 though served, stands unrepresented.

<u>SUBMISSIONS:</u>

PETITIONERS:

11. The learned Senior Counsel, Sri M.S. Shyam Sundar, appearing for the petitioners in all the cases, would submit petition-wise as follows:

11.1. **Writ Petition No.20063 of 2022:**

11.1.1. The learned Senior Counsel appearing for the petitioners would submit that the very foundation of the complaint discloses a civil dispute, as it arises out of the award of work contracts, execution of contractual works, raising of invoices/bills and alleged failure to clear the outstanding amounts. He would submit that the complainant has also instituted O.S.No.128 of 2023 seeking recovery of the very same amounts which form the subject matter of the private complaint, thereby demonstrating that the cause of action in the civil and criminal proceedings is identical. According to the learned Counsel, the allegations, even if taken at their face value, do not satisfy the essential ingredients of Sections 406 and 420 of the IPC. He would therefore contend that the continuation of the criminal proceedings, arising out of what is essentially a contractual and recovery dispute, would amount to an abuse of the process of law.

11.2. **Writ Petition No.25722 of 2022**

11.2.1. The learned Senior Counsel for the petitioners would submit that the 2022 ECIR and the consequential actions of the Enforcement Directorate are illegal, as the ECIR is founded on several complaints arising from the same set of facts, resulting in multiple proceedings thereby exposing the petitioners to double jeopardy under the guise of proceedings under the Act. Further, the Enforcement Directorate has neither properly identified the alleged "proceeds of crime" nor recorded sufficient material giving rise to the requisite reasons to believe against the petitioners. On this score, the learned Senior Counsel would seek for quashing of the proceedings arising from the 2022 ECIR and the subsequent summons issued under Section 50 of the Act.

11.3. **Writ Petition No.4968 of 2024:**

11.3.1. The learned Senior Counsel would submit that the dispute is purely civil and contractual in nature and that the essential ingredients of Sections 406 and 420 of the IPC are absent. There is no allegation of deception or fraudulent intention from the inception of the transaction, or of any false representation made by the petitioners. He would contend that there is neither entrustment nor dishonest misappropriation to attract Section 406 of the IPC, and that payment of consideration towards purchase of a flat is part of a commercial transaction. The proceedings before the RERA and the execution proceedings, according to him, further demonstrate the civil character of the dispute. He would submit that Section 15 of the Karnataka Ownership Flats (Regulation of Promotion, Construction, Sale, Management and Transfer) Act, 1972

('Karnataka Ownership of Flats Act' for short), being non-penal in nature, cannot create criminal liability. There are also no specific allegations against the Directors, the allegations being vague and omnibus. Further, the Company has not been arraigned as an accused in the subject crime without due to which the offence against the petitioners cannot be permitted to continue.

11.3.2. Mere delay in completion of the project, according to the learned Senior Counsel, cannot constitute cheating, particularly when the FIR is lodged after an inordinate and unexplained delay. He would further contend that vicarious criminal liability cannot be fastened on the Directors in the absence of a statutory provision and that the FIR discloses, at the highest, a recovery dispute. The complainants, having already availed the remedy under the RERA, cannot pursue parallel criminal proceedings on the same cause of action. He would accordingly submit that continuation of the investigation amounts to an abuse of the process of law and that the case falls within the categories enunciated in **STATE OF HARYANA v. BHAJAN LAL** reported in **1992 Supp (1) SCC 335** warranting quashing of the proceedings.

11.4. **Writ Petition No.27587 of 2024 :**

11.4.1. The learned Senior Counsel appearing for the petitioners would submit that a perusal of the complaint, would disclose that the dispute is purely civil and contractual in nature. There is no material to demonstrate dishonest intention at the inception of the transaction, an essential ingredient of cheating. Further, the agreement itself contemplates for instances of delay, cancellation and refund, while the ingredients of criminal breach of trust are wholly absent. The tripartite loan agreement further evidences the commercial nature of the transaction. The complaint proceeds on the erroneous premise that a registered sale deed had been executed in favour of the complainant, when admittedly none was executed. Further, the contracting Company has not been impleaded. The subsequent allegations regarding the apartment and the delay in lodging the complaint do not alter the essentially civil character of the dispute. Therefore, on this score the learned Senior Counsel would submit that continuation of the criminal proceedings against the petitioner would amount to nothing but an abuse of the process of law.

11.5. **Writ Petition No.34702 of 2022:**

11.5.1 The learned Senior Counsel appearing for the petitioners would submit that the present proceedings are an attempt to give a criminal colour to what is essentially a civil, contractual and insolvency-related dispute. He would submit that, once the police failed to act, the complainants had the remedy of pursuing the private complaint before the learned Magistrate and could not, on the very same set of facts, institute another complaint resulting in the registration of the impugned crime. Private Complaint in PCR No.20 of 2022 had already been filed on the same facts, pursuant to which Crime No.143 of 2022 came to be registered and was subsequently quashed by a coordinate Bench of this Court in W.P.No.14484 of 2022 for failure to file an affidavit in compliance with the judgment of the Apex Court in the case of **PRIYANKA SRIVASTAVA & ANR. v. STATE OF U.P. & ORS.**[1], while the private complaint itself continued to remain pending. Instead of pursuing the said private complaint, the complainants have instituted the present proceedings on the very same allegations.

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[1] **(2015) 6 SCC 287**

11.5.2. He would further contend that invocation of the KPIDFE Act is wholly without jurisdiction, as home buyers do not fall within the ambit of "depositors" or "investors" under the KPIDFE Act. The complainants having projected themselves as purchasers before the RERA and as financial creditors before the National Company Law Tribunal ('NCLT' for short), cannot, for the very same transaction, claim the status of depositors under the KPIDFE Act. Such mutually inconsistent stands, according to the learned Senior Counsel, render the invocation of the KPIDFE Act artificial and unsustainable. He would further submit that, with the commencement of the corporate insolvency resolution process ('CIRP' for short), the complainants are required to pursue their claims within the insolvency framework and, in view of Section 238 of the Insolvency and Bankruptcy Code, 2016 ('IBC' for short) the provisions of the IBC have overriding effect over inconsistent laws. The present criminal proceedings, founded upon the very same underlying claims and instituted in the backdrop of the ongoing insolvency proceedings, are therefore nothing but an attempt to exert pressure and secure leverage outside the insolvency mechanism. He would accordingly submit that, particularly when the terms of settlement have also been fulfilled, continuation of the criminal proceedings would amount to an abuse of the process of law.

11.6. **Writ Petition Nos. 31006 of 2025**

11.6.1. The learned Senior Counsel for the petitioner would contend that the registration of the 2025 ECIR and the consequential proceedings under the Act are an attempt to circumvent the stay granted by this Court in respect of the 2022 ECIR, which was registered without there being no change in circumstances. The subsequent reliance on the CBI FIR which was added to the 2025 ECIR through an addendum is impermissible, as the same was not in existence when the 2025 ECIR was registered and concerns distinct allegations. The amounts received from homebuyers are ordinary business transactions and cannot be treated as proceeds of crime merely on account of delay or non-completion of projects. The Directorate of Enforcement has erroneously characterized legitimate transactions, including repayment of loans, payments to group entities, vendors and lenders, as diversion, layering and siphoning. The reasons to believe provided in the PAO fail to establish any nexus between the funds received from homebuyers and the alleged scheduled offence for the funds to be characterized as proceeds of crime.

11.6.2. It is further submitted that substantial amounts were utilized towards construction and pre-EMIs which material has been ignored by the Directorate of Enforcement. The attachment of the land parcels has no nexus with the alleged proceeds of crime, particularly as the lands were acquired prior to the development of the projects. The attachment of unsold inventory is prejudicial to the homebuyers themselves. Repayments to group entities and promoters of the Company were towards genuine inter-corporate loans and prior advances are incorrectly characterized as layering and siphoning. The findings in the PAO proceed on an erroneous appreciation of legitimate business transactions and without establishing the requisite nexus with the alleged proceeds of crime. On this score, the learned Senior Counsel would contend that the 2025 ECIR and the subsequent PAO deserve to be quashed.

RESPONDENTS:

HOME BUYERS:

12. *Per contra*, the learned counsel Sri A. Velan appearing for the home buyers/ *de facto* complainants i.e., respondent No.2 in Writ Petition Nos.4968 of 2024 and 34702 of 2024 and for the respondent No.20 and 21 in Writ Petition No.31006 of 2024, would vehemently refute the submissions in each of the cases contending as follows:

12.1. The petitioner – Company and it's directors are accused of large scale diversion and misappropriation of funds belonging to the home buyers. Multiple FIR's are filed against hem for the offences of cheating, breach of trust and fraud on various allegations including the double sale of residential units, creation of fictitious loan agreements and diversion of money through escrow accounts to related or offshore entities. The amounts involved exceed Rs.3,300 Crores and constitutes the "proceeds of crime" under the Act, leading to the Directorate of Enforcement initiating investigation under the Act. The subject petition has filed to paralyze the proceedings initiated by the Directorate of

Enforcement and interference at such a nascent sage would frustrate the object of the Act and all the petitioners to tamper with the evidence and manipulate accounts.

12.2. The allegations against the petitioners have wide public interest. The transactions involve systematic laundering of funds collected from home buyers, concealment of illegal gains and layering of money through shell entities. The Apex Court has also recognized the criminal element in similar builder – bank nexus matters in SLP(C)No.7649 of 2023.

12.3. It is his further submission that no amounts have been recovered pursuant to the order of the RERA or the settlements entered into as contended by the learned Senior Counsel for the petitioners, and consequently, the homebuyers have not received any payment. The terms of the settlements have also not been fulfilled.

12.4. The petitioners have instead after obtaining a stay in W.P. No. 14484 of 2022 arising from a crime filed by one of the home buyers, relied upon the same to secure similar orders in the other petitions before this Court.

13. The learned counsels Sri Akash Bantia, Sri Renoyld D'Souza and Sri S.K. Ravi also appearing for the home buyers/*de facto* complainants i.e., respondent Nos.2 to 18 and respondent No.19 in Writ Petition No.31006 of 2025 and respondent No.2 in Writ Petition No.27587 of 2024 respectively, would toe the lines of the learned Counsel Sri A. Velan in submitting that the subject petitions deserve to be dismissed on the ground that the petitioners have been committed fraud upon the home buyers and have lured them into investing in the project but have not delivered possession of the flats or apartments till date.

DIRECTORATE OF ENFORCEMENT:

14. The learned Additional Solicitor General, Sri K. Arvind Kamath appearing for the Directorate of Enforcement in Writ Petition Nos.25722 of 2022 and 31006 of 2025 would submit as follows:

14.1. The registration of an ECIR can be founded on more than one FIR. The 2025 ECIR is distinct from the earlier 2022 ECIR, as the predicate offences, transactions, entities and financial flows forming their respective bases are different. The existence of a single live FIR alleging the commission of scheduled offences is sufficient for initiation of proceedings under the Act. An ECIR being an internal document of the Directorate of Enforcement cannot be quashed like an FIR.

14.2. The pendency, stay or quashing of proceedings relating to a predicate offence does not, by itself, preclude investigation under the Act, particularly where fresh material disclosing laundering of proceeds of crime has come to light. Further, the CBI, pursuant to the directions of the Apex Court, has registered has registered an FIR against the petitioner - Company and others for offences including cheating, which forms part of the material being investigated under the Act.

14.3. The PAO has been issued on the basis of sufficient material and records sufficient reasons to believe to indicate that the properties represent proceeds of crime or equivalent value thereof and that there is a likelihood of dissipation of the assets. The allegations in the PAO include diversion and siphoning of funds received from homebuyers to other entities without any corresponding purpose connected with construction of the flats. The PAO is only a provisional and protective measure, and the validity of the attachment is required to be examined by the Adjudicating Authority under Section 8 of the Act, with a further statutory remedy before the Appellate Tribunal under Section 26 of the Act.

14.4. The proceedings have been initiated and the provisional attachment has been effected strictly in exercise of the statutory powers under the Act and in view of the efficacious alternative remedies available, this Court at the present stage ought not to interfere. On this score the learned Additional Solicitor General would seek for dismissal of the subject petitions.

STATE:

15. The learned State Public Prosecutor - I, Sri B.N. Jagadeesha, appearing for the respondent - State in Writ Petition Nos.20063 of 2022; 4986 of 2024; 27587 of 2024 and 34702 of 2024, would submit that the investigation in all

the crimes is still at a nascent stage and that a *prima facie* case is made out against the petitioners from a reading of the complaints in all the cases. Therefore, he would submit that the investigation ought not to be throttled at this stage and must be permitted to continue.

CONSIDERATION

16. I have bestowed my anxious consideration upon the submissions advanced by the respective learned counsel and have meticulously perused the material obtaining on record.

17. ***The issue that now falls for consideration is whether the crimes registered against the petitioners deserve to be obliterated and, as a consequence thereof, whether the ECIR's founded thereon and the provisional attachment orders that have followed suit would also warrant being quashed.***

18. Since the facts, allegations and proceedings have been narrated petition-wise, it would be both apposite and convenient that the consideration of the challenge also travels along the same

path. I, therefore, deem it appropriate to consider the petitions in seriatim, on the facts peculiar to each, against the backdrop of the law governing the field.

19. **Writ Petition No.20063 of 2022**:

19.1. The subject petition is not between the home buyer and the developer. It is between the proprietor of a company viz., J.J. Earth Movers and Ozone Urbana. The issue is not with regard to siphoning of funds of a home buyer or non-completion of projects or selling away apartments which were subject matter of agreements with third parties. The 2nd respondent/complainant and the Company had entered into a contract with regard to excavation and other civil works in 12 projects with the complainant between the years 2013 to 2020. The bills that were submitted by the complainant totally amounted to ₹4,40,50,000/-. It is the case of the complainant that despite repeated requests being made by the complainant seeking payment, the total amount is not paid. Non-payment of the amount towards contract or the work that is said to have been completed is projected to become a crime by registering a private complaint under Section 200 of the Cr.P.C. before the learned Magistrate. In the light of the issue springing from the complaint, I deem it appropriate to notice the complaint. The complaint reads as follows:

"....   ....

5. **The complainant submits that, in the year 2013 to 2019-20 the accused has given 12 projects to the complainant for a sum of Rs. 4,04,50,000/- (Rupees Four Crores, Four Lakhs Fifty Thousand Only), the complainant has completed the said project works in time, the accused has made the payment of Rs. 2,49,00,000/- (Rupees Two Crores Forty Nine Lakhs Only), and the balance amount of Rs. 1,32,00,000/- (Rupees One Crore Thirty Two Lakhs Only) the accused assured that, he will pay shorty.**

6. The complainant submits that, after several request made by the complainant, the accused has drag on the dates by saying one or the other pretext for the payment of the balance amount, and also informed that due to the Covid-19 effect, he has suffered a huge loss in business, and he seeks time with the complainant, the complainant has agreed for the same, thereafter 2 years the accused was not contacted the complainant, thereafter the complainant visited the accused office, at that time the accused No. 2 & 3 has requested the complainant that, they will pay the said amount within 5 months.

7. The complainant submits that, after completion of 5 months, the accused persons have not paid the said balance amount, on 05-05-2022 the complainant went to the accused office, at that time the accused person along with other person have started to abuse the complainant and threatened him that, kidnap him and kill him, if again he ask the balance amount, with great difficult the complainant has escaped, with the clutches of the accused. On the treat of the accused persons, the complainant has not lodged any complaint and waited till

20-05-2022. But the accused persons has failed to do the balance amount to the complainant.

8. The complainant submits that, on 20-05-2022 before the HAL police station, but the police officials have taken his complaint, and not issued any acknowledgment, and also not taken any action against the accused person. The copy of the complaint is herewith produce for the kind perusal of this Hon'ble Court.

9. The complainant submits that, thereafter on 07-06-2022 the complainant has lodged the complaint before the Commissioner of Police, Infantry Road Bangalore. The copy of the complaint and acknowledgment is herewith produce for the kind perusal of this Hon'ble Court. So far no action has been taken against him. Hence there is no alternative the complainant is hereby approaching this Hon'ble Court.

10. The complainant submits that, after completion of the entire work made by the complainant, the accused persons have intentionally not paid the full amount, they had paid partial amount, and balance amount they have assured that, they will pay shortly, but till today with an intention to cheat the complainant they have not paid the said balance amount in order to his wrongful gain.

11. The complainant submits that, the accused persons with an common intention to cheat the complainant, they have committed the offence punishable under section 420, 341, 323, 504, 506 R/w 34 of IPC.

12. The complainant submits that, the accused persons have local persons and highly influenced persons. Hence the police have colluded with accused persons and hence the complainant has no other alternative, hence approaching this Hon'ble Court.

13. The complainant submits that, the accused persons are having common intention for cheat the complainant and wrongful gain go grab the money illegally. Hence the accused is committed an offence punishable under section 420, 341, 504, 506 R/w 34 of IPC.

> 14. The complainant submits that, all the above said incidents took place on the complainant residence in the jurisdiction of the HAL police station.
>
> 15. The complainant submits that, this Hon'ble court got jurisdiction to try this matter."

(Emphasis added)

A mere perusal of the complaint would render it unmistakably clear that the predominant, if not the solitary, object behind setting the criminal law into motion is **recovery of money**. The complaint is sought to be given the colour and complexion of criminality by introducing an allegation that the petitioners threatened the complainant that, if he were to once again demand repayment, he would have to face consequences. This embellishment, however, cannot obscure what lies at the heart of the complaint. Paragraph 5 thereof makes the purpose conspicuous—it is the recovery of the alleged balance amount of ₹**1,32,00,000/-** that is sought to be achieved through the coercive machinery of criminal law.

19.2. It is too well settled to warrant elaborate reiteration that **criminal law cannot be converted into an engine for recovery of money**. A monetary claim, arising out of a transaction otherwise bearing the trappings of a contractual or civil dispute, cannot be dressed in the robes of a crime merely by employing expressions of threat, cheating or intimidation. The substance of the allegations, and not the linguistic embellishments with which the complaint is adorned, must guide the Court in discerning its true character.

19.3. The jurisprudential landscape is replete with pronouncements of the Apex Court cautioning against precisely such an exercise. The criminal justice system cannot be permitted to become a **debt-collection mechanism**, nor can the threat of investigation, arrest and prosecution be employed as leverage to compel payment of a disputed sum. Where the substratum of the complaint unmistakably reveals a claim for recovery of money emanating from a contractual transaction, a sprinkling of allegations intended to lend it a criminal hue would not, by itself, transform a civil dispute into a criminal offence. **What is civil in its genesis cannot be permitted to masquerade as criminal merely because criminal process promises greater coercive efficacy in securing repayment.**

19.4. The Apex Court in the case of **ANUKUL SINGH v. STATE OF UTTAR PRADESH**[2]**,** observes as follows:

> "....   ....
>
> **13.** The record reveals that within a short span, as many as eight FIRs were registered against the appellant. The gravamen of the allegations in the present FIR is that Respondent No. 2/complainant approached the appellant for a loan of Rs. 2,00,000/-, but was allegedly advanced only Rs. 1,40,000/-. It is further alleged that, in connection with the said transaction, an agreement to sell dated 09.11.1998 was executed in respect of a plot owned by the complainant, and that the appellant procured three cheques from Respondent No. 2, which, upon presentation, were dishonoured for insufficiency of funds. Even if accepted in entirety, these allegations disclose, at best, a civil dispute and do not *prima facie* constitute the essential ingredients of the criminal offences alleged.
>
> ....
>
> **16.** Despite this background, the police proceeded to file a charge sheet dated 16.04.2003 against the appellant for offences under sections 420, 467, and 468 IPC. Even if the allegations are assumed to be true, they unmistakably arise out of a commercial/contractual transaction relating to loan and repayment, which has been given a criminal colour. The case thus falls squarely within categories (1) and (7) of *Bhajan Lal*, namely, where the allegations do not disclose the commission of an offence, and where the proceedings are maliciously instituted with an ulterior motive. Continuation of such prosecution would amount to an abuse of process of law and consequently, warrant quashing under Section 482 Cr.P.C.
>
> **17. This Court has, in a long line of decisions, deprecated the tendency to convert civil disputes into criminal proceedings. In *Indian Oil Corporation* v. *NEPC India Ltd.*[17], it was held that criminal law cannot be used as a tool to settle scores in commercial or contractual matters, and that such misuse amounts to abuse of process. The following paragraphs from the decision are apposite**:

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[2] **2025 SCC OnLine SC 2060**

"9. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

*10. **While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged**."*

18. Similarly, in *Inder Mohan Goswami* v. *State of Uttaranchal*[18], it was emphasized that criminal prosecution must not be permitted as an instrument of harassment or private vendetta. In *Ganga Dhar Kalita* v. *State of Assam*[19], this Court again reiterated that criminal complaints in respect of property disputes of civil nature, filed solely to harass the accused or to exert pressure in civil litigation, constitute an abuse of process.

19. Most recently, in *Shailesh Kumar Singh @ Shailesh R. Singh* v. *State of Uttar Pradesh*[20], this Court

disapproved the practice of using criminal proceedings as a substitute for civil remedies, observing that money recovery cannot be enforced through criminal prosecution where the dispute is essentially civil. The Court cautioned High Courts not to direct settlements in such matters but to apply the settled principles in *Bhajan Lal*. The following paragraphs are relevant in this context:

> *"9. What we have been able to understand is that there is an oral agreement between the parties. The Respondent No. 4 might have parted with some money in accordance with the oral agreement and it may be that the appellant - herein owes a particular amount to be paid to the Respondent No. 4. However, the question is whether prima facie any offence of cheating could be said to have been committed by the appellant.*
>
> *10.* ***How many times the High Courts are to be reminded that to constitute an offence of cheating, there has to be something more than prima facie on record to indicate that the intention of the accused was to cheat the complainant right from the inception. The plain reading of the FIR does not disclose any element of criminality.***
>
> *11*___. The entire case is squarely covered by a recent pronouncement of this Court in the case of___ **"Delhi Race Club (1940) Limited *v.* State of Uttar Pradesh"**, ___(2024) 10 SCC 690. In the said decision, the entire law as to what constitutes cheating and criminal breach of trust respectively has been exhaustively explained. It appears that this very decision was relied upon by the learned counsel appearing for the petitioner before the High Court. However, instead of looking into the matter on its own merits, the High Court thought fit to direct the petitioner to go for mediation and that too by making payment of Rs. 25,00,000/- to the 4th respondent as a condition precedent. We fail to understand why the High Court should undertake such exercise. The High Court may either allow the petition saying that no offence is disclosed or may reject the petition saying that no case for quashing is made out. Why should the High Court make an attempt to help the complainant to___

recover the amount due and payable by the accused. It is for the Civil Court or Commercial Court as the case may be to look into in a suit that may be filed for recovery of money or in any other proceedings, be it under the Arbitration Act, 1996 or under the provisions of the IB Code, 2016.

12. ***Why the High Court was not able to understand that the entire dispute between the parties is of a civil nature****.*

13. We also enquired with the learned counsel appearing for the Respondent No. 4 whether his client has filed any civil suit or has initiated any other proceedings for recovery of the money. It appears that no civil suit has been filed for recovery of money till this date. Money cannot be recovered, more particularly, in a civil dispute between the parties by filing a First Information Report and seeking the help of the Police. This amounts to abuse of the process of law.

14. ***We could have said many things but we refrain from observing anything further. If the Respondent No. 4 has to recover a particular amount, he may file a civil suit or seek any other appropriate remedy available to him in law. He cannot be permitted to take recourse of criminal proceedings.***

15. ***We are quite disturbed by the manner in which the High Court has passed the impugned order. The High Court first directed the appellant to pay Rs. 25,00,000/- to the Respondent No. 4 and thereafter directed him to appear before the Mediation and Conciliation Centre for the purpose of settlement. That's not what is expected of a High Court to do in a Writ Petition filed under Article 226 of the Constitution or a miscellaneous application filed under Section 482 of the Criminal Procedure Code, 1973 for quashing of FIR or any other criminal proceedings. What is expected of the High Court is to look into the averments and the allegations levelled in the FIR along with the other material on record, if any. The High Court seems to have forgotten the well-settled principles***

> ***as enunciated in the decision of this Court in the "State of Haryana v. Bhajan Lal", 1992 Supp (1) SCC 335"***
>
> **20. Applying the above principles to the facts of the present case, it is manifest that the dispute - concerning repayment of loan money and the alleged coercion in execution of documents - is purely civil in character. The essential ingredients of cheating or forgery are not *prima facie* made out. The institution of multiple FIRs in quick succession, particularly after the appellant had already initiated lawful proceedings, reinforces the inference of mala fides**."

19.5. Subsequently, the Apex Court in the case of **PALINISWAMY VEERARAJA v. STATE OF KARNATAKA**[3], observes as follows:

> "... ....
>
> **12.** The appellants and the respondents are both business owners. They allegedly entered into an agreement where one party would make monetary investment and the other would supply textile goods. One party says that the relationship continued without any incident between 1995 and 2000 and it is only thereafter that disputes arose regarding the nature of arrangement particularly an attempt to make the agreement between the parties exclusive which the appellants were not in favour of, did the dispute arise. On the other hand, the other party says that they had entered into an agreement and the very terms of the initial agreement itself were not complied with i.e., sharing of profits in return of capital investment in so far as the trading of textiles in USA and Canada is concerned. **Either way, it is plain as day that the dispute between the parties concerns the business relationship or in other words concerning whether or not a joint venture stood established between them and if yes, the distribution of profits arising therefrom. That clearly is in the nature of civil dispute.**

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[3] **2026 SCC OnLine SC 940**

13. When it comes to alleged forgery of documents, why is it that the allegation came only in the Court in Bangalore and the suit filed before the District Court Illionis, does not make any mention of the same. After all it is before that Court that the alleged forged documents were filed. Still further, the report of the handwriting expert on which reliance is placed to prove that the documents were forged is dated prior to the judgment of the District Court i.e., 1st September 2009 and the judgment was entered on 2nd February 2004. It only stands to reason that if such hard, conclusive evidence was in the possession of the complainant, the same could have been furnished to the Court and if accepted, could have led to further punitive damages being awarded in his favour. This obviously was not done. It be clarified here itself that the sanctity of the report of the handwriting expert has not been examined by us and so we do not comment thereupon. It is only the timing or the sequence of events that renders the reliance placed thereon, suspect, in our considered view.

14. It is also a matter of record that for the reasons as recorded in the judgment, the civil suit of the complainant has also been dismissed. Well, we do not comment on the merits of that case and the complainant is obviously free to take recourse to the law as he may be advised if not already taken.

15. In the cumulative view of circumstances prevailing in this case, criminal action against the appellants would be contrary to the authority of law and therefore an abuse of process of law for the reason that the third round of further investigation as a consequence of which the chargesheet was filed, did not have the concerned Magistrate's approval. That apart, in view of ground (3) mentioned in Para 102 of *State of Haryana v. Bhajan Lal*, the FIR and subsequent proceedings which is the subject matter of the present appeal as mentioned in Para-1 are quashed and set aside.”

(Emphasis supplied at each instance)

In the light of the law declared by the Apex Court in the afore-quoted judgments, when the facts obtaining in the case at hand are placed on that touchstone, the conclusion becomes inescapable. The complaint instituted against these petitioners, being unmistakably animated by the object of recovery of money, cannot be permitted to travel through the corridors of criminal investigation and thereafter culminate in a criminal trial. To permit such proceedings to continue would be to lend the coercive arm of criminal law to what is, in substance, a monetary claim and thereby permit the criminal process to be employed as an instrument of recovery. For the aforesaid reasons, permitting further proceedings in P.C.R.No.54725 of 2022 would amount to an abuse of the process of law. The proceedings, therefore, deserve to be, and are, obliterated.

20. **Writ Petition No.25722 of 2022:**

20.1. In this petition what is challenged is the proceedings arising from an ECIR registered on 12-12-2022 and the summons issued under Section 50 of the Act subsequently. Since the predicate offences forming part of the 2022 ECIR arise from two crimes i.e. Crime No.183 of 2021 and Crime No.143 of 2022 the allegations in the said two crimes are required to be noticed. The gist of the allegations contained in Crime No.183 of 2021 read as follows:

> "ಪಿರ್ಯಾದುದಾರರಾದ ಶ್ರೀ ಮೋಹಿತ ಶರ್ಮಾ ಎಂಬುವವರು ಠಾಣೆಗೆ ಹಾಜರಾಗಿ ದೂರನ್ನು ನೀಡಿದ್ದು ಸದರಿ ದೂರಿನಲ್ಲಿ ತಾನು ಮೇಲ್ಕಂಡ ವಿಳಾಸದಲ್ಲಿ ವಾಸವಾಗಿದ್ದು, ಓಜೋನ್ ಅರ್ಬನ್, ಇನ್ಫ್ರಾ ಡೆವೆಲಪ್ಪರ್ಸ್, ಪ್ರೈ.ಲಿ. ಕಂಪನಿಯ ರೆಪ್ರಸೆಂಟೇಟಿವ್ ರವರು ನಮ್ಮನ್ನು ಸಂಪರ್ಕಿಸಿ ಓಜೋನ್ ಕಡೆಯಿಂದ ಉತ್ತಮ ಗುಣಮಟ್ಟದ ಅಪಾರ್ಟಮೆಂಟ್ ಗಳನ್ನು ನಿರ್ಮಾಣ ಮಾಡುತ್ತಿದ್ದು, ಅಪಾರ್ಟಮೆಂಟ್ಗಳನ್ನು ಖರೀದಿಸುವುದಾದರೆ ತಗಲುವ ಹಣವನ್ನು 10 : 80 : 10 ಪ್ರಮಾಣದಲ್ಲಿ ಪಾವತಿಸಬಹುದೆಂದು ನಂಬಿಸಿದ್ದು, ಇದರಿಂದ ನಾನು ಮತ್ತು ನನ್ನ ಪತ್ನಿ ಆಕಾಂಕ್ಷ ಶರ್ಮ ರವರು ಸೇರಿ ಸದರಿ ಓಜೋನ ಕಂಪನಿಯ ಪ್ರಾಜೆಕ್ಟ್‌ನ್ Aqua 2 ರಲ್ಲಿ, ಕೆ-202 ನಂಬರಿನ 3 BHK ಅಪಾರ್ಟಮೆಂಟನ್ನು ಬುಕ್ ಮಾಡಿ ರೂ 858855/-ರೂಪಾಯಿಗಳನ್ನು ಪಾವತಿಸಿ ದಿನಾಂಕ: 14/08/2015 ರಂದು ಅಗ್ರಿಮೆಂಟ್ ಮಾಡಿಕೊಂಡಿರುತ್ತೆವೆ. ನಂತರ ಕಂಪನಿಯ ಸಿಇಒ ಶ್ರೀನಿವಾಸ ಗೋಪಾಲನ ರವರು ನಮಗೆ HDFC ಲಿಮಿಟೆಡ್ ನ ರೆಪ್ರಸೆಂಟೇಟಿವ್ ರಾಜರಾಜೇಶ್ವರಿ ಎಂಬುವರನ್ನು ಪರಿಚಯಿಸಿ HDFC ಲಿಮಿಟೆಡ್ ನಿಂದ ಸಾಲವನ್ನು ಪಡೆಯುವಂತೆ ತಿಳಿಸಿದ್ದು ಅವರಂತೆ ನಾವು HDFC ಲಿಮಿಟೆಡ್ ನಿಂದ ಅಪಾರ್ಟಮೆಂಟ್ ಖರೀದಿಸಲು 68,2000/- ಸಾಲಕ್ಕಾಗಿ ನಾವು ಬ್ಯಾಂಕ್ ಓಜೋನ ಕಂಪನಿಯವರು ಮೂರು ಜನ ಸೇರಿ (ಟ್ರೈಪಾರ್ಟೇಟ್) ಅಗ್ರಿಮೆಂಟ್ ಅನ್ನು ಮಾಡಿಕೊಂಡಿರುತ್ತೇವೆ. ಅಗ್ರಿಮೆಂಟ್ ಪ್ರಕಾರ ಅಪಾರ್ಟಮೆಂಟ್ ಕಡೆವವರಿಗೂ ಸಾಲದ ಕಂತನ್ನು (ಇಎಂಐ) ಓಜೋನ ಕಂಪನಿಯವರೆ ಪಾವತಿಸುವುದಾಗಿ ಒಪ್ಪಿರುತ್ತಾರೆ. ಅಗ್ರಿಮೆಂಟ್ ಪ್ರಕಾರ ಅಪಾರ್ಟಮೆಂಟ್ ನ್ನು ಡಿಸೆಂಬರ್ 2017 ರಲ್ಲಿ ಮುಗಿಸಿ ನೀಡಬೇಕಿತ್ತು, ಆದರೆ ಅಪಾರ್ಟಮೆಂಟ್ ಗಳು ಇನ್ನೂ ನಿರ್ಮಾಣ ಹಂತದಲ್ಲಿದ್ದು ಕೇವಲ 60% ಕಾಮಗಾರಿಯು ಮುಗಿದಿರುತ್ತದೆ, ಸಾಲದ ಶರತ್ತು, ಪ್ರಕಾರ HDFC ರವರು ಹಂತ ಹಂತವಾಗಿ ಹಣವನ್ನು ಬಿಡುಗಡೆ ಮಾಡದೇ 90% ಹಣವನ್ನು ಅಂದರೆ ರೂ 72,14,855/- ರೂ. ಗಳನ್ನು HDFC ನವರು ನಮಗೆ ತಿಳಿಯದ ಹಾಗೆ ಓಜೋನ್ ಡೆವಲಪ್ಪರ್ಸ್ ಕಂಪನಿಯವರಿಗೆ ಬಿಡುಗಡೆ ಮಾಡಿರುತ್ತಾರೆ. ಅಗ್ರಿಮೆಂಟ್ ಪ್ರಕಾರ ಜೂನ್-2019 ರವರೆಗೆ ಪ್ರೀಮಿಯಂ ಅನ್ನು ಪಾವತಿಸಿದ್ದು ನಂತರ ಡಿಸೆಂಬರ್-2019 ರಲ್ಲಿ, ಅಪಾರ್ಟಮೆಂಟ್ ನ್ನು ಮುಗಿಸಿ ನಮಗೆ ನೀಡುವುದಾಗಿ ನಂತರ ಇ.ಎಂ.ಐ ಅನ್ನು ನಮಗೆ ಪಾವತಿಸುವಂತೆ ಮುಂದುವರೆಸುವಂತೆ ಸೂಚಿಸಿರುತ್ತಾರೆ. 2019ರಲ್ಲೂ ಕೂಡ ಅಪಾರ್ಟಮೆಂಟ್ ನ್ನು ನೀಡದ ಕಾರಣ HDFC ನಲ್ಲಿ ವಿಚಾರಿಸಿದಾಗ ನಮ್ಮ ಸಾಲದ ಸಂಪೂರ್ಣ ಹಣವನ್ನು ಓಜೋನ್ ಕಂಪನಿಗೆ ಪಾವತಿಸಿರುವುದಾಗಿ ತಿಳಿಸಿ ನಮ್ಮನ್ನು HDFC ನಿಂದ ಹೊರಗೆ ಕಳುಹಿಸಿರುತ್ತಾರೆ, 2017 ರಿಂದ 2021 ರವರೆಗೆ ಕಾಮಗಾರಿಗಳನ್ನು ಪೂರ್ಣ ಮಾಡದೆ ನಮಗೆ ಮೋಸ ಮಾಡಿರುವುದು ತಿಳಿದು ಓಜೋನ್ ಕಂಪನಿಗೆ ತೆರಳಿ ವಿಚಾರಿಸಿದಾಗ ಯಾರೂ ಕೂಡ ನಮಗೆ ಸರಿಯಾಗಿ

ಸ್ಪಂದಿಸದೇ ಸಿ. ಇ.ಓ ರವರನ್ನು ಬೇಟಿ ಮಾಡಲು ಹೇಳಿ ಹೊರಗೆ ಕಳುಹಿಸಿರುತ್ತಾರೆ, ನಂತರ ನಾನು ರೇರಾ ಗೆ ದೂರು ನೀಡಿದಾಗ ಜುಲೈ 2020 ರೊಳಗೆ ಕಾಮಗಾರಿಯನ್ನು ಮುಗಿಸಿಕೊಡುವುದಾಗಿ ಹಾಗು ದೂರನ್ನು ಹಿಂಪಡಿಯಲು ತಿಳಿಸಿದ್ದು, ನಂಬಿಕೆಯಿಂದ ನಾವು ದೂರನ್ನು ಹಿಪಡೆದುಕೊಂಡಿರುತ್ತೇವೆ. ಅಲ್ಲಿಯವರೆಗೂ ಓಜೋನ್ ಕಂಪನಿಯವರು ನಮಗೆ 18,19,185/- ರೂಗಳ ಕ್ರೆಡಿಟ್ ನೋಟ್ ನ್ನು ನೀಡಿರುತ್ತಾರೆ. ಆಕ್ಟೋಬರ್ 2021 ರಲ್ಲಿ, ನಾವು ಸದರಿ ಅಪಾರ್ಟಮೆಂಟಿನ ಕಾಮಗಾರಿಯನ್ನು ನೋಡಲು ಹೋದಾಗ ಸೆಕ್ಯೂರಿಟಿರವರು ನಮ್ಮನ್ನು ಹೊರಹಾಕಿರುತ್ತಾರೆ. ಆಗ ಕಂಪನಿಯನವರನ್ನು ಸಂಪರ್ಕಿಸಲು ಪ್ರಯತ್ನಿಸಿದಾಗ ಯಾರೂ ಕೂಡ ನಮಗೆ ಸ್ಪಂದಿಸಿರುವುದಿಲ್ಲ, ಕಂಪನಿಯವರು ಗ್ರಾಹಕರ ಹಣವನ್ನು ಬೇರೆ ಕಡೆಗೆ ಬಳಸಿ ಕೆಲಸವನ್ನು ಅಪೂರ್ಣ ಮಾಡಿರುತ್ತಾರೆ. ನಮಗೆ ನಂಬಿಕೆ ದ್ರೋಹ ಮಾಡಿ ವಂಚನೆ ಮೋಸ ಮಾಡಿರುವ ಕಂಪನಿ ಸಿ.ಇ.ಓ ಶ್ರೀನಿವಾಸ ಗೋಪಾಲನ್, ಡೈರೆಕ್ಟರಗಳಾದ ವಾಸುದೇವನ್ ಸತ್ಯಮೂರ್ತಿ ಪ್ರಿಯಾ ವಾಸುದೇವನ್, ರಾಜೀವ್ ಬಂಡಾರಿ,, ಸಿವುಸಾಗರ್ ನೇಮಿಚನ್ ದರ್ಬಕುಲ ವಂಶಿ, ಎಸ್.ಬಾಸ್ಕರನ್, ಗ್ರೇಟಾ ಹಾಗೂ ಹೆ.ಡಿ.ಎಫ್.ಸಿ ಲಿಮಿಟೆಡ್ ಅಧಿಕಾರಿಗಳ ವಿರುದ್ಧ ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಬೇಕೆಂದು ನೀಡಿದ ದೂರು ಇತ್ಯಾದಿ."

Crime No.183 of 2021 is registered under Section 403, 406, 420 and 120B of the IPC for the offences alleging that the complainants who are homebuyers who booked a flat in a project of the Company by paying the concerned amounts to the Company after obtaining a house loan were not delivered possession of the flat. The said crime is subsequently, challenged before this Court in Crl.P.245 of 2022 which comes to be quashed by a co-ordinate bench of this Court vide order dated 07-03-2024 which reads as follows:

> "This petition is filed by the petitioner accused Nos.1 and 2 under Section 482 of Cr.P.C. for quashing the FIR in Crime No.183/2021 registered by the Kodigehalli Police station for the offences punishable under Sections 403, 406, 420 and 120B of IPC, pending on the file of IV Additional Chief Metropolitan Magistrate, Bengaluru.

2. Heard the arguments of learned counsel for the petitioners, learned HCGP for the State and learned counsel for respondent No.2.

3. **During the pendency of the petition learned counsel for the petitioners and respondent No.2 submits the matter has been settled between the petitioners and respondent No.2 before the Real Estate Regulatory Authority (RERA), and he has no objection for quashing the criminal proceedings**

4. **Learned counsel for the petitioners submits the accused Nos.1 and 2 are the main accused who is MD and other two persons are only employees and there is no objections for the respondent to quash the entire FIR in view of the settlement between the parties before the RERA. Hence, conducting investigation against the petitioner is nothing but abuse of process of law in view of the settlement between the parties.**

5. **In view of joint compromise between the parties and in view of the judgment of Hon'ble Supreme Court in the case *of Gian Singh vs. State of Punjab and Another* reported in 2012 CRI.L.J.4934, the criminal proceedings requires to be quashed**.

6. Accordingly, the criminal petition is **allowed**.

7. The proceedings against petitioners/accused Nos.1 and 2 in Crime No.183/2021 registered by the Kodigehalli Police station for the offences punishable under Sections 403, 406, 420 and 120B of IPC, pending on the file of IV Additional Chief Metropolitan Magistrate, Bengaluru, is hereby quashed."

(Emphasis supplied)

Crime No.183 of 2021 is quashed in Crl.P.245 of 2022 on account of settlement between the parties before the RERA.

20.2. Now Crime No.143 of 2022 is required to be noticed which is registered on account of an order of reference by the concerned Court under Section 156(3) of the Cr.P.C. arising from a private complaint filed under Section 200 of the Cr.P.C. in P.C.R.No.20 of 2022 by 128 home buyers who have purchased apartments in the project of the Company. Therefore, it becomes apposite to notice the allegations in the private complaint which is filed alleging the offences punishable under Sections 406, 409, 417, 418, 420, 120B read with Section 34 of IPC and Section 9 of KPIDFE Act. The complaint reads as follows:

".... ....

> 3. **The present complaint is being filed against the Accused No. 1 to 7 and various other accused persons being all officials of Accused No. 1, who are/were responsible for the day-to-day management of the affairs of the Company, and also against various Banks, Housing Finance Companies, namely, Accused No. 8 to 11 and their officials and various other unknown accused persons involved in the conspiracy for commission of offences punishable under Sections 406, 409, 417, 418, 420 and 120B r/w Section 34 of the Indian Penal Code, 1860 and Section 9 of the Karnataka Protection of Interest of Depositors Act, 2004.**
>
> **4. The Accused No. 2 to 7 are the Directors of the aforementioned Company (Accused No.1) and have deliberately committed the aforementioned offences on behalf of the Company. The other Accused persons being**

the channel partners, the Banks/housing finance companies, namely, (1) Indiabulls Housing Finance Ltd (2) Housing Development Finance Corporation Ltd (3) Piramal Capital & Housing Finance Limited and (4) Bank of Baroda, arrayed as accused Nos.8-11 above, and various bank officials who have connived with Accused Nos. 1-7 and have acted under their directions jointly for illegal gains with dishonesty and have caused huge financial loss to the Complainants. The total amount of loss caused to the Complainants jointly is approximately around Rs. 80,00,00,000/-(Rupees Eighty Crore only).

5. **All the Accused, conspired together, portrayed a very rosy and lucrative picture and fraudulently promoted a real estate project being developed and constructed by Accused No. 1 in 2014 under the name of 'Ozone Urbana' situated at Kannamangala Village and Poojanahalli Village, Kasaba Hobli, Devanahalli Taluk, Bangalore Rural District, Karnataka.**

6. **All the aforesaid Accused persons, with a dishonest intention to cheat the Complainants, lured and induced the Complainants to purchase units/flats/apartments in the said real estate project by offering various predefined schemes, like Subvention Scheme; Buy-Back Scheme, 2X Scheme etc. jointly launched by Accused Nos. 1-7 along with Accused No. 8 to 11. Based on the said schemes which were projected as being most profitable and lucrative and being induced by the representations made by the Accused, the innocent Complainants booked the units with the Company in its real estate project by paying almost 95% of the initial sale consideration amount within 30 - 45 days from the date of signing of the Builder Buyers Agreement.**

7. **Accused Nos. 1-7 represented that they are a leading market player in the real estate industry and are well known for providing timely possession of the projects with good quality construction materials, satisfied clients, etc. Accused Nos. 1-7 assured and represented to all homebuyers including the Complainants herein that they have tie-ups with various**

credible Banks and Housing Finance Companies (Accused Nos. 8-11) who are willing to grant home loans to homebuyers by taking in mortgage the flats/units/apartments under purchase. Thereafter, all the Accused Nos. 1-11 acting jointly and severally represented to the Complainants that the payment options under the various Schemes, rates of interest etc. were very, reasonable and further that the Accused Nos. 1-7 shall make payment of the installments of the pre-EMI/EMI amounts till the date of possession.

....

11**. As mentioned hereinabove, all the Accused persons proposed various schemes to allure and induce the Complainants to purchase flats/units in the said real estate project. Some of the schemes which were offered are Buy-back scheme with assured returns, subvention scheme with payment of Pre-EMIs till possession, free-rental scheme with payment of rent by the accused builder till possession, etc. Accused Nos. 1-7 employed experienced and skilled personnel to mislead and deceive the general public especially the NRI's to believe that the promises made were true**. The Accused Nos. 1-7 provided assurances to the Complainants that they are very experienced and efficient developers and by any means the dates as stipulated in the Agreements would be met.

....

14. After the bookings and disbursal of the loan amounts, the accused persons represented that they are following the proposed plans to gain the confidence of the complainants/allottees and to allure new allottees for the vacant flats.

15. After taking the advance payments, Accused Nos. 1-7 started to show their true colours inasmuch as Accused Nos. 1-7 **made continuous and intentional defaults in the process of construction and held-up the hard-earned money of the complainant allottees for their illegal personal gain.**

16. As stated already, in order to finance the sale of the purchased flat, the Complainants had taken home loans from the Banks and Housing Finance companies' abovementioned as part of pre-condition of the various Scheme(s) by signing and executing a Tri-Partite Agreement (the 3 parties to the said

Agreement were the Company, the Complainant/allottee and the Bank/Housing Finance Company). **It is important to point out here that in accordance with the Tri-Partite Agreement, the amount of loan was disbursed directly to Accused No. 1, for purchase of the units.** Most the sale transactions took place/were executed in the year 2015-17. The Complainants/allottees were promised possession of their respective units/flats within 3 years from the date of signing of the Construction Agreement. in particular, the Complainants No.1 to 7 were promised the possession of their units by 31.03.2019, 31.03.2019, 01.12.2017, 01.12.2017, 01.10.2016, 31.03.2019 and 31.12.2022 respectively.

....

18. **It will be further most important to point out here that as per the contracted Subvention Scheme, Accused No. 1 was obligated and mandated to make payment of PRE-EMI/EMI till the date of possession of the unit and/or exercise of the Buy-Back option by the Complainants. However, Accused No. 1 along with Accused Nos. 2-4 have drastically failed to honour their various bounden commitments/promises and assurances including their obligations under the Subvention Scheme, 2X Option, Buy-Back option, etc. Ever since 2016, there has been no construction at the site of the Project. Thus, it is evident that the project is struck and there is extra-ordinarily delayed by more than 4 years.**

19. Since around 2016, the other Accused persons, namely, the Banks and Housing Finance Companies, instead of getting their Pre-EMIs/Money from Accused Nos. 1-7, are harassing the innocent homebuyers, viz, the Complainants/allottees, through calls, legal notices, threat of initiation of Civil and Criminal proceedings, etc., despite the fact that they are aware that no fault can be attributable on the part of Complainants in any manner whatsoever,

....

21**.** Finding themselves in a position where it was clear that the Complainants had been cheated by all the Accused persons, the Complainants tried to make efforts, and seek a remedy to resolve their agony. For that, the Complainants tried to find out the prevalent law on the subject and the requisites to be mandatorily followed by Accused Nos. 1-7 at the time of commencement of a real estate project under RERA Act**. It was**

at that time that the Complainants got to know that Accused Nos. 1-7 have also violated various provisions of law which includes but not limited to RERA Act, 2016, for which various complaints have been filed and the same are pending against Accused Nos. 1-7 before various authorities.

22**. It also came to the knowledge of the Complainants that Accused Nos. 1-7 have also never deposited or maintained 70% of the deposited amounts into the Escrow account, specifically opened for this purpose in accordance with the RERA Act. Further, Accused Nos. 1-4 have also withdrawn the inordinate amounts from the said Escrow account which was not in proportion of the construction as required by the law.**

23. **Further, despite receiving 95% payment of the sale consideration of the respective flats from the Complainants, Accused Nos. 1-7 has grossly and fraudulently failed to offer and hand over possession of the purchased unit/flat on the time as stipulated in the Construction Agreement. Be that as it may, Accused Nos. 1-7 have even failed to consider or even make sincere attempts and efforts of completing the project in time or even thereafter.**

24. **It is clear that Accused Nos. 1-4 along with all other Accused persons employed this Ponzi scheme fraud by alluring the Complainants/allottees with high return.** The facts reveal that as soon as the money was deposited by the Complainants with Accused Nos. 1-7 through the aegis of the other Accused persons who financed the sale consideration, the Accused Nos. 1-7 siphoned off the deposits and took the money from the bank that belonged for the construction of this project to pay off or invest in its other projects/sister concerns. Thereafter, having unjustly enriched itself after causing huge financial loss to the Complainants/allottees, Accused Nos. 1-7 have been purposely delaying the construction of the project. The Complainants/allottees have knowledge that Accused Nos. 1-7 have siphoned off the amounts deposited for this project to other projects/sister concerns to employ them into several other projects. Also, the other Accused persons without considering

the pace of the construction disbursed the loan amount directly to Accused Nos. 1-7.

25. The Accused Nos. 1-7 proposed the scheme of buyback with assured returns but intentionally defaulted to fulfill their promise. Now, Accused Nos. 1-7 are purposely delaying the performance with the motive of wrongfully enjoying the money paid by the complainant allottees and are employing the same in some other project(s) which tantamount to clear criminal breach of trust.

26. Accused Nos. 1-7 along with the all other Accused persons have pressurized, lured and coerced the complainants herein, who have exercised or wish to exercise their buy-back option as per the agreements, to execute supplementary or roll over agreements to provide their consent to the accused builder to retain their hard-earned money into the project without any payments. Moreover, it was agreed between the accused builder and the allottees that after exercising buy-back option, the accused builder shall cancel the unit allotted, pay the agreed amount to the said allottee within 45 days of exercising the option and foreclose the loan taken by the allottee for the payment of the said unit.

27. In the case of the allottees who have not surrendered to the pressure, undue influence or coercion of the accused builder and have not executed supplementary or roll over agreement(s), the accused builder has forcefully got the cancellation forms executed by them without making any payments in return and thereby cancelled their units and sold these units to some other persons and accepted the payments from them also. These allottees are left to the mercy of the accused builder and have nothing in their hands, their units have been cancelled and resold but no payments are made to them and the obligation of repayment of the loan is also left on their heads.

28. **The accused persons, even after cancelling the unit and selling it to the other some persons, intentionally defaulted to make the said payments within the time agreed after, due exercise of the buy-back option and has been wrongly enjoying the hard-earned money of the innocent allottees.**

29. **The accused persons proposed the Subvention scheme with no EMI till possession but they have been a regular defaulter in fulfilling their promises.** Beside taking the exaggerated amount for the units from the allottees and making the promise of paying the EMIs till possession, the accused persons no. 1 to 4 have intentionally made defaults due to which the allottees are suffering. Further, the accused persons promised to pay the EMIs till possession which they intentionally failed to perform due to which the banks started pressuring and harassing the allottees to pay the EMIs, intimidated and threatened by the accused bank officials, the allottees were forced to file a writ petition before the Hon'ble Karnataka High Court against the banks wherein interim relief has been provided to the Allottees. A copy of the Interim Order passed by the Hon'ble Court of Karnataka in W.P.NO.18713/2021 is produced herewith and marked as **ANNEXURE-E**.

....

31. **The accused bank officials in connivance with the accused no. 1 to 7 and its officials, after the approval of the loan in the name of the complainant, disbursed whole of the loan amount directly to the accused no. 1 company without satisfying themselves as to the genuineness of the project at the initial stages of the construction and without conducting proper due diligence w.r.t. the company which is in strict violations of the legal policies formulated by the RBI and the Central Government.**

32. **The accused no. 1 to 7 are liable for falsification of accounts as they have got disbursed the amount from the bank in regard of completion of the project but wrongly allocated the money in some other projects due to which the construction of this specific project is struck and allottees are suffering.**

....

37. **To summarize, the Accused above named, with a dishonest intention induced the Complainants to pay a sums as aforesaid and being induced by the same, the Complainants paid the said amounts to the Accused No. 1 to 7. Further, the all the Accused conspired and connived together to raise loans in the name of the Complainants**

and thereafter, the Accused No. 1 to 7 intentionally defaulted in repaying the same to the Accused No. 8 to 11. The Accused Nos. 1 to 7 have now, neither given possession of the property nor have repaid the loan to the Accused No. 8 to 11 as agreed. The Accused No. 8 to 11, fully having knowledge of the intentions of the Accused Nos. 1 to 7 disbursed the loan to the Accused No. 1 to 7 and now seek to recover the said loan from the Complainants. The Accused No. 1 to 7 are also not returning the money to Complainants. This way, the Accused have conspired together and have defrauded the Complainants. The 409, 417, 418, 420 and 120B r/w Section 34 of the Indian Penal Code 1960 and Section 9 of the Karnataka Protection of Interest of Depositors Act, 2004.

38. The above said facts and circumstances disclose commission of various crimes under various laws which calls for immediate and strict enquiry and investigation into the affairs of the accused persons.

39. It is pertinent to mention here that, the Complainants had approached the Halsoor Police Station and had informed them similarly regarding the offences that have been committed by the Accused, vide letter dated 20.02.2022. However, the officers of the said Police Station refused to register the FIR and also refused to acknowledge the receipt of the complaint, which is in clear violation of the judgment of the Hon'ble Apex Court in Lalita Kumari vs. State of Uttar Pradesh. Also, the Complainants approached the Commissioner of Police seeking redressal of their grievance vide letter dated 25.02.2022, but in vain. Thus the Complainants having no other remedy have approached this Hon'ble Court seeking a direction under Section 156(3) of the Code of Criminal Procedure, 1973. Copy of the letter addressed to the Halsoor Police Station and the Commissioner of Police are produced herewith and marked as **ANNEXURE - F** and **G** respectively."

(Emphasis added)

A perusal of the complaint would unmistakably reveal the manner in which the complainants, who are home buyers, were allegedly induced by the Company to purchase apartments by availing home loans, structured through **tripartite agreements and subvention schemes**. Acting upon such representations and arrangements, the home buyers parted with substantial sums and, as alleged, nearly **95% of the sale consideration** came to be deposited. Notwithstanding receipt of such a substantial portion of the consideration, possession of the apartments did not see the light of day.

20.3. The allegations, therefore, cannot, at this stage, be brushed aside as a mere contractual discord between a developer and its purchasers. The complaint narrates the inducement, the consequent parting with substantial monies by the home buyers and the failure to deliver possession despite receipt of almost the entirety of the consideration. These allegations, when taken at their face value and without embarking upon a mini-trial, **prima facie exude the ingredients of the offences alleged**. Whether the allegations would ultimately withstand the rigours of trial is altogether a different matter; but, at the threshold, they certainly furnish sufficient criminal content to permit the process of investigation to continue.

20.4. The said crime i.e., Crime No.143 of 2022 later comes to be challenged before this Court in W.P.No.14484 of 2022. The Co-ordinate Bench of this Court by way of a detailed order dated 12-08-2024 in W.P.No.14484 of 2022 quashes Crime No.143 of 2022, but retains the private complaint in P.C.R.No.20 of 2022. The order reads as follows:

"....   ....

> 3. The case of the petitioners is that the respondent Nos.1 to 128 have filed private compliant before the Spl. Court under Section 2 (d) read with Section 156(3) of Cr.P.C. The same is registered as PCR No.20/2022 alleging that the accused Nos.1 to 7 in the complaint and various other accused being the officials of accused No.1, the company called Ozone Urbana Infra Developers Pvt. LTD., and they were looking after the day-to-day managements of the company. The accused Nos.2 to 7 are Directors of the company and they are being channel partners, the banking/housing finance companies, namely, 1) Indiabulls Housing Development Finance Ltd. 2) Housing Development Finance Corporation Ltd. 3) Piramal Capital & Housing Finance Limited and (4) Bank of Baroda, arrayed as accused Nos.8 to 11 and various bank officials who have jointly for illegal gains with dishonesty and have caused huge financial loss to the complainants to the worth of Rs.80,00,00,000/- (Rupees Eighty Crore).

4. **The accused persons have conspired together, portrayed a very rosy and lucrative picture fraudulently promoted a real estate project being developed and constructed by the accused No.1 in 2014. They have induced the complainants, who purchased units/flats/apartments in the real estate project and various predefined schemes like Subvention Scheme, Buy-Back Scheme, 2X-Scheme etc., jointly launched by accused Nos.1 to 7 along with accused Nos.8 to 11 and projected as being most profitable and lucrative and being induced by the representations made by the accused, the innocent complainants booked the units with accused No.1/company in its real estate project by paying almost 95% of the initial sale consideration amount within 30 to 45 days by signing of the Builder Buyers Agreement.**

....

19. Having heard the arguments and perused the records, as per the complaint filed before the Special Court by the respondents, who are the home buyers from the petitioner company, the petitioner company entered into a tripartite agreement with accused Nos.8 to 11 the bankers and the complainants. As per the agreement, the accused persons/developers used to construct the plots and allot it to the respondent/complainant's for making payment. The accused Nos.8 to 11 being bankers agreed to lend financial assistance. Accordingly, the loans were raised by the complainants with accused Nos.8 to 11. The loans were directly paid to the accused persons even though loans were sanctioned to the complainants. Apart from that some of the complainant also paid money to the petitioners as advance consideration for allotting the plots. It is agreed between the parties mutually in case the complainants are not able to pay the full amount within the prescribed time, the accused persons will buy back the plots by paying the money to the complainants or they shall repay the loans directly to the banker by way of EMI. Admittedly, the accused persons were a developing company and they are owning land and they started developing the same. Though, they started putting up construction on the plots, there were not able to complete the plots due to various reasons, like not obtaining

the sanction plan from the concerned authority. Though, they are said to have obtained a plan from the Village Panchayat, it is not the competent authority. Therefore, the building was not able to complete.

20. It is also admitted fact that in the meanwhile the respondents have approached the RERA Court and the accused persons have undertaken to complete the project, but the same is not completed. Still the more than 50% of the work is pending. It is also admitted fact that in the meanwhile, against the accused person a dispute was raised before NCLT, Bangalore Bench. Where the insolvency proceedings were initiated and the NCLT initially dismissed petition and later it was restored by the NCLT. Admittedly, one proceeding is pending before the NCLT and another before the RERA court in respect of same cause of action. In the meanwhile the present complaint came to be filed by 128 complainants before the Special Court both under the IPC as well KPID Act.

21. The leaner senior counsel as taken main contention that KPID is not applicable in view of the Section 2(2) of the KPID Act, as the petitioner company is not a financial company. For the conveyance, the defines of Section 2(2) read as under:

> *"Section 2(2): Definitions- In this Act unless the context otherwise requires,-*
>
> *(1) "Competent Authority" means the authority appointed under Section 5;*
>
> *(2) "Deposit" includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either in cash or in kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include, -*
>
> *(i) amount raised by way of share capital or by way of debenture, bond or any other instrument covered under the guidelines given and regulations made, by the Security Board of India, established under the Securities and Exchange Board of India Act, 1992;*

(ii) amounts contributed as capital by partners of a firm;

(iii) amounts received from a scheduled bank or a co-operative bank or any other banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (Central Act 15 of 1992) :

(iv) any amount received from,-

(a) the Industrial Development Bank of India,

(b) a State Financial Corporation,

(c) any financial institution specified in or under section 4A of the Companies Act, 1956 (Central Act 1 of 1956) or

(d) any other institution that may be specified by the Government in this behalf:

(v) amounts received in the ordinary course of business by way of,-

(a) security deposit,

(b) dealership deposit,

(c)earnest money,

(d) advanced against order for goods or services;

(vi) any amount received from an individual or a firm or an association of individuals, registered under any enactment relating to money lending which is for the time being in force in the State: and

(vii) any amount received by way of subscriptions in respect of a Chit.

Explanation I.- "Chit" has the meaning as assigned to it in clause (b) of section 2 of the Chit Funds Act, 1982 (Central Act 40 of 1982);

Explanation II.- Any credit given by a seller to a buyer on the sale of any property(whether movable or immovable) shall not be deemed to be deposit for the purposes of this clause,"

22. **On careful reading of the provisions Sub-Section 2 (v) (d) and (vi) of the Act, which reveals that any amount received from individual relating to the money lending which is time being in force and any advance amount received against the goods or services, the KPID will attract. Here in this case, the accused persons being a firm and a company under the development projects, received more than 80 crores**

from the companies from making them as a purchaser and they made contract / agreement with the banking company and showing the complainants as borrowers of the loan. The amount has been received by the company and tri-partite agreement and the said amount repayable by the borrowers if the plots were given to them or else there is a buy back condition that plots shall be taken by the petitioner company and EMI shall be paid to the banker directly. But though they have received 80 crores on loan entered into between the bankers respondents and the petitioners, but they have neither given the services or plots to the respondents as per Section 2 (v) (d) of KPID Act. It is seems to be a bogus transactions in the name of giving plots but they have not constructed the building. They have not putting the sanction plots for the purpose of putting up construction but they nobalized the money from the respondents and used the same in the other finance companies run by the petitioners company as sister concerns. Therefore, the KPID Act, is applicable to the case on hand.

23. The learned Senior Counsel for the petitioners contended that there is violation of guideline issued by the Hon'ble Supreme Court in ***Priyanka Srivatsava***'s case and affidavit was not filed.

24. In this regard, on perusal of the records, the respondents have represented by the authorized signatory of 07 persons who are signed the complaint. The respondents have not filed any affidavit in respect of filing the complaint to the police. Admittedly, there is no complaint filed to the official of the police under Section 154 (3) of Cr.P.C. But the private complaint directly filed without complying the part of the guidelines of the Hon'ble Supreme Court. Of course, the Trial Court has not taken cognizance and just referred the case to the police for investigation under Section 156 (3) of Cr.P.C. Therefore, without compliance the very reference itself is not in accordance with law.

....

27. Therefore, the very filing of the complaint before the Prl. District and Sessions Judge, at Bengaluru is not correct. The learned Prl. District and Sessions Judge, at Bengaluru

could have forward the complaint to the designated Court and without doing so, by ignoring the its own order and notification dated 09.07.2021 referring the compliant to the police station, is not correct. **That part there is no application of mind by the learned Sessions Judge, while referring the matter to the police and not verified the affidavit and guidelines of the Hon'ble Supreme Court issued in the case of *Priyanka Srivatsava*. Therefore, the very reference of the complaint and the registering the FIR is liable to be set-aside.**

28. **Apart from that though the respondents have already approached RERA Court and NCLT, that is a not ground for quashing the case on merits. The FIR shall be set-aside only on the technical grounds and the complaint is entertainable by the Special Court under the KPID Act.** Accordingly, this Court may not be go into the merits of the case. Hence, I proceed to pass the following;

O R D E R

i. The petition is allowed in part.

ii. The reference order dated 26.05.2022 in PCR.No.20/2022 and consequential registering the FIR by the police in Crime No.143/2022 dated 17.07.2022 is hereby set-aside. The FIR and the reference order is quashed.

iii. **The complaint is restored to the Prl. City Civil and Sessions Judge, Bengaluru and Special Court for KPIDEF Act, at Bangaluru (CCH-1) with a direction to transfer the complaint to the CCH-92 Special Court.**

iv. **The complainants have liberty to approach the police higher authorities as per the provisions of 156 (3) of Cr.P.C. (Old Code). Thereafter they have required to file detailed affidavit as per the**

> **guidelines issued by the Hon'ble Supreme Court in the case of *Priyanka Srivatsava*.**
>
> *v.* After the compliance by the complainants and if they file affidavits before the Special Court, the Special Court shall proceed in accordance with law."

(Emphasis supplied)

The Co-ordinate Bench has categorically noticed the gravamen of the allegations against the Company. The accusation was that the Company had induced the complainants to enter into transactions which were alleged to be bogus, collected substantial amounts on the representation that constructed premises would be delivered, but neither delivered the promised constructions nor utilised the monies for the purpose for which they had been collected. On the contrary, the allegation was that the monies parted with by the complainants were diverted and utilised for purposes alien to the construction of the promised buildings.

20.5. The Co-ordinate Bench further noticed that the Company had received amounts exceeding ₹**80 crores** under loan arrangements in which the complainants were shown as borrowers, pursuant to **tripartite agreements containing a buy-back arrangement**. Despite receipt of such enormous sums, the accused allegedly neither delivered the promised plots/services nor discharged the obligations undertaken under the arrangement. It was in the backdrop of these allegations that the Co-ordinate Bench found the provisions of the **KPIDFE Act** to be attracted and declined to interdict the private complaint at its threshold.

20.6. What was obliterated by the Co-ordinate Bench was, therefore, **not the complaint or its substantive allegations**. The interference was confined to the order referring the complaint for investigation under **Section 156(3) of the Cr.P.C.** and the consequential FIR registered in **Crime No.143 of 2022**, solely on account of non-compliance with the procedural safeguards mandated by the Apex Court in **PRIYANKA SRIVASTAVA** *supra*. Thus, the distinction is unmistakable: **the criminal allegations survived; it was only the procedurally infirm reference and the consequential registration of the crime that did not.** The order of the Co-ordinate Bench, therefore, cannot be construed as having effaced the substratum of the complaint; it merely required the criminal process to be set in motion in accordance with law.

20.7. It is an admitted circumstance that, on the date of registration of the **2022 ECIR**, both the crimes which constituted the predicate offences were very much in existence. It is only subsequent to the registration of the ECIR that the said crimes came to be quashed - one on account of settlement between the parties and the other on a technical ground. The quashment, therefore, was not founded upon an adjudication that the allegations did not constitute the scheduled offences or that no criminality existed in the transactions alleged.

20.8. As noticed hereinabove, though the FIR registered in **Crime No.143 of 2022** came to be obliterated, the private complaint in **P.C.R.No.20 of 2022** was consciously left untouched by the Co-ordinate Bench. The complaint continues to subsist and, with it, the allegations forming its substratum. The petitioner–Company, therefore, cannot contend that it stood completely absolved of the criminal proceedings or that the very foundation upon which the proceedings under the Act rested had disappeared altogether. **The FIR may have fallen, but the complaint from which the allegations emanated continues to survive.**

20.9. It is in this circumstance that the submission of the learned Senior Counsel for the petitioner - that the **2022 ECIR** must necessarily perish because both the predicate offences have been quashed and, consequently, no predicate offence survives cannot be accepted. The premise on which the submission is built does not obtain on the facts. One of the proceedings which forms the very foundation of the scheduled offence, namely **P.C.R.No.20 of 2022, continues to subsist**. Therefore, this is not a case where the predicate offence has been completely effaced or where the petitioner has been finally absolved of the scheduled offence so as to contend that the edifice of proceedings under the Act has been left without a foundation. It is at this juncture that it becomes apposite to notice the exposition of law by the Apex Court in **VIJAY MADANLAL CHOUDHARY v. UNION OF INDIA**[4], concerning the indispensable relationship between the scheduled offence and proceedings for money-laundering. The Apex Court holds as follows:

"…. …. ….

109. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal

[4] **(2023) 12 SCC 1**

activity relating to a scheduled offence that can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, **unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum.** For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of the definition clause "proceeds of crime", as it obtains as of now.

....

382.8. The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money laundering**. The authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum**. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the court of competent jurisdiction, there can be no offence of money laundering against him or any one claiming such property being the property linked to stated scheduled offence through him."

The Apex Court categorically observes that prosecution for offences under the Act can continue even when there is a pending enquiry/trial by way of a criminal complaint before the competent forum.

20.10. Further the issue of whether an ECIR can be quashed on account of the FIR's forming the predicate offence being quashed on technical grounds is discussed by a Division Bench of the High Court of Madras in the case of **VIJAYRAJ SURANA v. ENFORCEMENT DIRECTORATE**[5], wherein the Division Bench observes as follows:

" …. …. ….

> **31. When there are findings arrived at independently in both the FIR and ECIR, can the Court completely disregard those findings and bring the proceedings to an unjustified end just because one of the proceedings was quashed on procedural/technical grounds without due impetus to the substantive grounds?** This question requires an in-depth consideration.
>
> ***F) DELIBERATIONS ON THE PRINCIPLE OF AUTOMATIC QUASHING OF ECIR ONCE FIR STANDS QUASHED:***
>
> **32. It shocks the conscience of the Court that in recent cases involving money laundering, a certain**

[5] **2024 SCC OnLine Mad 8404**

pattern has emerged, whereby, the FIR quashed through minor technical glitches or procedural irregularities and with that as a ground they seek for quashing of ECIR also. The wordings in the final summary portion of the *Vijay Madanlal's* judgment in paragraph 467 (5)(d) is used in isolation without due consideration to the judgment as a whole to wriggle away from the clutches of PMLA. The wordings in *Vijay Madanlal's case* cannot be accorded a narrow meaning by relying only on the summarisation towards the end of the judgment, but the observations in various paragraphs and the findings made therein must be read in tandem to extract its true essence. At the outset, this Court would clarify that we are neither attempting nor intending to rewrite the *Vijay Madanlal's* judgment. This Court is merely restraining from a pick and choose application of the principle established in *Vijay Madanlal case* and rather, is for the complete harmonious application of the judgment as a whole in letter and spirit. Any application of principle, even if in its literal form paves way for injustice, then the Court is allowed to take a detour to expound the law in such a way which serves the cause of justice. If the principles of automatic quashment of ECIR is adopted arithmetically, the very purpose and objective of PMLA is defeated.

33. This point of contention in the present Petition falls within the contours of the judgment rendered by the Hon'ble Supreme Court in *Vijay Madanlal case*. The *Vijay Madanlal case* extensively dealt with the validity of different provisions in the PMLA, 2002. The observations made in the Paragraph No. 281 relevant to the case on hand is extracted below:

> *"281. The next question is : whether the offence under Section 3 is a standalone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money-laundering. The property must qualify the definition of "proceeds of crime" under Section 2(1)(u) of the*

> *2002 Act. As observed earlier, all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of "proceeds of crime" under Section 2(1)(u) will necessarily be crime properties. Indeed, in the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the concerned case has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and ex-consequenti proceeds of crime within the meaning of Section 2(1)(u) as it stands today. On the other hand, in the trial in connection with the scheduled offence, the Court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a Court of competent jurisdiction. It is well within the jurisdiction of the concerned Court trying the scheduled offence to pronounce on that matter."*

34. A blanket application of the observations made in the aforementioned judgment will not advance the object set out under the PMLA, 2002 and in turn will defeat its primary object. The *Vijay Madanlal case* is a binding precedent for all Courts below. And on careful application of the judgment, analysing on a case to case basis, the output shall defer for each case and not render the same result.

35. Every case is marinated with different facts and circumstances and the application of law should not only meet the ends of Justice, but should also further the object behind the statute. The principles in *Vijay Madanlal*is set out clear with respect to proceeds of crime under PMLA, 2002, as under;

> *"281……….In the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the concerned case has been*

> *rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and ex-consequenti proceeds of crime within the meaning of Section 2(1)(u) as it stands today..”*

36. The Court's observations above hold that where a person is acquitted or absolved of a criminal activity relating to a scheduled offence and on establishing in a Court of law that the crime property is in legitimate ownership, such property cannot be termed as crime property and in consequence the PMLA offences loses its significance. Hence, to warrant a quashing of the ECIR, mere quashing of the FIR on technical grounds by itself does not make the ECIR liable to be quashed. That is not the observations set out in *the Vijay Madanlal case*. Rather in proceedings pertaining to the quashing of the FIR in a scheduled offence, the Court must have dealt with not mere procedural irregularities, but something more in the nature of substantive grounds.

37. The exact wordings of the Court culls out the object. That the accused person should have been acquitted or absolved from the allegations of criminal activity relating to the scheduled offence and that the crime property should be rightfully owned and possessed by him. **So the essence of the observations made herein is that the accused person should be exonerated from the charges levelled against him.**

38. Though there are multiple grounds for quashing an FIR, and in one of the many grounds an FIR can be quashed, <u>when it comes to proceedings</u> pertaining to quashing the ECIR, the Court must examine the grounds based on <u>which FIR concerning the scheduled offence was quashed and after careful examination on a case to case basis, if the FIR was quashed on substantive grounds of absence of prima facie offence and not mere procedural irregularities, then the ECIR loses its significance and is liable to be quashed. Since the scheduled offence itself is not</u>

made out, then automatically no predicate offence can hold good in the ECIR. However, if the FIR was quashed purely on technical grounds or procedural irregularities, then it is to be understood that mere quashing of the FIR does not absolve the accused under the PMLA proceedings and inturn cannot collapse the predicate offence in the PMLA proceedings.

39. Further, when the PMLA proceedings is set in motion and *prima facie* findings are already made, including completion of filing of chargesheet, then an FIR quashed after this stage cannot be a viable ground to quash the ECIR also. More so, the PMLA requires the presence of a scheduled offence to initiate proceedings under the Act. So it also becomes a mandate that the grounds on which scheduled offence was quashed is thoroughly examined before rendering the PMLA offence ineffective.

40. This Court is not venturing into the grounds of quashing an FIR as the principles pertaining to the same has already been laid down elaborately by the Hon'ble Supreme Court. But the rationale here is to cull out the level of bearing that a quashed FIR has on an proceedings challenging the ECIR**. This Court feels that all cases where FIR is quashed shall not automatically become a ground for quashing an ECIR. Instead a case to case analysis is a pre requisite for deciding on the sustenance of an ECIR. To put it in comprehensive terms, When the Court in an FIR quash proceedings has not delved into the merits of the offence, but rather found technical errors on the face of it, then the Court directs the quashing of the said FIR. The accused then goes on to challenge the ECIR by placing reliance on the said FIR Quash order to quash the ECIR also. But a reading of relevant paragraphs in *the Vijay Madanlal's case* clearly showcases that this is not the object behind the said judgment. The final summarisation, when read in tandem with the observations set out in paragraphs of the judgment and also keeping in line with the explanation to Section 44 of the PMLA, 2002, this Court comes to**

the irresistible conclusion that cases where FIR pertaining to the scheduled offence is quashed it does not automate the exoneration of the accused from the predicate offence. Rather FIR quashes on grounds of mere technicalities or procedural irregularities in the FIR, cannot by itself form a basis to grant an automatic quash of ECIR. Also in the aforementioned instance, there needs to be a case to case examination of the offence registered under the PMLA before the offence is rendered ineffectual.

41. Hence, the moot point for consideration whether all cases where FIR has been quashed can pave way for quashing of ECIR? **This Court feels that each case must be tested on its own, in consonance with the *Vijay madanlal* judgment and a blanket application of the principle without due regard to the facts of each and every case shall render both the judgment and the object of the PMLA ineffective**.

G) IMPLICATIONS OF AUTOMATIC QUASHING OF ECIR BASED ON FIR QUASH:

42. In cases as such where on initiation of PMLA proceedings, *prima facie* proceeds of crime has been traced, there arises a pertinent question as to whether this Court can stall such proceedings inspite of preliminary findings of the existence of proceeds of crime. The conscience of this Court is directed towards delivery of justice and though the FIR of scheduled offence stands quashed, it is merely on technicalities without analysing the merit of the scheduled offence. Hence, **when "proceeds of crime" is traced in a parallel investigation by the Enforcement Directorate, this gives rise to another question that, once proceeds of crime is*prima facie* unearthed can ECIR be quashed on the ground that FIR was quashed. This clearly is an unjustified approach."**

(Emphasis supplied at each instance)

The Division Bench, while considering the interplay between the subsistence of a predicate offence and proceedings under the Act, observes that an ECIR cannot be obliterated merely because the predicate FIR has subsequently been quashed on a **technical ground**. The Division Bench holds that to permit the ECIR to perish on account of a technical infirmity in the predicate proceedings, without there being an adjudication on the merits of the allegations constituting the scheduled offence, would run contrary to the purport of the law declared by the Apex Court in **VIJAY MADANLAL CHOUDHARY** *supra*. The distinction drawn is, therefore, between **quashment on merits, which strikes at the very substratum of the scheduled offence, and quashment on a technical ground, which merely terminates a particular proceeding without effacing the underlying allegations of criminality**.

20.11. If the law declared by the Apex Court in **VIJAY MADANLAL CHOUDHARY** *supra*, as followed and applied by the Division Bench of the High Court of Madras in **VIJAYRAJ SURANA** *supra*, is juxtaposed with the facts obtaining in the case at hand, the submission seeking obliteration of the **2022 ECIR** becomes unacceptable. As observed hereinabove, the predicate proceedings have not disappeared on an adjudication exonerating the petitioner on merits. More importantly, the private complaint in **P.C.R.No.20 of 2022**, containing the allegations which form the foundation of the scheduled offence, continues to subsist. The substratum, therefore, remains. In such circumstances, neither the **2022 ECIR** nor the consequential summons issued in exercise of power under **Section 50 of the Act** can be said to have been rendered foundationless merely because the predicate FIR suffered quashment on a technical ground. They, therefore, **do not warrant interference at the hands of this Court and cannot be obliterated at this stage**.

21. **Writ Petition No.4968 of 2024:**

21.1. The crime in Crime No.19 of 2024 that is called in question in the subject petition springs from a complaint registered 31-01-2024 before the jurisdictional police by a home buyer. The complaint reads as follows:

"Date 31/01/2024

To

The Station House Officer
Devanahalli Police Station.
Bengaluru, Karnataka

Complainant:

Bhavna Sadhwani/Raju Sadhwani
9886406779   9845425000

Complaint against:

1. Ozone Urbana Infra Developers Pvt Ltd.
No.38, Ulsoor Road, Bangalore 560042.
Web site: www.ozonegroup.com

2.Mr.Vasudevan Satyamoorthy
(Chairman and Managing director)
DIN:00022732
Resident of No.32, Norris Road, Richmond Town,
Bengaluru 560025,
Mob:9845016477

3.Mr.Satyamoorthy Sai Prasad(director)
DIN:00022813
Resident Of : Nishanth Prime Apartments
5, Prime Street, Richmond Town,
mOpp Hockey stadium, Museum road,
Bengaluru 560025.

4.Mrs. Priya Vasudevan (Ez-Director and
wife of Chairman and MD of Ozone Group)
DIN:00774484
Resident of No.32, Norris Road, Richmond Town,
Bengaluru 560025.

5.Mr.S.Baaskaran (Ex CEO)
Address: Not Known Mob:9606035340

6.Mr Srinivasan Gopalan(Ex CEO)
DIN:06414360
Resident of No.34.G2.Sona Palace Apartments,
Norris Road, Richmond Town,
Bengaluru 560025

7.Rajeev Bhandari (nominee Director)
DIN:01176913 Address: NOT KNOWN

8.Mr.Seewoosagar Nemchand (nominee Director)
Din:08365678 Address: NOT KNOWN

Respected Sir,

Date: 31/01/2024

SUBJECT: Written Compliant

We, Bhavna Sadhwani (age 68) and Raju Sadhwani (age 70) (Complainants) residing at 2311, 1st Cross, HAL 3rd Stage, Extn, Opp Kemp Fort, Airport Road, Bangalore 560017, are Home Buyers in the residential township Ozone Urbana "Pavillion" Flat no. K 403 located at Devanahalli, Kannamangla village, Bangalore 562110('Apartment') and said to be constructed by Ozone Urbana Infra Developers Pvt Ltd (part of Ozone Group) having their office at No.38, Ulsoor Road, Bangalore 560042.('Ozone Group').

We the complainants are ordinary Senior Citizens of India and as flat purchasers constitute the vulnerable sections of society who have invested their life time savings for their dream home in Ozone Urbana "Pavillion" which was to be constructed by Ozone Urbana Infra Developers Pvt Ltd having their office at the address as stated above.

We state that Ozone group falsely represented to us that they are a leading company in real estate and are known for timely delivery of projects and use of the best quality construction materials. They advertised as building a fully contained township with Villa plots (meadows), senior living complexes (Serene, Irene Etc), various residential apartment projects (Aqua, Pavillion, Avenue Etc). With all quality amenities and facilities (Hospital,5 Star Hotel, School, retail Mall, Cineplex, Essentially promising a City within a City) necessary for a quality living in 185 acres of land situated in Kannamangla Village, Devanahalli, Bangalore 562110. They then marketed the above project township by taking out misleading full page

advertisments in leading newspapers, Magazines, social Media etc and also falsely marketed themselves thru their own staff, channel partners and hired marketing agencies.

My husband and I on 04/02/2014 met with few Ozone group sales persons at their office in their project site at Kannamangala Village, Devanahalli, Bangalore. They took us around the model flat that they had constructed streeing upon their uncompromising attention to quality and detail of both materials and construction, they also stressed that they had the reputation of timely construction and hand over of flats to purchasers for possession. During this meeting they convinced us to put a down payment and book a 3 BHK flat in project "Pavillion" in Ozone Urbana. On 10/02/2014 we made two payments to Ozone by cheque no.065387 for Rs.3,00,000/-and cheque no.003406 for Rs.2,81,279/-drawn on HDFC bank and Standard Chartered Bank respectively.

Payment and book a flat :

We, quote, the following facts and details, We have invested in their project "Pavillion" in Ozone Urbana in a 3 BHK apartment bearing no.K 403 bought in March 2014 for delivery in Oct 2016 with grace period of 6 months that is March 2017, the building is yet NOT COMPLETE and there is no hope of it being completed. We paid the full value of the flat as demanded by the developer Ozone which is Rs,64,52,418/-(Rupees sixty Four Lakhs Fifty Two Thousand Four hundred and Eighteen) payment details attached, from our hard earned retirement savings. Due to all the broken promises by the builder we have been put in to a lot of Physical, Financial and Mental hardship. We have lost our health completely due to Ozone's malafide intentions. Please note they have not got the occupancy certificate hence there is no legal electricity, water connection, fire and pollution NOC's and other statutory clearancies since the building is not complete. As a result of the broken promises by the builder we Ordinary Law Abiding Senior Citizens with no source of income have had to borrow money from our son to survive.

When we questioned on several occasions about not handing over of the apartment as agreed the CRM manager have only given us excuses and have taken months and months to respond to us. Every March became December and every December became March of the following year. This again shows that all of the persons such as the Directors, CEO, the CRM Manager, Sales Representatives have colluded to Defraud and Cheat HomeBuyers like us. We have been in constant touch with their sales representative Ms.Bhuvna in person as well as email/letters. We had written to them on 29/08/2020 wherein we had highlighted that they are late by 4 yrs, Ms Bhuvna (CRM) assured us that the flat would be handed over in March 2021. Hence it is evident that grave injustice has been done to us as well as several Home buyers such as us. Ozone Group has CHEATED us.

Cause of Compliant:

The main reason for us filing a complaint and to register a F.I.R. is as follows

1.Ozone has its License revoked by RERA for all its projects in **Bangalore, hence it cannot construct nor will it be able to sell. At present the project construction and completion in the near future is completely out of the question. Inspite of this the Ozone Company is still continuing to market and sell flats/Apartments to the general innocent public which truly reveals the true characters behind this company.**

2.Ozone and its Chairman and MD Mr. Vasudevan Satyamoorthy has used the proposed project 185 Acres land to mortgage and fund his other company projects and ventures

3.Mr.Vasudevan Satyamoorthy has diverted funds received from bookings and sale of apartments/Flats as Ozone Urbana project to offshore accounts, fund his personal estate purchases and other companies.

4.It has come to our notice thru some confidential sources that Mr.Vasudevan Satyamoorthy the Chairman and MD of Ozone group is planning and making all arrangements to flee the country.

> **5.Mr.Vasudevan Satyamoorthy has already sold Two patches of the proposed land and buildings (National Public School and Hotel) in late 2023. And he is into negotiations with some prospective buyers to sell other assets.**
>
> **6.Mr.Vasudevan Satyamoorthy has not displayed any character befitting a businessman and Chairman and a MD of a reputed construction company, instead he has displayed lack of espect towards Law, Rules and regulations, Court Orders, lack of Compliance etc, everything that a crook in a suit employs.**
>
> **7.Its about 10 Years since we made the initial booking for this apartment from then till today we have suffered and continuing to suffer irreparable damage all around (360 degrees, and at the end of it our life is still in disarray. This man Satyamoorthy is oblivious to all this and unwilling to refund our amount with even simple interest. This man has scammed Hundreds of innocent people and should not be allowed to escape and go free.**
>
> **We therefore humbly request that your good offices take cognizance of this compliant, investigate the matter and help us recover our money from this fraudulent developer and book Ozone Group, Its Directors and its Group companies involved under relevant provisions of the law."**

(Emphasis added)

21.2. The afore-quoted complaint is instituted against the office-bearers of the Company, including its Directors, Managing Director, Chairman and other officials. The gravamen of the allegation is that the complainants had entered into an agreement with the representatives of the Company for purchase of a flat in the project christened **"Ozone Urbana Pavilion"** and, pursuant thereto, had parted with the entire sale consideration of **₹64,52,418/-**. What followed, according to the complainants, was a decade-long wait without the promised flat seeing the light of day. Despite passage of nearly **ten years from the date of booking**, neither was the construction completed nor was possession of the apartment handed over to the complainants. Repeated enquiries are alleged to have met only with assurances—assurances which, according to the complaint, remained assurances and never fructified into delivery of possession.

21.3. It is on the foundation of these allegations that **Crime No.19 of 2024** comes to be registered against the petitioners for the offence punishable under **Section 15 of the Karnataka Ownership of Flats Act** and Sections **406, 420 and 149 of the IPC**. What assumes significance for the present consideration is that, though the Company is specifically named and its acts form the very fulcrum of the complaint, **the Company itself is not arrayed as an accused**. The petitioners, who are its Directors and officials, alone are drawn into the web of the crime.

21.4. It is this circumstance that forms the sheet-anchor of the submission of the learned Senior Counsel appearing for the petitioners. The contention is that the alleged contravention under the Karnataka Ownership Flats Act is essentially attributed to the Company and, therefore, in the absence of the Company being arraigned as an accused, its Directors or other officials cannot, merely by reason of the offices they hold, be prosecuted for the alleged offence. The submission, in essence, is that **when the principal alleged offender - the Company is kept outside the array of accused, criminal liability under the statute cannot be fastened upon its officers in isolation**, unless the statutory scheme expressly permits such prosecution. Whether the submission merits acceptance would necessarily depend upon the language employed by the statute and the manner in which it fastens liability for its contravention. It, therefore, becomes apposite to notice **Section 15 of the Karnataka Ownership of Flats Act**, around which the challenge revolves. Section 15 reads as follows:

> "**15. Offences by Companies.—(1) If the person committing an offence under this Act is a company,**

> **every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of business by the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:**
>
> Provided that, nothing contained in this sub-section shall render any such person liable to such punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.
>
> (2) Notwithstanding anything contained in sub-section (1) where an offence under this Act, has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
>
> *Explanation*.—For the purpose of this section,—
>
> (*a*) 'company' means a body corporate and includes a firm or other association of individuals; and
>
> (*b*) 'director' in relation to a firm means a partner in the firm."

(Emphasis supplied)

21.5. Section 15 of the Karnataka Ownership of Flats Act specifically deals with **offences by companies** and delineates the circumstances in which the Company as well as the persons who were in charge of, and responsible for, the conduct of its business can be brought within the fold of prosecution. In the light of the statutory architecture, when the very allegations emanate from acts attributed to the Company, the Company ought, in the ordinary course, to have been arrayed as an accused in the subject crime. Its omission from the array of accused, despite being specifically named in the complaint and despite the transaction being one entered into with the Company, is undoubtedly an infirmity that cannot be brushed aside. That, however, would not mean that the entire crime must perish at its threshold.

21.6. The Company is unmistakably named in the complaint; the transaction complained of is with the Company; and the allegations, when taken at their face value, *prima facie* make out the ingredients of the offences alleged. The omission to formally array the Company as an accused is, therefore, an infirmity capable of being remedied in the course of investigation and cannot become a premium for obliteration of the crime itself. **A curable omission in the array of accused cannot be permitted to eclipse allegations which otherwise disclose a cognizable offence.** Therefore, the prayer for obliteration of **Crime No.19 of 2024** on this score does not merit acceptance. The crime shall continue to be investigated in accordance with law. The respondent–Jurisdictional Police are, however, **at liberty to array the Company as an accused in the subject crime in accordance with law** and thereafter proceed with the investigation in accordance with law.

22. **Writ Petition No.27587 of 2024:**

22.1. The crime in Crime No.161 of 2024 that is called in question in the subject petition also springs from a complaint registered before the jurisdictional Police by a home buyer. The complaint reads as follows:

> "To,
> The Police Inspector,
> Devanahalli Police Station,
> Bengaluru.
>
> Respected Sir/Madam,
>
> Subject: Written Complaint
>
> I am a home buyer in the residential township Ozone Urbana "Avenue" Flat no. S1102 located at Devanahalli, Kannamangala village, Bangalore 562110 ('Apartment) and said to be constructed by Ozone Urbana Infra Developers Pvt Ltd (part of Ozone Group) having their office at No.38, Ulsoor Road, Bangalore, 560042 (' Ozone Group'). Ozone group falsely represented to us that they are a leading company in real estate and are known for timely delivery of projects and use of the best quality construction materials. They advertised as building a fully contained township with Villa plots (meadows), senior living complexes (Serene, Irene Etc), various residential apartment projects (Aqua, Pavillion,

Avenue Etc) With all quality amenities and facilities (Hospital, 5 Star Hotel, School, retail Mall, Cineplex, Essentially promising a City within a City) necessary for a quality living in 185 acres of land situated in Kannamangla Village, Devanahalli, Bangalore 562110. **They then marketed the above project township by taking out misleading full page advertisments in leading newspapers, Magazines, social Media etc. and also falsely marketed themselves through their own staff, channel partners and hired marketing agencies. I purchased dream home in the said project in the year 2017 after inspecting the project which was introduced and personally shown to us by the company officials, I was taken to the company office in Ulsoor and was given a trust and asssurance by the directors of the company hence I was convinced to pay booking amount and I paid booking amount but the booking was not confirmed by the company, after due course of time and after constantly pushing for the receipts the company compelled me to change my choice of flat to another one by giving excuses. After a year the company headed by the people listed below convinced me and finally gave me a allotment letter in the year 2018. Subsequently I was made to enter into a sale agreement between me and the company. They gained my trust and confidence that the house/flat will be delivered and given possession by Dec 2022. They even offered me a attractive tripartite agreement between me, officials of the company and the bank, thereby the company ensured that I get the loan for the said purchase. I was ensured by the said company officials that they would be paying the Pre-emi up till the date of possession. In due course of time the company sent me a letter stating that the I will have to pay the Pre-emi before the possession was given. Ultimately the burden of paying for the delay was cast on me. Banks released 93 percent of funds to the said accused people without checking into the actual progress of the property. The flat that I booked was taken as a surety by the bank and they funds were released. Ultimately the possession was never given to me. A sum of 1,32,10,000/- (one crore thirty two lakh ten thousand rupees only) has been paid to the said**

accused company officials. As on date I do not have the flat, the building construction has been stalled. The developer and the company officials have lost the license to continue with the development of the project.

In due course of time in search of solution to this issue of not getting the flat and no refund from the builder for defaulting the possession of the property. I joined group of people who had purchased the flats in the same project. When I interacted with them I got to know that there was yet another person who had been sold the flat which was previously sold to me. When we exchanged the documents to see the details and reverify, I discovered that the flat which I purchased in the year 2017 was later sold to the other person on 09/11/2021 without informing me, without my consent, without giving me back the money I have paid, etc. The other person to whom the flat was sold also was offered bank loans organised by the developer builder accused. My property was given as a surety and security to get the bank loan, amount was dispersed by the bank. Later the developer took money from both of us and has now defaulted the possession. Now the banks are after me for the payments as the flat is mortgaged by multiple banks. They do not have exclusive rights over the property to be proceeding against. Ultimately the developer has cheated me, breached my trust, taken double the money, has not completed it, has not given possession, and also is not refunding me even after I got to know about such illegal acts.

It is also important to note that there are many people who have been cheated and who have face the similar situation and are systematically cheated by the officials of the company. Hence it is requested of this authority to register an FIR and immediately take actions against the said Accused people.

Complaint against :
1. Ozone Urbana Infra Developers Pvt Ltd.
No.38, Ulsoor Road, Bangalore 560042.

Web site: www.ozonegroup.com

2. Mr. Vasudevan Satyamoorthy
R/O No.32, Norris Road,
Richmond Town, Bengaluru 560025.
Mob: 9845016477

3. Mr.Satyamoorthy Sai Prasad,
R/O Nishanth Prime Apartments,
Prime Street, Richmond Town,
Opp Hockey stadium, Museum road,
Bengaluru 560025.

4. Durbhakula Vamsi Sai
Mob No: 9845000799

5. Seewosagar Nemchand

6. Rajeev Bhandari"

(Emphasis added)

22.2. The allegations in the afore-quoted complaint merit a closer notice. The complainant, a home buyer, was induced to invest in the residential township christened **"Ozone Urbana"**, projected and promoted as a premium development comprising high-quality residential villa plots and apartment complexes as a *"city within a city"*. Acting upon such representations, an allotment letter came to be issued in favour of the complainant in the year 2018, followed by execution of an agreement of sale. The promise held out was that possession of the allotted property would be delivered in the year 2022.

22.3. A tripartite agreement was thereafter entered into amongst the complainant, the petitioner - Company and the lending Bank. Pursuant thereto, the Bank sanctioned the loan and disbursed the monies directly to the developer. In all, a staggering sum of **₹1,32,10,000/-** travelled from the Bank directly into the hands of the petitioner - Company. Under the arrangement, the Company was required to service the EMI's. The allegation is that the Company failed to honour even this obligation, leaving the complainant to shoulder the burden of repayment of a loan raised for acquisition of a property which was never delivered to him. **Thus, while the money reached the developer, the home never reached the home buyer; what remained with the complainant was only the burden of the EMI**.

22.4. What follows in the complaint assumes greater significance. Neither was possession delivered nor was the construction completed. When the complainant sought to ascertain what had become of the property for which such substantial consideration had been paid, he allegedly discovered that the very apartment allotted to him had been **sold to another purchaser on 09-11-2021**, behind his back and without his knowledge, much less his consent.

22.5. The allegations do not stop there. The complainant further alleges that the property booked by him and already forming part of the financing arrangement had been subjected to mortgages with multiple Banks and that funds had been raised by the petitioner–Company from different financial institutions on the strength of the same or overlapping properties, thereby deceiving unsuspecting home buyers. Repeated demands and entreaties of the complainant allegedly fell on deaf ears. It is in this backdrop that the complaint came to be registered for offences punishable under Sections **406 and 420 of the IPC**.

22.6. The allegations, viewed as they must be at this stage at their face value cannot be brushed aside as a mere breach of contract or an ordinary dispute between a developer and a purchaser. The complaint presents a far more disquieting picture. An amount of **₹1,32,10,000/-** is alleged to have been received by the Company through the Bank pursuant to the tripartite arrangement; possession of the promised property has not been delivered; the complainant continues to bear the burden of EMI's; and, above all, the very property allotted to him is alleged to have been sold to a third party without his knowledge or consent. **The money is received, the property is not delivered, the loan burden remains with the home buyer, and the very property promised to him is allegedly sold to another.** These allegations, if established, travel far beyond the realm of a mere contractual default and *prima facie* bear the ingredients of the offences alleged.

22.7. The investigation, it must be remembered, is still at its threshold. It could not travel further on account of the interim protection operating in favour of the petitioners. **At such a nascent stage, this Court cannot embark upon a roving enquiry into disputed facts or conduct a mini-trial to determine the ultimate culpability of the petitioners. The complaint discloses sufficient material warranting investigation into the flow of funds, the alleged multiple**

mortgages, the subsequent alienation of the allotted property and the role of the persons concerned.

22.8. Therefore, in the teeth of the allegations obtaining in the complaint and the investigation having scarcely commenced, **obliteration of the crime at its inception would amount to stifling a legitimate investigation before the truth is permitted to unfold**. The prayer for quashment, on this score, must necessarily meet its rejection.

23. **Writ Petition No.34702 of 2024:**

23.1. The 2nd respondent is the complainant. A complaint comes to be registered before the Commissioner of Police which is later transmitted to the jurisdictional Police which becomes a crime in Crime No.77 of 2024 for the offences punishable under Sections 406, 409, 420, 120B read with 34 of the IPC and Section 9 of the KPIDFE Act. Since the entire issue now gets triggered from registration of complaint, I deem it appropriate to notice the complaint. The complaint reads as follows:

"….. ….. …..

3. The present complaint is being filed against the Accused No. 1 to 7 and various other accused persons being all officials of Accused No. 1, who are/were responsible for the day-to-day management of the affairs of the Company, and also against various Banks, Housing Finance Companies, namely, Accused No. 8 to 11 and their officials and various other unknown accused persons involved in the conspiracy for commission of offences punishable under Sections 406, 409, 417, 418, 420 and 120B r/w Section 34 of the Indian Penal Code, 1860 and Section 9 of the Karnataka Protection of Interest of Depositors Act, 2004.

4. The Accused No. 2 to 7 are the Directors of the aforementioned Company (Accused No. 1) and have deliberately committed the aforementioned offences on behalf of the Company. The other Accused persons being the channel partners, the Banks/housing finance companies, namely, (1) Indiabulls Housing Finance Ltd (2) Housing Development Finance Corporation Ltd (3) Piramal Capital & Housing Finance Limited and (4) Bank of Baroda, arrayed as accused Nos.8-11 above, and various bank officials who have connived with Accused Nos 1-7 and have acted under their directions jointly for illegal gains with dishonesty and have caused huge financial loss to the Complainants. The total amount of loss caused to the Complainants jointly is approximately around Rs. 80,00,00,000/- (Rupees Eighty Crore only).

….. ….. …..

11. As mentioned hereinabove, all the Accused persons proposed various schemes to allure and induce the Complainants to purchase flats/units in the said real estate project. Some of the schemes which were offered are Buy-back scheme with assured returns, subvention scheme with payment of Pre-EMIs till possession, free-rental scheme with payment of rent by the accused builder till possession, etc. Accused Nos. 1-7 employed experienced and skilled personnel to mislead and deceive the general public especially the NRI's to believe that the promises made were true. The Accused Nos. 1-7 provided assurances

to the Complainants that they are very experienced and efficient developers and by any means the dates as stipulated in the Agreements would be met. The Complainants believing in the assurances of the accused persons as true, booked various units in the said project during the years 2014 to 2016. Particularly, the Complainants No. 1 to 7 booked their units in their respective order on the following dates: 20.12.2016. 30.12.2016. 23.09.2015. 08.04.2015. 01.03.2014 18.08.2016 08.07.2015 23.12.2017. In pursuance thereto, complainants were allotted various units in the said project and loans were also immediately processed and sanctioned on all the units by the other accused persons, viz.. banks and housing finance companies abovementioned. Particularly, the Complainants No. 1 to 7 were allotted the following units in their respective order: 'S-1002', 'S-7001, 'D-501' 'H-404', 'K-302', 'U-604'. 'E-G003'. 'C-601'. Copies of the allotment letters issued to the Complainants No. 1 to 7 are the respective order and are marked as **ANNEXURE - A**.

13. **Consequently, various agreements, namely agreement for sale, construction agreement, tripartite agreement, buy-back agreement, etc., were executed between the complainants/allottees, the Accused Nos. 1 real estate company and the other Accused i.e. Banks/Housing Finance companies to represent the allottees that the whole project will proceed as per the assurances only but alas, that was not the case in real.** The said agreements were executed between the Accused No. 1, the Accused Finance Company and the Complainants No. 1 to 7, in particular, on the following dates in the respective order of the Complainants: 21.12.2016, 08.12.2016, 03.07.2015, 12.05.2015, 01.03.2014, 04.08.2016, 11.12.2017. Copies of the Agreements entered into by the Complainants No. 1 to 7 are produced in the respective order herewith and collectively marked as **ANNEXURE - B**.

14. **After the bookings and disbursal of the loan amounts, the accused persons represented that they are following the proposed plans to gain the confidence of the complainants/allottees and to allure new allottees for the vacant flats.**

15. After taking the advance payments, Accused Nos. 1-7 started to show their true colours inasmuch as Accused Nos. 1-7 **made continuous and intentional defaults in the process of construction and held-up the hard-earned money of the complainant allottees for their illegal personal gain.**

16. As stated already, in order to finance the sale of the purchased flat, the Complainants had taken home loans from the Banks and Housing Finance companies' abovementioned part of pre-condition of the various Scheme(s) by signing and executing a Tri-Partite Agreement (the 3 parties Agreement were the Company, the Complainant/allottee and the Bank/Housing Finance Company). It is important to point out here that in accordance with the Tri-Partite Agreement, the amount of loan was disbursed directly to Accused No. 1, for purchase of the units. Most the sale transactions took place/were executed in the year 2015-17. The Complainants/allottees were promised possession of their respective units/flats within 3 years from the date of signing of the Construction Agreement. In particular, the Complainants No. 1 to 8 were promised the possession of their units by 31.03.2019, 31.03.2019 01.12.2017, 01.12.2017. 01.10.2016. 31.03.2019 and 31.12.2022 respectively.

….. ….. …..

19. **Since around 2016, the other Accused persons, namely, the Banks and Housing Finance Companies, instead of getting their Pre-EMIs/Money Nos. 1-7, are harassing the innocent homebuyers, viz, the allottees, through calls, legal notices, threat of initiation of legal proceedings, etc., despite the fact that they are aware that no fault can be attributable manner whatsoever on the part of Complainants in any.**

….. ….. …..

22**. It also came to the knowledge of the Complainants that Accused Nos. 1-7 have also never deposited or maintained 70% of the deposited amounts into the Escrow account, specifically opened for this purpose in accordance with the RERA Act. Further, Accused Nos. 1-4 have also withdrawn the inordinate amounts from**

the said Escrow account which was not in proportion of the construction as required by the law.

23. **Further, despite receiving 95% payment of the sale consideration of the respective flats from the Complainants, Accused Nos. 1-7 has grossly and fraudulently failed to offer and hand over possession of the purchased unit/flat on the time as stipulated in the Construction Agreement. Be that as it may, Accused Nos. 1-7 have even failed to consider or even make sincere attempts and efforts of completing the project in time or even thereafter.**

24. **It is clear that Accused Nos. 1-4 along with all other Accused persons employed this Ponzi scheme fraud by alluring the Complainants/allottees with high return. The facts reveal that as soon as the money was deposited by the Complainants with Accused Nos. 1-7 through the aegis of the other Accused persons who financed the sale consideration, the Accused Nos. 1-7 siphoned off the deposits and took the money from the bank that belonged for the construction of this project to pay off or invest in its other projects/sister concerns. Thereafter, having unjustly enriched itself after causing huge financial loss to the Complainants/allottees, Accused Nos. 1-7 have been purposely delaying the construction of the project.** The Complainants/allottees have knowledge that Accused Nos. 1-7 have siphoned off the amounts deposited for this project to other projects/sister concerns to employ them into several other projects. Also, the other Accused persons without considering the pace of the construction disbursed the loan amount directly to Accused Nos. 1-7.

25. **The Accused Nos. 1-7 proposed the scheme of buyback with assured returns but intentionally defaulted to fulfill their promise. Now, Accused Nos. 1-7 are purposely delaying the performance with the motive of wrongfully enjoying the money paid by the complainant allottees and are emploving the same in some other project(s) which tantamount to clear criminal breach of trust.**

….. ….. …..

27. In the case of the allottees who have not surrendered to the pressure, undue influence or coercion of the accused builder and have not executed supplementary or roll over agreement(s), the accused builder has forcefully got the cancellation forms executed by them without making any payments in return and thereby cancelled their units and sold these units to some other persons and accepted the payments from them also. These allottees are left to the mercy of the accused builder and have nothing in their hands, their units have been cancelled and resold but no payments are made to them and the obligation of repayment of the loan is also left on their heads.

28. The accused persons, even after cancelling the unit and selling it to the other some persons, intentionally defaulted to make the said payments within the time agreed after due exercise of the buy-back option and has been wrongly enjoying the hard-earned money of the innocent allottees.

29. The accused persons proposed the Subvention scheme with no EMI till possession but they have been a regular defaulter in fulfilling their promises. Beside taking the exaggerated amount for the units from the allottees and making the promise of paying the EMIs till possession, the accused persons no. 1 to 4 have intentionally made defaults due to which the allottees are suffering. Further, the accused persons promised to pay the EMIs till possession which they intentionally failed to perform due to which the banks started pressuring and harassing the allottees to pay the EMIs. Intimidated and threatened by the accused bank officials, the allottees were forced to file a writ petition before the Hon'ble Karnataka High Court against the banks wherein interim relief has been provided to the allottees. A copy of the Interim Order passed by the Hon'ble High Court of Karnataka in W.P.No.18713/2021 is produced herewith and marked as **ANNEXURE-F**.

30. The accused persons no. 1 to 7 have breached the trust of the allottees by mentioning the different dates of possession irrespective of the tower, floor and date of sale. As observed in many agreements the builder has proposed different dates of possession without considering the factual

and logical working of construction. The accused persons have intentionally proposed different dates of possession to different allottees with a motive to illegally and unlawfully retain and use the hard-earned money paid by the complainant allottees. This conduct of the accused builder makes it apparent that the accused builder is not interested in sale or completion of the project but only interested in enjoying the hard earned money paid by the allottees and to employ it in its other projects.

31. The accused bank officials in connivance with the accused no. 1 to 7 and its officials, after the approval of the loan in the name of the complainant, disbursed whole of the loan amount directly to the accused no. 1 company without satisfying themselves as to the genuineness of the project at the initial stages of the construction and without conducting proper due diligence w.r.t. the company which is in strict violations of the legal policies formulated by the RBI and the Central Government.

32. **The accused no, 1 to 7 are liable for falsification of accounts as they have got disbursed the amount from the bank in regard of completion of the project but wrongly allocated the money in some other projects due to which the construction of this specific project is struck and allottees are suffering.**

33. When the accused persons were satisfied that there was no scope for further sale, they started making defaults and ignoring the queries of the complainants herein and it was apparent that the accused persons no. 1 to 7 have no intention to deliver the project and have dishonestly cappropriated the amount for their personal use and gain due to which stalled and no construction was in process, the accused person stopped paying the Pre-EMIS and also stopped following all other obligations which they agreed to perform into various agreements.

34. The accused persons no. 1 is a private limited company having authorised capital of Rs. 10,60,00,000/- and paid-up capital of Rs. 9,18,14,000/-but in connivance with the some banks and their officials it has secured various loans from which Rs. 29,05,00,00,000/- (Rupees Two Thousand Nine

Hundred and Five Crores only) is still pending on records and all this amount is over and above the payments received from all of the allottees.

35. The actions of the accused persons are completely unethical and unscrupulous manner which calls for a strict enquiry and investigation into the affairs of the accused persons.

36. The Accused No. 1 to 7 have stopped the complainants herein from visiting their allotted unit by using criminal force and has also threatened the complainants of dire consequences if they file any complaint against them. The said Accused have used foul and filthy language against the Complainants when they tried to communicate with the former in order to reslove the issue.

37. **To summarize, the Accused above named, with a dishonest intention induced the Complainants to pay a sums as aforesaid and being induced by the same, the Complainants paid the said amounts to the Accused No. 1 to 7. Further, the all the Accused conspired and connived together to raise loans in the name of the Complainants and thereafter, the Accused No. 1 to 7 intentionally defaulted in repaying the same to the Accused No. 8 to 11. The Accused Nos. 1 to 7 have now, neither given possession of the property nor have repaid the loan to the Accused No. 8 to 11 as agreed. The Accused No. 8 to 11, fully having knowledge of the intentions of the Accused Nos. 1 to 7 disbursed the loan to the Accused No. 1 to 7 and now seek to recover the said loan from the Complainants. The Accused No. 1 to 7 are also not returning the money to Complainants. This way, the Accused have conspired together and have defrauded the Complainants. Thus the Accused have committed offences punishable under Sections 406, 409, 417, 418, 420 and 120B r/w Section 34 of the Indian Penal Code, 1860 and Section 9 of the Karnataka Protection of Interest of Depositors Act, 2004.**

38. The above said facts and circumstances disclose commission of various crimes under various laws which calls

for immediate and strict enquiry and investigation into the affairs of the accused persons

39. It is pertinent to mention here that, the Complainants had approached the Halsoor Police Station and had informed them similarly regarding the offences that have been committed by the Accused. vide letter dated 20.02.2022. However, the officers of the said Police Station refused to register the FIR and also refused to acknowledge the receipt of the complaint, which is in clear violation of the judgment of the Hon'ble Apex Court in **Lalita Kumari vs. State of Uttar Pradesh**. Also, the Complainants approached the Commissioner of Police seeking redressal of their grievance vide letter dated 25.02.2022 but in vain. Thus the Complainants having no other remedy have approached this Hon'ble Court seeking a direction under Section 156(3) of the Code of Criminal Procedure. 1973. Copy of the letter addressed to the Halsoor Police Station and the Commissioner of Police are produced herewith and marked as **ANNEXURE - F** and **G** respectively.

PRAYER

WHEREFORE, the Complainants above named most respectfully pray that this Hon'ble Court be pleased to direct the Halsoor Police Station to register FIR and investigate into the offences alleged hereinabove and pass such other orders that this Hon'ble Court deems fit in the interest of justice and equity."

(Emphasis added)

23.2. The case projected by the complainant is that the petitioners/accused induced respondent No.2 and the members of the Home Buyers Association to purchase apartments in the project promoted by the Company by entering into **subvention schemes**, allegedly in collusion with the lending Bank. Acting upon the representations so held out, the home buyers parted with substantial sums towards purchase of the apartments. The grievance is stark. The monies have gone out of their hands, but the promised homes have never come into them. The complainants allege that they have been left **without their money and without possession of the apartments** for which the money was paid.

23.3. The allegation travels further. It is asserted that the amounts collected from the home buyers, instead of being deployed for construction and completion of the project for which they were collected, were diverted to other businesses or siphoned off by the Company. Proceedings against the developer are also stated to be pending before the RERA, which has, in certain proceedings, directed refund of the amounts paid by the home buyers. The complaint further alleges that this is not an isolated grievance and that numerous other complaints founded upon similar allegations are pending against the accused. These are, however, matters whose ultimate truth would necessarily have to emerge in accordance with law.

23.4. The fulcrum of the submission of the learned Senior Counsel appearing for the petitioners is, however, one of statutory applicability. The contention is that a **home buyer is neither a "depositor" nor an "investor" within the contemplation of the KPIDFE Act** and that monies paid towards purchase of an apartment cannot be metamorphosed into a "deposit" merely because possession has not been delivered or the amount has not been refunded. On that premise, it is contended that the very invocation of **Section 9 of the KPIDFE Act** against the petitioners is fundamentally misconceived and cannot be sustained.

23.5. **The submission strikes at the applicability of the statute itself and, therefore, requires consideration in the light of the language employed by the legislature. Whether monies collected from home buyers under arrangements of the kind alleged in the complaint would answer the statutory description of a "deposit"**, and whether the entity receiving such monies would fall within the sweep of the Act, cannot be answered dehors the definitions contained therein. It, therefore, becomes apposite to notice **Sections 2(2), 2(3), 2(4) and 9 of the KPIDFE Act**, which read as follows:"….. ….. …..

2. Definitions.—In this Act unless the context otherwise requires,—

….. ….. …..

(2) **"Deposit" includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either in cash or in kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or in any other form**, but does not include,—

(*i*) amount raised by way of share capital or by way of debenture, bond or any other instrument covered under the guidelines given and regulations made, by the Security Board of India, established under the Securities and Exchange Board of India Act, 1992;

(*ii*) amounts contributed as capital by partners of a firm;

(*iii*) amounts received from a scheduled bank or a co-operative bank or any other banking company as defined in clause (*c*) of Section 5 of the Banking Regulation Act, 1949 (Act 15 of 1992);

(*iv*) any amount received from,—

(*a*) the Industrial Development Bank of India,

(*b*) a State Financial Corporation,

(*c*) any financial institution specified in or under Section 4-A of the Companies Act, 1956 (Act 1 of 1956) or

(*d*) any other institution that may be specified by the Government in this behalf;

(*v*) amounts received in the ordinary course of business by way of,—

(*a*) security deposit,

(*b*) dealership deposit,

(*c*) earnest money,

(*d*) advanced against order for goods or services;

(*vi*) any amount received from an individual or a firm or an association of individuals, registered under any enactment relating to money lending which is for the time being in force in the State: and

(*vii*) any amount received by way of subscriptions in respect of a Chit.

Explanation I.—"Chit" has the meaning as assigned to it in clause (*b*) of Section 2 of the Chit Funds Act, 1982 (Act 40 of 1982);

Explanation II.—Any credit given by a seller to a buyer on the sale of any property (whether movable or immovable) shall not be deemed to be deposit for the purposes of this clause;

(3) "Depositor" means a person who has made deposits with Financial Establishment hereinafter defined but excludes any former or present promoter, owner, partner in any form, Director, manager, member, administrator, accountant or collaborator, employee or any other person with the said establishment or its subsidiaries, whose complicity in the fraudulent activity is proved.

(4) "Financial Establishment" means any person or a *group of individuals* accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined under clause (*c*) of Section 5 of the Banking Regulation Act, 1949 (Act 10 of 1949);

….. ….. …..

9. Fraudulent default by Financial Establishment.—(1) Any Financial Establishment, which fraudulently defaults any

repayment of deposit on maturity or on demand or otherwise by the depositor or his successor along with or without benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fails to render service as assured against the deposit, every person including the promoter, director, partner, manager former directors, partners, promoters who have demitted or resigned from establishment provided their liability is limited to the period of office or any other person or an employee responsible for the management or conducting of the business or affairs of such Financial Establishment, shall on conviction, be punished with imprisonment for a term not less than three years and which may extend to seven years and with fine which may extend to ten lakh rupees and such Financial Establishment also shall be liable for a fine which may extend to an amount equivalent to five lakh rupees or where such deposits is quantifiable in terms of money twice the amount of aggregate funds collected from subscriber or member whichever is more.

Explanation.—For the purpose of this section a Financial Establishment, which commits default in repayment of such deposit with such benefits in form of interest, bonus, profit or in any other form as promised or fails to render any specific service promised against such deposit, or fails to render any specific service agreed against the deposit with an intention of causing wrongful gain to one person or wrongful loss to another person or commits such defaults due to its inability arising out of impracticable or commercially not viable promises made while accepting such deposit or arising out of deployment of money or assets acquired out of the deposits in such manner as it involves inherent risk in recovering the same when needed shall, be deemed to have committed a default or failed to render the specific service, fraudulently.

(2) Whoever having been previously convicted of an offence punishable under this Act, is subsequently convicted of an offence punishable under this Act, shall be punished with imprisonment for a term of not less than five years which may extend to seven years and a fine which shall not be less than ten lakh rupees and which may extend to fifty crore rupees.

(3) (*i*) Where an offence under this Act has been committed by a financial establishment other than an individual, every person who, at the time the offence was committed, was in conduct of its business, as well as the financial establishment, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(*ii*) Nothing contained in clause (*i*) above, shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(*iii*) **Notwithstanding anything contained in clause (*i*) above, where an offence under this Act has been committed by a financial establishment other than an individual, and it is proved that the offence,—**

(*a*) has been committed with the consent or connivance: or

(*b*) is attributable to any negligence on the part of any such current or former Director, Manager, Secretary, Promoter, Partner, Employee or other Officer of the financial establishment;

such persons shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

Now whether the amounts invested by the home buyers in the Company would fall within the meaning of deposits under Section 9 of the KPDIFE Act is required to be noticed. The issue need not detain this Court for long or delve deep into the matter.

23.5.1. The Apex Court in the case of **STATE OF MAHARASHTRA v. 63 MOONS TECHNOLOGIES LIMITED**[6] observes as follows:

"…. …. ….

C.3. ***Definitions of "Deposit" and "Financial Establishment" : Interpretation of Sections 2(c) and 2(d) of the MPID Act***

44. The notifications attaching the properties of the respondent were issued under Section 4 of the MPID Act. Section 4 covers only those situations where a "financial establishment" is a defaulting entity. Section 4 is reproduced below:

"**4.** ***Attachment of properties on default of return of deposits***.—(1) Notwithstanding anything contained in any other law for the time being in force—

(*i*) where upon complaints received from the depositors or otherwise, the Government is satisfied that any financial establishment has failed—

(*a*) *to return the deposit after maturity or on demand by the depositor; or*

(*b*) *to pay interest or other assured benefit; or*

(*c*) *to provide the service promised against such deposit; or*

(*ii*) where the Government has reason to believe that any financial establishment is acting in a calculated manner detrimental to the interest of the depositors with an intention to defraud them;"

(emphasis supplied)

45. The primary issue is whether NSEL is a "financial establishment" within the meaning of Section 2(*d*). Section 2(*d*) reads as follows:

"**2.(*d*)** "**Financial Establishment**" means any person *accepting deposit* under any scheme or

[6] **(2022) 9 SCC 457**

> arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined under clause (*c*) of Section 5 of the Banking Regulation Act, 1949;"

(emphasis supplied)

46. "Financial establishment" is defined as any person accepting a "deposit". The definition excludes from its purview (*a*) a corporation or cooperative society controlled or owned either by the State or the Central Government; and (*b*) a "banking company" as defined under Section 5(*c*) of the Banking Regulation Act, 1949. Since NSEL does not fall within any of the exceptions, it would be a "financial establishment" for the purposes of the Act if it is a "person accepting deposit". Section 3(42) of the General Clauses Act, 1897 provides an inclusive definition of "person" to include both incorporated and unincorporated companies [*New Horizon Sugar Mills Ltd.* v. *State of Pondicherry*, (2012) 10 SCC 575, para 58 : (2013) 1 SCC (Civ) 516 : (2013) 1 SCC (Cri) 1061] as:

> "**3. (42)** "**person**" shall include any company or association or body of individuals, whether incorporated or not."

47. The expression "deposit" is defined in Section 2(*c*) of the MPID Act in the following terms:

> "**2. (*c*)** "**deposit**" **includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any financial establishment to be returned after a specified period or otherwise, either in cash or in kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or in any other form**, but does not include—
>
> (*i*) amount raised by way of share capital or by way of debenture, bond or any other instrument covered under the guidelines given, and regulations made, by the SEBI, established under the Securities and Exchange Board of India Act, 1992;

(*ii*) amounts contributed as capital by partners of a firm;

(*iii*) amounts received from a scheduled bank or a cooperative bank or any other banking company as defined in clause (*c*) of Section 5 of the Banking Regulation Act, 1949;

(*iv*) any amount received from—

(*a*) the Industrial Development Bank of India,

(*b*) a State Financial Corporation,

(*c*) any financial institution specified in or under Section 6-A of the Industrial Development Bank of India Act, 1964, or

(*d*) any other institution that may be specified by the Government in this behalf;

(*v*) amounts received in the ordinary course of business by way of—

(*a*) security deposit,

(*b*) dealership deposit,

(*c*) earnest money,

(*d*) advance against order for goods or services;

(*vi*) any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in the State; and

(*vii*) any amount received by way of subscriptions in respect of a Chit.

Explanation I.—"Chit" has the meaning as assigned to it in clause (*b*) of Section 2 of the Chit Funds Act, 1982;

Explanation II.—Any credit given by a seller to a buyer on the sale of any property (whether movable or immovable) shall not be deemed to be deposit for the purposes of this clause;"

48. **The statutory definition of the expression "deposit" comprises of the following ingredients:**

(*i*) Any receipt of money or the acceptance of a valuable commodity by a financial establishment;

(*ii*) Such acceptance ought to be subject to the money or commodity being required to be returned after a specified period or otherwise; and

(*iii*) The return of the money or commodity may be in cash, kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form.

These elements of the definition are followed by specific exclusions contemplated in clauses (*i*) to (*vii*). Clause (*i*) of the exceptions covers an amount which is raised by way of share capital or by debenture, bond or other instrument governed by the guidelines and regulations of SEBI. Clause (*v*) states that money received in the ordinary course of business by way of security deposit, dealership deposit, earnest money or advance against an order of goods or services shall be excluded. The exclusions in clauses (*i*) to (*vii*) indicate that transactions which would otherwise fall within the broad sweep of the definition are excluded.

49. The legislature may define a word artificially by restricting or expanding its natural meaning. When the legislature employs the phrase "means", the definition is intended to be exhaustive. In *Indra Sarma* v. *V.K.V. Sarma* [*Indra Sarma* v. *V.K.V. Sarma*, (2013) 15 SCC 755 : (2014) 5 SCC (Civ) 440 : (2014) 6 SCC (Cri) 593] , this Court observed that the definition of the expression "domestic relationship" in Section 2(*f*) of the Protection of Women from Domestic Violence Act, 2005 is restrictive since it is defined by the use of the term "means". On the other hand, the Court has taken a consistent view that where the definition of a word is inclusive, as presaged by the adoption of the expression "includes," it is prima facie extensive [*Karnataka Power Transmission Corpn.* v. *Ashok Iron Works (P) Ltd.*, (2009) 3 SCC 240 : (2009) 1 SCC (Civ) 802; *Ramanlal Bhailal Patel* v. *State of*

Gujarat, (2008) 5 SCC 449] . **The definition of "deposit" uses the phrase "includes and shall be deemed to have always included". The import of this is to create a legal fiction by which actions which though not included within the natural meaning of the expression are intended to be included. The combined use of "includes" and "deemed to have always included" while defining the term "deposit" makes the term inclusive and not restrictive.**

50. The expression "deposit" is conspicuously broad in its width and ambit for it includes, not only any receipt of money but also the acceptance of any valuable commodity by a financial establishment under any scheme or arrangement. As a matter of interest, we may note at this stage that the expression "any" is used in the substantive part of the definition of the expression "deposit" on five occasions, namely:

(*i*) Any receipt of money;

(*ii*) Any valuable commodities;

(*iii*) By any financial establishment;

(*iv*) With or without any benefit; and

(*v*) In any other form.

51. Likewise, the definition of financial establishment refers to the acceptance of deposits:

(*i*) Under any scheme or arrangement; or

(*ii*) In any other manner.

52. The repeated use of the expression "any" by the statute while defining both the above expressions is a clear reflection of the legislative intent to cast the net of the regulatory provisions of the law in a broad and comprehensive manner**. Unlike many other State enactments which govern the field, clause (*c*) of Section 2 of the MPID Act comprehends within the meaning of a deposit not only the receipt of money but of any valuable commodity as**

well. For example, in contrast, Section 2(2) of the Tamil Nadu Act defines "deposit" only in terms of money and not commodity. Section 2(2) reads as follows:

> "**2. (2)** "**deposit**" means the deposit of money either in one lump sum or by instalments made with the financial establishments for a fixed period, for interest or for return in any kind or for any service;"

53. Similarly, statutes protecting the interest of depositors in Orissa [The Odisha Protection of Interests of Depositors (in Financial Establishments) Act, 2011.] , Kerala [The Kerala Protection of Interests of Depositors in Financial Establishments Act, 2013.] , Himachal Pradesh [The Himachal Pradesh [Protection of Interests of depositors (in Financial Establishments)] Act, 1999.] , Goa [The Goa Protection of Interests of Depositors (in Financial Establishments) Act, 1999.] , Telangana [The Telangana Protection of Depositors of Financial Establishments Act, 1999.] , Andhra Pradesh [The Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999.] and Sikkim [The Sikkim Protection of Interests of Depositors (in Financial Establishments) Act, 2000.] define the phrase "deposit" only in terms of money and not the acceptance of a commodity.

54. According to the second ingredient of Section 2(*c*), the money or commodity must be liable to be returned. However, such return need not necessarily be in the form of cash or kind but also in the form of a service, with or without any benefit such as interest. It needs to be recalled that clause (*v*) of Section 2(*c*) states that a deposit of money or commodity made as a security deposit, dealership deposit or an advance amount is excluded from the definition of the phrase "deposit". To illustrate, if a member of a financial establishment deposits Rs 25,000, and that money is returned on cessation of membership by making deductions, the issue of whether the deposit is a security deposit or of the nature covered under Section 2(*c*) should be determined with reference to the structure of operation and functioning of the financial establishment. It is to be noted that the definition also states that the return may be with or without interest or any benefit. Therefore, the submissions made by both the sides on whether NSEL had through its representations assured a 16% return on trading in the platform is immaterial for the purpose of determining if NSEL accepted deposits.

55. Having referred to the relevant bye-laws, we shall determine if NSEL receives "deposits" as defined by Section 2(*c*) of the MPID Act. The bye-laws elucidate that NSEL receives both money and commodities from trading members. **In order to decide if these receipts by NSEL could be regarded as "deposits", the test of "return" will have to be satisfied. The test is that the return be in cash, kind or service. It is not necessary that the return should be with the benefit of interest, bonus or profit. Therefore, if the financial establishment is obligated to return the deposit without any increments, it shall still fall within the purview of Section 2(*c*) of the MPID Act, provided that the deposit does not fall within any of the exceptions. The exception of relevance to our case is clause (*v*) which states that amounts received in the ordinary course of business by way of (*a*) security deposit; (*b*) dealership deposit; (*c*) earnest money; and (*d*) advance against order for goods or services shall be excluded from the purview of the term "deposit"**."

23.5.2. Subsequently, the Apex Court in the case of **ALKA AGRAWAL v. STATE OF MAHARASHTRA**[7] observes as follows:

"…. …. ….

5. The MPID Act, which received the assent of the President on 20th January 2000 and published in the Maharashtra Government Gazette, Part IV, dated 21st January 2000, was enacted with a view to protect the interests of depositors in the financial establishments and the matters relating thereto. At the time of introduction of the Bill in the Legislature, the Statement of Objects and Reasons mentioned that the Statute was designed to protect the public from the increasing menace of

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[7] **2026 SCC OnLine SC 866**

Financial Establishments which, very often, grab money from the public in the form of deposits.

5.1 Noticing at the outset the purpose and spread of the MPID Act, following was stated in the Statement of Objects and Reasons,

> **"There is a mushroom growth of Financial Establishments in the State of Maharashtra in the recent past. The sole object of these establishments is of grabbing money received as deposits from public, mostly middle class and poor on the promises of unprecedented high attractive interest rates of interest or rewards and without any obligation to refund the deposit to the investors on maturity or without any provision for ensuring rendering of the services in kind in return, as assured. Many of these Financial Establishments have defaulted to return the deposits to public. As such deposits run into crores of rupees, it has resulted in great public resentment and uproar, creating law and order problem in the State of Maharashtra, especially in the city like Mumbai which is treated as the financial capital of India. It is, therefore, expedient to a make a suitable legislation in the public interest to curb the unscrupulous activities of such Financial Establishments in the State of Maharashtra."**

….. ….. …..

5.1.3 Thus, the MPID Act is served by elaborate provisions both regulatory and penal in nature enacted to protect the depositors' interest. The Act could be said to be providing a quasi-criminal remedy, as Section 3 makes the offence of fraudulent default by the Financial Establishment to be an offence punishable with imprisonment for a term which may extend to six years with fine to extend to one lakh rupees on conviction. Criminal action for the said offence would lie against the defaulter and FIR could be lodged under the said Section 3 of the MPID Act.

5.1.4 The MPID Act is a self-contained Code, which creates an independent machinery and mechanism to

provide remedial measures to the victim depositors and to check and punish Financial Establishments, which will include any person accepting deposit has fraudulently committed default duping the investors.

5.2 As the dispute in the present case, in its ultimate analysis, revolves around as to whether the payment made or amounts given by the appellants fall within the ambit of "deposit" as defined under the MPID Act, the relevant definition becomes pivotal to be considered. Section 2(c) of the MPID Act defines "deposit".

5.2.1 The definition is extracted hereinbelow:

"**2. Definitions.—** In this Act, unless the context otherwise requires,—

…………..

(c) "deposit" includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either in cash or in kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include—

(i) amount raised by way of share capital or by way of debenture, bond or any other instrument covered under the guidelines given, and regulations made, by the SEBI, established under the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(ii) amounts contributed as capital by partners of a firm;

(iii) amounts received from a scheduled bank or a co-operative bank or any other banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949);

(iv) any amount received from,—

(a) the Industrial Development Bank of India,

(b) a State Financial Corporation,

(c) any financial institution specified in or under section 6A of the Industrial Development Bank of India Act, 1964 (18 of 1964), or

(d) any other institution that may be specified by the Government in this behalf;

(v) amounts received in the ordinary course of business by way of,—

(a) Security deposit,

(b) dealership deposit,

(c) earnest money,

(d) advance against order for goods or services;

(vi) any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in the State; and

(vii) any amount received by way of subscriptions in respect of a Chit.

Explanation I.— "Chit" has the meaning as assigned to it in clause (b) of section 2 of the Chit Funds Act, 1982 (40 of 1982);

Explanation II.— Any credit given by a seller to a buyer on the sale of an property (whether movable or immovable) shall not be deemed to be deposit for the purposes of this clause;"

5.2.2 The above definition *inter-alia* includes any receipt of money or acceptance of any valuable commodity by a Financial Establishment. The term "Financial Establishment" is defined in Section 2(d) of the MPID Act, which is as under,

"**2. Definitions.—** In this Act, unless the context otherwise requires,—

…………..

(d) "Financial Establishment" means any person accepting deposit under any scheme or arrangement or

> in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company as defined under clause (c) of section 5 of the Banking Regulation Act, 1949;"

5.2.3 "Financial Establishment" as defined in Section 2(d) means "any person" accepting deposit either under any scheme or arrangement or "in any other manner". The definition takes out from its purview a corporation or cooperative society controlled or owned either by the State or the Central Government. It also excludes a banking company as defined under Section 5(c) of the Banking Regulation Act, 1949.

5.2.4 The definition of "financial establishment" in Section 2(d) of the MPID Act has also a wide coverage to mean "any person accepting deposit under any arrangement or in any other manner". The expanse of Section 2(d) of the MPID Act undoubtedly covers "any person accepting deposit".

5.3 As stated, Section 3 of the MPID Act is in respect of fraudulent default committed by Financial Establishments. The section provides for punishment upon conviction of every person including the promoter, partner, director, manager or employee found responsible for the management or in conducting the business or affairs of the Financial Establishment which has fraudulently defaulted in the repayment of deposits.

5.3.1 Section 3 is extracted hereunder,

> "3. **Fraudulent default by Financial Establishment.—** Any Financial Establishment, which fraudulently defaults any repayment of deposit on maturity alongwith any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fails to render service as assured against the deposit, every person including the promoter partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs of such Financial Establishment shall, on conviction, be punished with

imprisonment for a term which may extend to six years and with fine which may extend to one lac of rupees and such Financial Establishment also shall be liable for a fine which may extend to one lac of rupees.

Explanation.— For the purpose of this section, a Financial Establishment, which commits default in repayment of such deposit with such benefits in the form of interest, bonus, profit or in any other form as promised or fails to render any specified service promised against such deposit, or fails to render any specific service agreed against the deposit with an intention of causing wrongful gain to one person or wrongful loss to another person or commits such default due to its inability arising out of impracticable or commercially not viable promises made while accepting such deposit or arising out of deployment of money or assets acquired out of the deposit in such manner as it involves inherent risk in recovering the same when needed shall, be deemed to have committed a default or failed to render the specific service, fraudulently."

5.4 While extensively discussing the scheme of the MPID Act, this Court in *State of Maharashtra* v. *63 Moons Technologies Ltd.* adverted to discuss the scope of the expression "deposit" in Section 2(c) of the MPID Act and observed that the definition has these ingredients, "(i) Any receipt of money or the acceptance of a valuable commodity by a financial establishment (ii) Such acceptance ought to be subject to the money or commodity being required to be returned after a specified period or otherwise, and (iii) The return of the money or commodity may be in cash, kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form."

5.4.1 It was observed that specific exclusions are provided in clauses (i) to (vii) of Section 2(c) of the MPID Act. The Court highlighted that when the legislature mentioned in the definition in Section 2(c) the word "means", the definition becomes exhaustive. It was pinpointed that Section 2(c) uses the phrase "includes and shall be deemed to have always included". The Court further stated that the import of the same creates a legal

fiction and the use of the words "includes" and "deemed to have always included" make the term "deposit" inclusive and not restrictive.

5.4.2 Following was observed in **63 Moons Technologies Ltd.** (supra) regarding the expression "deposit",

> **"The expression "deposit" is conspicuously broad in its width and ambit for it includes, not only any receipt of money but also the acceptance of any valuable commodity by a financial establishment under any scheme or arrangement. As a matter of interest, we may note at this stage that the expression "any" is used in the substantive part of the definition of the expression "deposit" on five occasions, namely:(*i*) Any receipt of money; (*ii*) Any valuable commodities; (*iii*) By any financial establishment; (*iv*) With or without any benefit; and (*v*) In any other form."**
>
> (Para 50)

5.4.3 In the same way, the Court in the very decision, stated that the definition of "Financial Establishment" was indicated to be referring to the acceptance of deposits under any scheme or arrangement or "in any other manner". The repeated use of the expression "any" by the statute while defining both the above expressions namely "deposit" in Section 2(c) and "Financial Establishment" in Section 2(d) is a clear reflection of legislative intent to cast the net of the regulatory provisions of the law in a broad and comprehensive manner.

5.4.4 It was further observed that "unlike many other State enactments which govern the field, clause (c) of Section 2 of the MPID Act comprehends within the meaning of "deposit" not only the receipt of money but any valuable commodity as well". The Court juxtaposed the definition in Section 2(c) of the MPID Act with the definition of "deposit" in the similar laws by the State of Tamil Nadu, State of Orissa, State of Kerala, State of Himachal Pradesh, State of Goa, State of Telangana, State of Andhra Pradesh and State of Sikkim, which define the term "deposit" only in terms of acceptance of money and not the acceptance of commodities.

5.4.5 What is to be underlined is that the import of "deposit" under Section 2(c) of the MPID Act is wide enough so as to include the acceptance of money in any manner, whatever may be the nomenclature. Similarly, the definition of "Financial Establishment" in Section 2(d) uses the group of words "any person accepting deposit" and "in any other manner" to spread its net or coverage.

6. Reverting back to the facts of the instant case, admittedly, the amount of Rs. 2.51 crore was advanced by the appellants to respondent Nos. 2 to 6 with the promise for repayment of the same with quarterly interest. The factum of the transaction and the receipt of the amounts are not disputed by respondent Nos. 2 to 6. **As could be easily noticed from the definition of the term "deposit" in Section 2(c) of the MPID Act, reproduced above, the "deposit" is a term with a wide amplitude. It encompasses "any receipt of money to be returned after a specified period or otherwise with or without benefit of interest".**

6.1 The definition of "deposit" has three facets in the nature of ingredients. First is that there should be any receipt of money or acceptance of a valuable commodity by a financial establishment. On the second, the acceptance contemplated should be returnable after a specified period and thirdly, the return of such money or commodity could be in cash, kind, with or without any benefit of interest. All the above necessary ingredients to constitute "deposit" within the meaning of Section 2(c) of the MPID Act stands satisfied in respect of the transaction between the appellants and respondent Nos. 2 to 6.

6.2 Such "deposit" should be accepted by a "financial establishment". Looking to the wide import of the definition of Section 2(d) of the Act, since it includes any person accepting deposits, a private respondent like respondent Nos. 2 to 6 who accepted the money which was deposited stand covered within the concept of "Financial Establishment". The individual persons like respondents herein accepting the deposit and fraudulently defaulting become a "Financial

Establishment" within the definition of Section 2(d) of the Act, and could be subjected to legal action under the provisions of the MPID Act.

6.3 The contention that giving of amounts to respondent Nos. 2 to 6 was a transaction of "loan", is a convenient suggestion. Even if the transaction is named as "loan", it would not take it out of the scope of the term "deposit" as defined. Nomenclature of the transaction is not relevant. It is not the nomenclature but the ingredients or the basic attributes with which the transaction is informed and characterised that would make and mould the transaction to become "deposit" under Section 2(c) of the MPID Act. Therefore, even if lending of money by the appellants to respondent Nos. 2 to 6 was to be treated and termed as "loan", it would remain a "deposit" in the nature of money received by respondent Nos. 2 to 6 who have the robes of "financial establishment" as contemplated under Section 2(d) of the MPID Act.

6.4 It is true that the appellants filed proceedings before the Court of learned Chief Judicial Magistrate, Nagpur seeking registration of FIR against respondent Nos. 2 to 6 alleging the offences under Sections 420, 409 and 405 read with Section 34, IPC, and that the appellants could not succeed inasmuch as the courts held that no offence under the IPC as alleged was made out. But then, the merits of the aspect as to whether the lending of amount is "deposit" within the meaning of MPID Act and whether the machinery under Section 3 of the MPID Act could be set into motion cannot take colour from the consideration that the criminal offences under the IPC could not be made out.

6.5 While the criminal proceedings in respect of the offences under the IPC in their outcome operate in their own sphere, the machinery under the MPID Act has a different field to operate. Both are the different statutory regimes. Merely because the offences under the IPC were not established before the criminal court, it would not imply that it becomes a kind of embargo against putting into motion the provisions of the MPID Act or that the

invocation of provisions of the MPID Act is barred thereby.

6.6 It is not possible to take a view that the two areas of remedies namely under the criminal law and by invoking the provisions of the MPID Act, have the common aspects and ingredients to follow, for, both operate in a distinct field and in different ways. Non-making out of offences under the IPC cannot be equated with non-applicability of the provisions of MPID Act. The concepts thereunder have distinct and separate legal connotations and a complaint under Section 3 of the MPID Act is an independent recourse under the specific law.

6.7 The contention is therefore entirely misconceived that having failed to establish the offences under the IPC, the complaint under Section 3 of the MPID Act could not be maintained. In the same way, the plea that the dispute is of civil nature bear no relevance, once it is found that the transaction between the appellants and respondent Nos. 2 to 6 satisfies the essentials of the definition under Section 2(c) read with Section 2(d) of the MPID Act to become "deposit", accepted by "Financial Establishment" entitling the appellants to file a complaint under Section 3 of the MPID Act.

6.8 In light of the foregoing discussion and reasons, there is no escape from the conclusion that the amounts lent by the appellants to respondent Nos. 2 to 6 were "deposit" within the scope and ambit of the definition in Section 2(c) of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999. Respondent Nos. 2 to 6 as recipients of the amounts assume the character of a "Financial Establishment" as defined in Section 2(d) of the MPID Act."

23.5.3. In **MANOHAR BHIMRAOJI MAHALLE v. STATE OF MAHARASHTRA**[8] a Division Bench of the High Court of Bombay observed as follows:

"…. …. ….

19. It is argued on behalf of the appellants that Section 4 of the MPID Act is attracted when property is acquired by using depositors money and acquisition means the property should absolutely vest in the "Financial Establishment". The factual position on record shows that substantial payments were made to the appellants after "Builders/Developers" sold flats proposed to be constructed on said plot to flat purchasers and, therefore, it is clear that the depositors' monies were used substantially in acquiring the said property. Learned Senior Counsel appearing for the appellants is conscious of this position and therefore has not argued much on this aspect. However, his emphasis is on the word "acquire" which according to him is absolute acquisition of rights regarding the property. As observed earlier, the 'property' is a term of the widest import and is subject to any limitation or qualification which the context might require. It signifies every possible interest which a person can acquire, hold and enjoy. If we examine the said rights acquired by "Builders Developers" i.e Financial Establishment within the frame work of MOFA, then it is clear that the property which is the subject matter of the present appeal need not be the absolute property of the appellants. This is so as on the basis of said agreement of sale dated 04.06.2012, flats were sold to about 514 flat purchasers. Thus, it is clear that the "Financial Establishment" has got rights in the said property. Apart from this aspect both appellants as well as the respondents i.e "Builders/Developers/Financial Establishments" are under obligation to perform their statutory duties under

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[8] 2020 SCC OnLine Bom 368

the MOFA. In fact Section 8 of the MOFA creates charge of flat purchasers on the said property. Thus, it is clear that not only the said property is the property of the "Financial Establishment" as set out herein above but there is also a charge of the flat purchasers on the said property. Therefore, looking from any angle it cannot be said that no right is created by the said agreement dated 14.06.2012 and in fact, as set out herein above as the "Financial Establishment" has rights in the said property, Section 4 of the MPID Act is applicable to the same. Thus, it is very clear that the property which is the subject matter of the present appeal comes under the purview of Section 4 of the MPID Act.

20. The MPID Act was enacted to protect the interest of depositors in the Financial Establishments and matters relating thereto. The term "Deposit" as defined in Section 2(c) of the MPID Act inter alia includes any receipt of money by any "Financial Establishment" to be returned after a specified period or otherwise either in cash or in kind or in the form of specified service with or without any benefit in the form of interest, bonus, profit or in any other form. Thus, what is contemplated is receipt of money by the "Financial Establishment" and return of the same in any other form. In the present case, about 514 flat purchasers have paid substantial amounts to the "Financial Establishment" as "Financial Establishment" agreed to hand over to them possession of the flats to be constructed on the same plots. Thus, it is clear that the purchase of flats by flat purchasers from the "Financial Establishment" and for that purpose payment of money to the "Financial Establishment" by flat purchasers is covered under the definition of the term "Deposit" under MPID Act. The exceptions mentioned in the definition of "Deposit" are not applicable to such purchase of flats by flat purchasers from "Financial Establishment". It is also to be noted that neither the appellants nor any of the respondents contended that money advanced by the flat purchasers to said M/s. Rana Landmark Pvt. Ltd. is not deposit as per MPID Act and only argument was that the title of the property has not transferred to M/s Rana Landmark Pvt. Ltd. and that the same is not the absolute property of said M/s. Rana

Landmark Pvt. Ltd. and therefore, Section 4 of the MPID Act is not applicable. We have already discussed in detail this aspect and held that the said property comes within the purview of Section 4 of the MPID Act.

21. Section 4 of the MPID Act contemplates that two types of properties can be attached:

> *(i) Property believed to have been acquired by the "Financial Establishment" either in its own name or in the name of any other person from out of the deposits, collected by the "Financial Establishment".*
>
> *(ii) If it is found that property as contemplated above is not available for attachment or not sufficient for repayment of the deposits, such other property of the said "Financial Establishment" or the promoter, director, partner or manager or member of the said "Financial Establishment".*

22. The Notification dated 29.03.2016 issued by the Home Department of the Government of Maharashtra by exercising power under Section 4(1) and Section 5 of MPID Act shows that only two properties at Sr. No. 2 and 3 in the Schedule to the said Notification are in the name of M/s. Rana Landmark Pvt. Ltd. having approximate value of Rs. 1,20,00,000/- and Rs. 3,50,000/-. The property as Sr. No. 1 of the said Schedule is the subject matter of the present appeal. The properties at Sr. No. 10 and 11 are in the name of third persons and said M/s. Rana Landmark Pvt. Ltd. are shown to be the purchasers and that they have paid certain earnest amount. As far as the other properties are concerned, either they are in the name of third persons or in the name of Directors. Therefore, only properties at Sr. No. 2 and 3 which are in the name of M/s. Rana Landmark Pvt. Ltd. i.e. "Financial Establishment" can be considered as properties of said "Financial Establishment" and aggregate value of both these properties is Rs. 1,23,50,000/-. In this background of the matter, the affidavit in reply of Pravinkumar Bansilal Patil, PSI, Economic Offence Wing, Amravati City dated 14.12.2018 filed on behalf of the respondent No. 1 - State of Maharashtra states that the total fraud committed by the accused persons is to the tune of Rs. 13.88 Crores. **Thus, it is clear that even if it is**

assumed that the said property is not the property acquired by the "Financial Establishment" out of the deposits collected by the "Financial Establishment", the said property will fall in the category of "such other property" of the said "Financial Establishment" coming in the purview of Section 4 of the MPID Act as the properties in the name of the "Financial Establishment" acquired out of the deposits collected by the "Financial Establishment" or otherwise are not sufficient for repayment of the deposits to the depositors. If we consider all the properties mentioned in Notification dated 29.03.2016 irrespective whether they are in the name of the "Financial Establishment" or not then also the aggregate approximate price of the said properties is Rs. 17,85,85,900/- and if the price of the present property of Rs. 5,75,00,000/- is excluded from the same then it is clear that the same will not be sufficient for repayment of the deposits. Therefore, it is clear that the property which is subject matter of the present appeal is the property which is acquired by M/s. Rana Landmark Pvt. Ltd. i.e. "Financial Establishment" in its own name from out of the deposits collected by said "Financial Establishment" or other property belonging to the "Financial Establishment" and therefore, Section 4 of the MPID Act is squarely attracted to the same.

23. As we have held for the reasons set out herein that the said property is the property of financial establishment, the contention that the earnest money is excluded from the definition of "deposits" becomes irrelevant."

23.5.4. Again, the High Court of Bombay in the case of **SHUKUL s/o DHARMAJI MAKDE v. STATE OF MAHARASHTRA**[9] observes as follows:

"…. …. ….

[9] Criminal Application No.673 of 2021, disposed on 17-02-2026

15. Learned counsel for the applicant submitted that provisions of Sections 3 and 4 of the MPID Act are not applicable as allegations levelled against the applicant nowhere show that the "deposits" with the said Society are misappropriated.

16. Clause(c) of Section 2 of the MPID Act defines 'deposit' as under :

> **"(c) "Deposit" means the deposit of money either in one lump sum or by installments made with the Financial Establishment for a fixed period for interest or for return in any kind or for any service and includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either in cash or in kind or in the form of specified service with or without any benefit in the form of interest, bonus, profit, or in any other form, but does not include—**
>
> (i) amount raised by way of share capital or by any way of debenture, bond or any other instrument covered under the guidelines given, and regulations made, by the SEBI, established under the Securities and Exchange Board of India Act, 1992 (15 of 1992) ;
>
> (ii) amounts contributed as capital by partners of a film;
>
> (iii) amounts received from a Scheduled bank or Shraddha Talekar PS Co-operative Bank or any other banking company as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949);
>
> (iv) any amount received from—
>
> (a) the Industrial Development Bank of India;
>
> (b) a State Financial Institution;
>
> (c) any financial institution specified in or under section 6-A of Industrial Development Bank of India Act, 1964 (18 of 1964) ; or

(d) any other institution that may be specified by the Government in this behalf;

(v) amounts received in the ordinary course of business by way of –

(a) security deposit;

(b) dealership deposit; and

(c) earnest money;

(vi) any amount received from an individual or a firm or an association or individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in the State ; and

(vii) any amount received by way of subscriptions in receipt of a Chit.

Explanation I -- "Chit" has the meaning as assigned to in clause (b) of Section 2 of the Chit Funds Act, 1982 (40 of 1982);

Explanation II .-- "Any credit given by a seller to a buyer on the sale of any property (whether movable or immovable) shall not be deemed to be a deposit for the purposes of this clause."

Whereas clause (d) of Section 2 defines "Financial Establishment" as:

"(d) Financial Establishment" means any person defined under clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949)." accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company defined under clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949)."

17. **Thus, definitions of 'deposit' and 'financial establishment' are rather expansive. The inclusive definition of 'deposit' covers any receipt of money or acceptance of any valuable commodity, except those**

amounts which have been specifically excluded by sub-clauses (i) to (vii) thereof. Thus, any person accepting deposits under any scheme or in any other manner satisfies the description of financial establishment except a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company defined under the Banking Regulation Act.

18. In the present case, admittedly, the said Society, a cooperative institute, registered under the Cooperative Societies Act, is running a financial establishment and statements of witnesses disclose that they have collected "deposits."

19. **Learned counsel for the applicant submitted that the entire controversy revolves around question as to whether loan amounts given to various investors are within the definition of "deposit."**

20. The Hon'ble Apex Court, in the case of **State of Maharashtra vs. 63 Moon Technologies Limited, reported in (2022)9 SCC 457**, dealt with the scope and ambit of "deposit" and "financial establishment" and held as under:

> **"(i) the expression 'deposit' is conspicuously broad in its width and ambit for it includes, not only any receipt of money but also the acceptance of any valuable commodity by a financial establishment under any scheme or arrangement;**
>
> **(ii) the money or commodity must be liable to be returned. However, such return need not necessarily be in the form of cash or kind but also in the form of a service, with or without any benefit such as interest;**
>
> **(iii) it is not necessary that the return should be with the benefit of interest, bonus or profit. Therefore, if the financial establishment is obligated to return the deposit without any increments, it shall still fall within the purview of Section 2(c) of the MPID Act, provided that the deposit does not fall within any of the exceptions;**

(iv) the phrase 'valuable commodity' cannot be restricted to only mean precious metals. Agricultural commodities which NSEL trades in will fall within the purview of the term, and

(v) the definition is broadly worded to include even the possession of the commodities for a limited purpose."

Thus, expression 'deposit' is conspicuously broad in its width and ambit for it includes, not only any receipt of money but also the acceptance of any valuable commodity by a financial establishment under any scheme or arrangement. The expression 'any' is used in the substantive part of the definition of the expression 'deposit' on five occasions namely;

"i) Any receipt of money;
(ii) Any valuable commodities;
(iii) By any financial establishment;
(iv) With or without any benefit; and
(v) In any other form.

The Hon'ble Apex Court further explains that there is nothing in the definition of the term "deposit" to mean that the acceptance of the commodity should be accompanied by a transfer of title to the commodity. Even if the financial establishment is only in "custody" of the commodity, it would still fall within the purview of the phrase "acceptance of commodity".

According to the second ingredient of Section 2(c), the money or commodity must be liable to be returned. However, such return need not necessarily be in the form of cash or kind but also in the form of a service, with or without any benefit such as interest. It needs to be recalled that clause (v) of Section 2(c) states that a deposit of money or commodity made as a security deposit, dealership deposit or an advance amount is excluded from the definition of the phrase "deposit".

21. On going through the entire record and investigation papers, especially statements of witnesses, it reveals that various investors have deposited the

amounts. Admittedly, the said amounts are to be returned on maturity period. It reveals that daily deposits are also accepted by the said Society, which are also, admittedly, to be returned back to the investors.

22. Thus, the entire investigation papers show that amounts are obtained by way of "deposits" from the various investors and, therefore, the same are required to be repaid by the said Society. Therefore, it would amount to "deposit" within the meaning and for the purpose of MPID Act.

23. The object of the MPID Act is only to protect the interests of small depositors from fraud perpetrated on unsuspecting investors, who entrusted their life's savings to unscrupulous and fraudulent persons and who ultimately betrayed their trust. The said enactment was enacted to protect the interests of small depositors from fraud. The nature of legislation is to protect the interests of small depositors, who invest their life's earnings and savings in schemes for making profit floated by unscrupulous individuals and companies, both incorporated and unincorporated which needs to be kept in mind while testing the provisions of the MPID Act.

24. On going through the definition of "financial establishment", admittedly, the applicant, who was the Director and responsible for the day-to-day affairs of the Society, accepted the amounts from the various investors and disbursed the loan amount which is public money and has not taken steps to recover the same. It is not a simple breach of trust but it is an offence under breach of trust contemplated under Section 403 of the IPC."

(Emphasis supplied at each instance)

In the case of **63 MOONS TECHNOLOGIES** *supra***,** the Apex Court undertook an elaborate interpretation of the expressions **"deposit"** and **"financial establishment"** under Sections 2(c) and 2(d) of the Maharashtra Protection of Interest of Depositors Act, 1999 (‘MPID Act’ for short). It held that the definition of “deposit” is deliberately of **wide and inclusive amplitude**. The expression covers any receipt of money or acceptance of a valuable commodity by a financial establishment, provided it is liable to be returned—whether in cash, kind or by rendering a specified service, with or without interest, bonus, profit or other benefit. **The expression “deposit” under the MPID Act is intentionally broad; the decisive considerations are receipt and an obligation of return in cash, kind or service, subject to the express statutory exclusions.**

23.6. In **ALKA AGRAWAL** *supra*, the Apex Court reaffirmed and carried forward the principles declared in **63 MOONS TECHNOLOGIES**. The Apex Court first emphasised the protective object of the MPID Act namely, safeguarding depositors against financial establishments which collect public monies and thereafter fraudulently default. It characterised the enactment as a **self-contained statutory regime containing regulatory as well as penal remedies**.

23.7. The Apex Court further held that failure to establish IPC offences does not prevent proceedings under the MPID Act. The two statutory regimes operate in **distinct fields**, and proceedings under the special enactment constitute an independent statutory remedy. **Whether a transaction constitutes a deposit depends upon its substantive characteristics and not the name given to it. A loan may constitute a deposit, and failure of an IPC prosecution does not bar independent proceedings under the MPID Act.**

23.8. The judgment of the High Court of Bombay in **MANOHAR BHIMRAOJI MAHALLE** *supra*, is particularly significant to the issue of **home buyers/flat purchasers**. The case concerned approximately **514 flat purchasers** who had paid substantial amounts to a builder/developer for flats proposed to be constructed. The Court held that the builder/developer answered the description of a **"financial establishment"**, and the **monies paid by flat purchasers in consideration of the promise to construct and hand over flats were covered by the statutory definition of "deposit" under the MPID Act. Therefore the**

Money paid by flat purchasers to a builder/developer, against the promise of construction and delivery of flats, can constitute a "deposit" under the MPID Act; the promised flat/service can constitute the statutory form of "return".

23.9. In **DHARAMAJI MAKDE** *supra* the High Court of Bombay again emphasised the **expansive character** of the definitions of "deposit" and "financial establishment". It held that the inclusive definition of deposit embraces any receipt of money or valuable commodity except those transactions specifically excluded by the statute. Correspondingly, any person accepting such deposits under a scheme, arrangement or otherwise may answer the description of a financial establishment, subject to the statutory exceptions. **The MPID Act must be understood in light of its depositor-protection object; "deposit" and "financial establishment" receive a broad construction, and monies collected from investors with an obligation of return fall within the statute.**

23.10. Read together, the judgments establish a consistent thread: **the nomenclature of the transaction is not decisive;**

its substance is. A "deposit" is capable of encompassing money received with an obligation to return the value in **cash, kind or specified service**. **MANOHAR BHIMRAOJI MAHALLE** goes a significant step further in the specific context of real estate by holding that payments made by flat purchasers to a developer against the promise of construction and delivery of flats can fall within the definition of "deposit".

24. **Writ Petition No.31006 of 2025:**

24.1. The subject petition calls in question proceedings instituted by the Directorate of Enforcement arising from an ECIR registered in the year 2025, which has now resulted in a PAO dated 04-10-2025. The 2025 ECIR arises from the registration of five regular FIR's, of which two were quashed on the ground of regular FIR's, of which two were quashed on the ground of settlement or technicality like lack of jurisdiction of the concerned Court. The other three crimes are challenged in the companion petitions which are now dismissed for the reasons noted above. Since the entire dispute arises from the registration of the 2025 ECIR on 05-02-2025, the said ECIR is required to be noticed. It reads as follows:

DIRECTORATE OF ENFORCEMENT
(Prevention of Money Laundering Act, 2002)
ENFORCEMENT CASE INFORMATION REPORT (ECIR)

1	ECIR No. as per assigned format	Year	Zone	Sub-Zone	Date (DD/MM/YYYY)
	ECIR/BGZO/01/2025	2025	Bangalore	-	05/02/2025

2. Detail and nature of the Scheduled Offence:			
i. Scheduled Act(s)	ii. Section of the Act(s)	iii. Agency investigating the scheduled offence	iv. FATF Category
IPC 1860	Sections 420 and 120B	CCB Bengaluru City Police	(ix) Fraud (i) participation in an organized criminal group and racketeering
IPC 1860	Section 420	Devanahalli PS	(ix) Fraud
IPC 1860	Sections 420 and 120B	Kodigehalli PS	(ix) Fraud (i) participation in an organized criminal group and racketeering
IPC 1860	Sections 307, 419, 420 and 120B	Halasur PS	(ix) Fraud (i) participation in an organized criminal group and racketeering
IPC 1860	Section 420	Devanahalli PS	(ix) Fraud

3	Source from which the information / material has been received	1) FIR no. 0183/2021 dated 21.12.2021 registered at Kodigehalli PS, Bengaluru City.

		2) FIR no. 0019/2024 dated 31.01.2024 registered at Devanahalli PS, Bengaluru City. 3) FIR no. 0077/2024 dated 09.12.2024 registered at CCB Bengaluru City Police, Bengaluru City. 4) FIR no. 0161/2024 dated 28.09.2024 registered at Devanahalli PS, Bengaluru City. 5) FIR no. 0271/2024 dated 23.09.2024 registered at Halasur PS, Bengaluru City.
4	**Place(s) of Occurrence of Scheduled Offence**	Bengaluru City, Karnataka.
5	**Name and address of suspected person(s) with full particulars**	a) M/s Ozone Urbana Infra Developers Pvt Ltd No.38, Ulsoor Road, Bengaluru City, Karnataka b) Sh. Vasudevan Satyamoorthy, Director Of Ozone Urbana Infra Developers Pvt Ltd, No.32, Norris Road, Richmond Town, Bengaluru City, Karnataka c) Smt. Priya Vasudevan, No.32, Norris Road, Richmond Town, Bengaluru City, Karnataka d) Sh. Satyamoorthy Sai Prasad, Director Of Ozone Urbana Infra Developers Pvt Ltd, Nishanth Prime Aprtments, Prime Street, Richmond T, Opp Hockey Stadiym, Museum Road, Bengaluru City, Karnataka e) Sh. Durbhakula Vamsi Sai, Director Of Ozone Urbana Infra Developers Pvt Ltd, Bengaluru City, Karnataka f) Sh. Srinivasan Gopalan, Director Of Ozone Urbana Infra Developers Pvt Ltd, No.32,2, Sona Palace Apartments, Norris Road, Richmond Town, Bengaluru City, Karnataka

			g) Sh. Seewosagar Nemchand, Director Of Ozone Urbana Infra Developers Pvt Ltd, Bengaluru City, Karnataka h) Sh. Rajeev Bhandari, Director Of Ozone Urbana Infra Developers Pvt Ltd, Bengaluru City, Karnataka i) Sh. Bittal Mangilal Singhi Bengaluru City, Karnataka j) Sh. Baaskaran S, Bengaluru City, Karnataka k) Sh. Gaurav Goel, Bengaluru City, Karnataka l) Sh. Ganapathi Joshi, Bengaluru City, Karnataka m) Sh. Greta. Bengaluru City, Karnataka n) Car driver of Vasudevan Sathyamoorthy, o) Manager, HDFC Ltd. p) Unknown persons/entities
6	**Details of property suspected to be Proceeds of Crime**		
	a.	**Movable**	Yet to be ascertained
	b.	**Immovable**	

7	**Material relating to commission of offence:** 1) FIR no. 0183/2021 dated 21.12.2021 registered at Kodigehalli PS, Bengaluru City. 2) FIR no. 0019/2024 dated 31.01.2024 registered at Devanahalli PS, Bengaluru City. 3) FIR No. 0077/2024 dated 09.12.2024 registered at CCB Bengaluru City Police, Bengaluru City 4) FIR no. 0161/2024 dated 28.09.2024 registered at Devanahalli PS, Bengaluru City. 5) FIR no. 0271/2024 dated 23.09.2024 registered at Halasur PS, Bengaluru City.

Assessment of proceeds of crime:

- As per the FIR no. 0183/2021 dated 21.12.2021 registered at Kodigehalli PS, Bengaluru City, the complainant and his wife booked a flat in Ozone Urbana project by paying Rs. 8,58,855/- on 14/08/2015. Later, the complainant obtained a loan amount of Rs.68,20,000/- from HDFC bank as suggested by the company. Further, the company, complainant and the HDFC bank entered into a tripartite agreement vide which the company agreed to pay the EMIs on behalf of the buyer. The company didn't deliver the flat as per the agreed date and further the buyer was denied entry to the project when they visited to check the progress of the construction. Upon enquiry at the bank, it was found by the complainant that the bank transferred the amount directly to Ozone Developers without informing the complainant. When the complainant approached the RERA, the company issued a credit note of Rs. 18,19,185/- and promised to complete the construction by July 2020 and requested them to withdraw the complaint.
- As per the FIR no. 0019/2024 dated 31.01.2024 registered at Devanahalli PS, Bengaluru City, the complainant booked a flat in Ozone Urbana project by investing their retirement funds of Rs.64,52,418/- on 10.02.2014. The company which initially promised to deliver the flat by 2016-2017 has not completed the construction and didn't hand over the flat to the complainant till date.
- As per the FIR No. 0077/2024 dated 09.12.2024 registered at CCB Bengaluru City Police, Bengaluru City, the Ozone Urbana Developers Pvt Ltd. company started a project by name Ozone Urbana in Devanahalli Taluk in 2012 and buyers were promised with the project handover by 2017. However, till date only 49% of the project was completed. Meanwhile, when the buyers approached the concerned directors of the company, they assured the buyers stating that they had tied up with banks and will get loans from banks and housing finance companies. Further, they also promised that the EMIs would be paid by the company itself on behalf of the buyers until the project is completed. Later, they have collected about Rs.1500 crores through mortgaged loans in the names of the buyers in various banks and also collected more than Rs.1800 crores directly from the buyers. Thus, the directors of the said company cheated its buyers collectively

	to the tune of Rs.3300 crores and misappropriated the funds by transferring to various companies. • As per the FIR no.0161/2024 dated 28.09.2024 registered at Devanahalli PS, Bengaluru City, seeing the advertisement of the Ozone Urbana Developers Pvt Ltd. company related to high-quality plots sale, the complainant booked a flat in the said project and did a sale agreement with the company in 2018. The complainant later obtained loan from the bank by mortgaging the sale agreement and paid the amount to the company. However, it was later found that the said flat was sold by the company to another person by accepting amount from him as well. • As per the FIR no. 0271/2024 dated 23.09.2024 registered at Halasur PS, Bengaluru City, the complainant entered into an agreement with the accused person for the construction of a colony in Devanahalli for Rs.5.38 crores and accordingly completed the construction. However, the payment wasn't received from the accused person. On 12-10-2023, they entered into another agreement where the accused person agreed to pay Rs.3.38 crores and gave three cheques for the remaining amount. When the complainant tried to encash the said cheques, the accused person prevented him in doing so, threatened him and also the driver of the accused person attempted to run over the complainant with a Range Rover car, trying to kill him. • The offences under Sections 420 and 120B of IPC,1860, in the FIR no. 0183/2021 dated 21.12.2021 registered at Kodigehalli PS, Bengaluru City, Section 420 of IPC,1860, in the FIR no. 0019/2024 dated 31.01.2024 registered at Devanahalli PS, Bengaluru City, Sections 420 and 120B of IPC,1860, in the FIR No. 0077/2024 dated 09.12.2024 registered at CCB Bengaluru City Police, Bengaluru City, Section 420 of IPC, 1860, in the FIR no. 0161/2024 dated 28.09.2024 registered at Devanahalli PS, Bengaluru City and Sections 307, 419, 420 and 120B of IPC,1860, in the FIR no. 0271/2024 dated 23.09.2024 registered at Halasur PS, Bengaluru City and are scheduled offences under section 2(1)(x) and 2(1)(y) of the Prevention of Money Laundering Act, 2002.
8	**On the basis of the aforesaid information / document(s), a prima facie case for an offence of money laundering under Section 3 of the Prevention of Money Laundering Act, 2002 and punishable under Section 4 of the said Act appears to have been made out.**
9	**In view of above, a distinctive case bearing No. ECIR/BGZO/01/2025 is assigned to this case and the same is taken up for investigation under the provisions of Prevention of Money Laundering Act, 2002.**

The afore-quoted ECIR delineates, in considerable detail, the allegations forming the substratum of the scheduled offences, the particulars of the transactions alleged and the material gathered concerning their commission. It specifically records that the offences punishable under Sections **307, 419, 420 and 120-B of the IPC** constitute the scheduled/predicate offences which furnished the foundation for registration of the ECIR.

24.2. The 2025 ECIR does not rest merely upon a bald reproduction of the offences alleged in the predicate crimes. It proceeds to record the material which, according to the Enforcement Directorate, demonstrates the petitioner's involvement in acts of fraud and his alleged participation in an organised criminal group and activities described as racketeering. Reference is also made to investigations undertaken by different investigating agencies in connection with several crimes in which such allegations have surfaced. These are the allegations and the material that form the foundation upon which the proceedings under the Act have been set in motion against the petitioner.

24.3. The sixth crime stands on a somewhat different footing. It comes to be registered subsequently by the **Central Bureau of Investigation (CBI)**, pursuant to the directions issued by the Apex Court in **HIMANSHU SINGH v. UNION OF INDIA**, **SLP(C) No.7649 of 2023**. The genesis of this crime, therefore, is not an independent complaint simpliciter, but the proceedings before the Apex Court concerning the grievances of home buyers and the manner in which transactions between home buyers, builders/developers and lending Banks/Financial Institutions had been structured and operated.

24.4. It, therefore, becomes necessary to notice the trajectory of the proceedings in **HIMANSHU SINGH** *supra*, the orders passed from time to time, and the circumstances which ultimately impelled the Apex Court to direct investigation by the CBI. Equally necessary would be to notice the observations of the Apex Court concerning the conduct alleged against builders/developers on the one hand and Banks/Financial Institutions on the other, in disputes arising out of builder–home buyer transactions. Those proceedings were not confined to the petitioner–Company alone, but encompassed similar grievances against several other developers and lending institutions.

24.4.1. The proceedings in **HIMANSHU SINGH** *supra* soon assumed a wider canvas. Following institution of the said petition, several home buyers, placed in similar circumstances, approached the Apex Court against different builders/developers and Banks/Financial Institutions raising substantially similar grievances. Those petitions came to be tagged with the principal proceedings in **HIMANSHU SINGH**. Among them was a petition instituted by home buyers of the petitioner - Company as well.

24.4.2. On **05-11-2024**, the Apex Court, with a view to ascertain the true state of affairs obtaining in the projects and the financial arrangements surrounding them, directed the home buyers, builders/developers and the concerned Banks/Financial Institutions to place their respective affidavits on record. The exercise was intended to bring before the Court, inter alia, the **stage of completion of the projects and the financial sums involved**, thereby enabling the Court to have a comprehensive picture of the transactions which had generated the multitude of grievances before it. The order dated 05-11-2024 reads as follows:

"….. ….. …..

9. **The controversy in these matters has arisen out of tripartite agreements between the home buyers, the developers, and the financial institutions. Though there is variance in facts in this batch of matters, we broadly find that the following information is required to be furnished by the builder-cum developers, financial institutions, or the home-buyers**:

> **(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.**
>
> 10. The aforesaid order contains obligations for the home buyers/builders-cum-developers as well as the financial institutions. All of them are, accordingly, directed to furnish the requisite information within four weeks"

24.4.3. Despite the direction of the Apex Court in the afore-quoted order most of the builders/developers and banks/financial institutions fail to file their compliance affidavits due to which the Apex Court thought it fit to constitute an Special Investigation Team to uncover the nexus between the Banks/Financial Institutions and builders/developers and therefore by order dated 04-03-2025 directs the CBI to be present on the next date of hearing. The order dated 04-03-2025 reads as follows:

> "1. **The instant batch of petitions concern the disbursement of funds by banks to builders-cum-developers through subvention schemes** for various housing development projects in Noida, Greater Noida, Gurugram, and other nearby areas.
>
> 2. **There are three parties to the subvention schemes – the aggrieved homebuyers, the builders-cum-developers, and the banks/financial institutions. The aggrieved homebuyers are the Petitioners before this court.**

3. **All the aggrieved homebuyers purchased units in some or the other development projects launched by the builders-cum developers. Through the subvention scheme, the builders-cum developers advertised that they would pay the EMI/pre-EMI of the loans taken by the homebuyers to purchase the said units in their development projects, till the specified cut-off taken or till the date of possession, depending on the terms of each tripartite agreement. The homebuyers obtained loans from the respondent-banks.**

4. **In furtherance of these tripartite agreements, the banks disbursed majority of the loan amounts to the builders-cum developers upfront. In 2018 and 2019, when the builders-cum developers defaulted on the required EMI/pre-EMI payments, the banks began to demand payments from the homebuyers. It is pertinent to note that at the time of demanding payment from them, the homebuyers had not still received possession of their purchased units. In fact, the development projects were still under construction, incomplete, or had not even begun construction till then.** Many of these projects incomplete and to this day, most homebuyers have not been granted possession of their units. Owing to this, in 2020, Corporate Insolvency Resolution Process (in short, "CIRP") proceedings commenced under the Insolvency and Bankruptcy Code, 2016 against the builders-cum-developers, before various National Company Law Tribunals across those regions.

5. Aggrieved by the banks claiming monthly instalments from them, the homebuyers approached the High Court of Delhi for a writ of mandamus, inter alia, directing, among others: (i) the banks to charge EMI/pre-EMI payments from the builders-cum-developers, not the homebuyers; (ii) to refund the already recovered amount to the homebuyers and recover it from the builders-cum-developers; and (iii) the RBI to take strict action against the banks. Parallelly, some homebuyers approached the Real Estate Regulatory Authorities and various consumer fora for relief. The High Court, vide a common judgment dated 14.03.2022, dismissed the writ petitions owing to the alternate remedy available before the Real Estate Regulatory Authority.

6. **Challenging the same, the homebuyers have approached this Court. The homebuyers allege that: (i) Since the subject matter of the writ petitions concerned public interest and thousands of homebuyers, the writ petitions ought not to have been dismissed by the High Court; (ii) Almost 70-80% of the loan amounts were disbursed by the banks to the builders-cum-developers as 'first tranche,' despite project milestones not being achieved; and (iii) The banks and financial institutions violated several provisions of the 2013 RBI Guidelines when disbursing the amounts as the disbursal was done without any form of due diligence on behalf of the banks.**

7. On 05.11.2024, in order to have a better understanding of the latest stage of construction for the development projects and the large financial sums involved, and to ultimately ensure that reliefs are granted in a timely manner, this Court directed the homebuyers, builders-cum-developers, and banks/financial institutions to furnish the following information by way of compliance affidavits within 4 weeks:

(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.

8. As a last opportunity, on 07.01.2025, this Court granted the Respondent-banks/financial institutions and builders-cum developers 4 more weeks to file their compliance affidavits.

9. **Despite this Court's repeated instructions, emphasizing the seriousness of the matter, out of roughly 40 builders-cum developers and roughly 30 banks/financial institutions, only 9 banks/financial institutions and 5 builders-cum-developers have filed their compliance affidavits for the order dated 05.11.2024.**

10. **This blatant disregard and ignorance of the Court's directions, coupled with their reluctance in appropriately assisting the Court, hints towards a possible collusion between the builders-cum-developers and the banks/financial institutions.**

11. **In such circumstances, it may be necessary to constitute a Special Investigation Team (in short, "SIT") to uncover the nexus between the banks/financial institutions and the builders-cum developers with respect to the development projects where the homebuyers have paid substantial amounts and where the development projects have not even been launched, have not completed construction, or have not begun construction.**

> 12. The Standing Counsel for the Central Bureau of Investigation (in short, "CBI") is directed to remain present in this Court on the next date of hearing for the purpose of constituting an SIT. **He may also have instructions as to why the CBI should not be asked to register a case and then proceed to investigate the nexus between the banks and the builders.** Alternatively, constitution of a SIT at its own will also be considered by this Court."

24.4.4. Later, on 18-03-2025 the Apex Court appoints an *Amicus Curiae* to assist the Court and the learned *Amicus* was directed to submit a brief note on how to proceed further with the matter. The order dated 18-03-2025 reads as follows:

> "1. In deference to the order dated 04.03.2025, Ms. Aishwarya Bhati, learned Additional Solicitor General of India, has entered appearance on behalf of the Central Bureau of Investigation (CBI). She informs that some CBI officers are also present. We have impressed upon her to discuss with the CBI authorities and put up a proposal as to how would they intend to proceed with the enquiry/investigation into the issues that are briefly noticed in our order dated 04.03.2025 and those passed prior thereto. She assures that such a proposal shall be put up before the Court within two weeks.
>
> 2. **We also feel that in order to effectively unearth the underlying issues, an *amicus curiae* need to be appointed, especially someone having expertise and vast investigative/administrative experience besides a command over the legal intricacies. In this regard, we request Mr. Rajeev Jain, Advocate, former Director, Intelligence Bureau and a former Member of the National Human Rights Commission to assist the Court as an *amicus curiae*. He is also requested to submit a brief note as how to proceed further in the matter.**
>
> 3. The Registry is directed to supply an up-to-date soft copy of the SLP paperbooks to the learned *amicus* forthwith."

24.4.5. The Apex Court on 29-04-2025 directs the CBI to conduct a preliminary enquiry in terms of the suggestions submitted by the learned *Amicus.* The order dated 29-04-2025 reads as follows:

> "**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**.

6. 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.

7. 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.

8. 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.

9. **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.***

10. 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.*
> >
> > *d. 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.

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

f. 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).

g. 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.

iv. 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.*

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

vi. 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.

vii. 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).

h. 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.

i. 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.

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

k. 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).

l. 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).*

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

n. 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.

o. 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.

p. Interim protection to homebuyers to continue as per earlier orders."

11. 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.

12. 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.

13. 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.***
>
> *10. 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."*

….. ….. …..

16**. 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.**
>
> 17. **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."

24.4.6. On 22-07-2025, the CBI files the interim status report in respect of the preliminary enquiry being conducted pursuant to the directions of the Apex Court. By order dated 22-07-2025, the Apex Court proposes that, the CBI should register regular cases and proceed with the investigation. The order dated 22-07-2025 reads as follows:

"….. ….. …..

> 9. In compliance with the order dated 29.04.2025, the Central Bureau of Investigation (CBI) has filed an interim status

report, inter alia, stating: (i) the gist of common allegations of preliminary enquiries; (ii) Focal point of enquiry in 7 preliminary enquiries, registered pursuant to the earlier orders; (iii) summary of common action taken; (iv) discussion about subvention scheme; (v) outcome of enquiry from Reserve Bank of India and National Housing Bank; (vi) the preliminary enquiry against M/s. Supertech Ltd. highlighting the analysis of preliminary outcome based in physical inspection of projects etc. Similar analysis in respect of the other projects located in Greater Noida Authority, Gurugram Authority, Yamuna Expressway Industrial Development Authority, Ghaziabad Authority.

10. As regard to the preliminary enquiry registered in respect of projects outside NCR, the report indicates that the said enquiry is still continuing and it will be completed in the next six weeks time period.

11. **So far as the preliminary enquiries undertaken in six cases is concerned, the CBI has proposed the further course of action in paragraph 83 of the report. The CBI has recommended registration of 22 regular cases to enable it to undertake further investigation into these matters. As of now, we accept the recommendations contained in Paragraphs 83, 84 and 85 of the report. Consequently, the CBI shall register the regular cases and proceed further in accordance with law.**

12. In the process of investigation, if the CBI finds any kind of impediment or additional support, they shall be at liberty to approach this Court and appropriate directions to that effect will be issued.

13. **So far as the preliminary enquiry in respect of the projects outside NCR, six weeks more time is granted to complete the preliminary enquiry.**

14. We appreciate the outstanding efforts made by the CBI in completion of the six preliminary enquiries for which, we believe that more than 1000 persons have been examined and voluminous records have been looked into by them, besides visiting 58 project sites. We expect that even after registration of the regular cases, the CBI will, having regard to the

magnitude and gravity of the issues, promptly investigate and take the investigation to its logical conclusion.

15. **Mr. Rajiv Jain, learned *Amicus Curiae*, has submitted a comprehensive note dated 20.07.2025. His report has critically analysed the issues like: (i) unequal bargaining power between the parties resulting in contravention of guidelines of RBI and NHB; (ii) the status of the projects and payment plans; (iii) information about loan disbursements; (iv) lopsided terms of builder – homebuyer agreements; (v) possible recourse by banks/HFCS; (vi) property security myth and mortgage in builder builder and tripartite/quadripartite agreements and the role of development authorities; (vii) status of developers and hidden players – role and impact; (viii) on efficacy of RERA and disclosures on their websites; (ix) regulatory lapses by development authorities; and, (x) honoraria.**

16. In the aforesaid report, Note No. 1 highlights the transparency and responsibility of development authorities including RERA and the necessity to reconsider their role with reference to the protection of home buyers from unscrupulous builders."

24.4.7. On 23-09-2025, CBI submits before the Apex Court that the preliminary enquiry in terms of the directions issued by the Apex Court on 29-04-2025 was complete and that post the preliminary enquiry it was found that a cognizable case was made out and directs that the CBI should register a case and proceed with the investigation. The order dated 23-09-2025 reads as follows:

"1. On oral mention, the main case is taken on the Board.

> 2**. Learned Additional Solicitor General of India, on instructions, informs that the preliminary enquiry by the CBI, in terms of the directions issued earlier, is complete and as per such enquiry, a cognizable offence is made out.**
> 3. **That being so, the CBI will register the case under the appropriate provisions of law and proceed to investigate the same.**
>
> 4. A copy of the preliminary enquiry report be handed over to the learned *amicus* after completion of the search and seizure to enable him to assist the Court on the date fixed, i.e., 16.10.2025"

24.4.8. On 20-01-2026, the learned *Amicus* submitted a comprehensive status report running into more than two volumes. The report sets out, in detail, the actions of seven Banks/Financial Institutions and examines the issues surrounding the projects of the petitioner-Company, along with the further course of action. It also undertakes an in-depth examination of the role of the Banks/Financial Institutions and the Builders/Developers, and the alleged frauds committed by them, leaving the landowners and homebuyers with very limited recourse. The order dated 20-01-2026 reads as follows:

"….. ….. …..

> 7. **This matter pertains to the systematic misuse of the subvention scheme by various private builders-cum-developers, apparently in collusion and connivance with the banks and the financial institutions. On 22.07.2025,**

comprehensive directions were issued, and pursuant thereto, a brief note was handed over on behalf of the CBI to the effect that, in compliance with those directions, 22 regular cases were registered on 28.07.2025 as per the provisions of law. Thereafter, searches were carried out at the residential/ official premises of the accused persons. Out of these 22 cases, investigations in the following 3 cases are complete, and pursuantly, chargesheets have been filed against the builder companies and their directors:

> "1. RC 219 2025 E0015 (M/S. Rudra Buildwell Constructions Pvt. Ltd.), Project: 'KBNOWS Apartments' Greater Noida.
>
> 2. RC 219 2025 E0017 (M/S. Dream Procon Private Ltd.) Project: 'Victory Ace' Noida.
>
> 3. RC 219 2025 E0020 (M/S. Jaypee Infratech Ltd.) Project: "Orchards" Noida."

8. During the course of the hearing, we are informed that the above-stated chargesheets have been filed in the Court of Chief Metropolitan Magistrate at Rouse Avenue Courts, Delhi. We direct the Court concerned to consider the chargesheets filed and proceed with the matter in accordance with law within two weeks.

9. **With reference to the subsequent order dated 23.09.2025, the note submitted by the CBI reveals that 6 regular cases were registered on 25.09.2025, and some searches were carried out at the residential/official premises of the suspects. All these cases are still under active investigation.** The extract of the status report is said to have been shared with the learned *Amicus Curiae*. It is also explained that the requisite police officers/officials have been taken on deputation from the State Police of Uttar Pradesh and Haryana. Learned Additional Solicitor General of India representing the CBI states that the investigation will be completed promptly, and a fresh status report shall be filed before the next date of hearing.

10. Mr. Rajiv Jain, learned *Amicus Curiae*, has submitted a very comprehensive status report comprising two volumes. **It delves into the details of the actions of 7 banks/financial institutions, particularly the circumstances surrounding the Ozone projects and the further course of action. The report provides an in-depth analysis of the role of the banks and financial institutions, leaving the land owners with very limited recourse but to agree to the terms of their respective agreements. In many Tripartite agreements, the banks have ample power to move against the builders for the recovery of money. They can also seek a full refund from the builders if the unit is abandoned by the purchasers, while the builders are only entitled to retain the earnest money paid by the purchasers. The report shockingly reveals how unfairly the home buyers or the land owners have been treated.**

11. It seems to us that the report submitted by the learned *Amicus Curiae* will be extremely helpful for the CBI to take the ongoing investigation to a logical conclusion. We have, therefore, impressed upon Mr. Rajiv Jain, learned *Amicus Curiae*, to handover a soft copy of the report to Ms. Aishwarya Bhati, learned Additional Solicitor General of India, representing the CBI, for further information and necessary action.

12. The note submitted on behalf of the CBI reveals that, at present, 25 regular cases are under active consideration. These FIRs pertain only to those cases that came up for consideration before this Court when the orders dated 22.07.2025 and 23.09.2025 were passed. Thereafter, various other home buyers have also approached this Court by filing independent writ petition(s) or as intervenor(s).

13. The counsel for the petitioners in the writ petition(s) as well as those who have applied to become intervenor(s) are directed to handover soft copies of their respective petitions/applications to Ms. Aishwarya Bhati, learned Additional Solicitor General of India representing the CBI, so as to enable the CBI to examine those matters and register further regular cases, wherever required”

24.4.9. Subsequently, on 06-08-2026, the Apex Court issues certain interim directions to facilitate expeditious and time-bound investigation by the CBI. The CBI was directed to furnish to the Directorate of Enforcement the details of cases in which the Directorate was required to take cognizance of offences relating to proceeds of crime. The CBI was further particularly directed to conduct a thorough investigation into the allegations and documents contained in the representations alleging offences by the Banks, land authorities and the builder, namely, the petitioner-Company, Ozone Group, in the States of Karnataka, Maharashtra and Tamil Nadu. The order dated 06-08-2026 reads as follows:

> "1. **This batch of petitions, largely instituted at the instance of certain home buyers-cum-borrowers, have been directed against the systemic failure of the statutory and Government authorities to discharge their functions, as also against the circumvention of the regulatory framework by Banks and Housing Financial Corporations (HFC), resulting in alleged illicit benefits drawn by the builders cum-developers at the cost of homebuyers, without completing the subject-projects and handing over possession of the allotted premises.**
>
> 2. This Court, having considered the recommendations of Shri Rajiv Jain, learned *Amicus Curiae*, in a self-speaking order dated 29.04.2025 and subsequent orders, initially directed the Central Bureau of Investigation (CBI) to complete preliminary enquiries and thereafter register regular cases for investigation

into the alleged offences. In due course of time, the CBI has registered 56 FIRs, of which final reports have been filed in 18 cases, along with 17 charge-sheets and 1 closure report.

3. The CBI has now filed its 5th Supplementary Status Report, according to which, out of the 17 cases where a chargesheet was filed, cognizance has been taken in 3 cases. In 5 cases, the delinquent role of officials of the financial institutions has also emerged during the course of investigation, and they too have been chargesheeted under the Prevention of Corruption Act, 1988. However, sanction under Section 19 of that Act is awaited from the competent authority/authorities. We are informed that, in total, 34 prosecution sanctions are awaited in respect of different officials, the details whereof have also been mentioned in the Report.

4. It is further stated that the learned *Amicus Curiae* has forwarded an additional set of 38 Special Leave Petitions and 52 Interlocutory Applications on 04.05.2026 to the CBI for further examination and appropriate action thereon. These matters also pertain to similar allegations concerning real estate projects, but relate to the same companies and projects, in regard whereof CBI has already registered cases.

5. The CBI has further pointed out that due to the increase in the volume and national scale of these investigations, additional police officials need to be requisitioned. Accordingly, requests for requisitioning police officers from the States of Uttar Pradesh, Rajasthan, Tamil Nadu, Maharashtra, Haryana, Punjab, and Karnataka were made through a communication sent by the Director, CBI. However, the aforementioned States have neither provided the requisite additional police personnel, nor responded to the CBI Director's request. Consequently, the CBI has prayed for certain interim directions.

6. The learned *Amicus Curiae* has filed his status reports in the form of Note Nos. 7 and 8, both dated 06.08.2026. In Note No. 7, it has been pointed out that a total of 283 Special Leave Petitions, Writ Petitions, Transfer Petitions, and Interlocutory Applications have been filed, relating to 2041 petitioners/applicants. Out of them, only 977 persons have furnished the requisite information as on 01.08.2026, as per the Form provided by the learned *Amicus*, while he has been

able to obtain the necessary information for 45 more such persons from their filings. However, information qua several hundred petitioners/applications is still not available.

7. The Report submitted by the learned *Amicus Curiae* is self speaking with respect to: (i) the present status of the projects and builders; and (ii) the exposure faced by the Banks and HFCs. At its conclusion, the Note contains certain recommendations made by the learned *Amicus*, which warrant necessary directions by this Court.

8. Learned *Amicus Curiae* has also, through Note No. 8, submitted his comments on the investigation by the CBI and his comments on various representations seeking CBI enquiry/investigation. It is, inter alia, pointed out that the CBI has made available the investigation reports of three cases mentioned in paragraph 3 of the Report. The learned *Amicus* has also provided soft copies of 81 Special Leave Petitions and 52 Interlocutory Applications to the CBI, which have been filed meanwhile and have been scrutinised by him. Thereafter, it is explained that the learned *Amicus Curiae* has received detailed representations, notes, and supporting documents from the learned advocates/counsel and homebuyers across multiple States in connection with the subject-matter(s). The categorization of these representations too has been included as part of the Note. Finally, learned *Amicus* has also sought certain directions to the CBI.

9. We have heard learned *Amicus Curiae* and other learned senior counsel/counsel for the parties. In addition, Ms. Aishwarya Bhati, learned Additional Solicitor General representing the CBI, has also been heard.

10. In order to facilitate the expeditious and time-bound investigation by the CBI and as prayed for by it in its 5th Supplementary Status Report along with the directions sought by learned *Amicus Curiae* to CBI, we issue the following interim directions:

(i) The Directors General of Police of the States of Uttar Pradesh, Rajasthan, Tamil Nadu, Maharashtra, Haryana, Punjab, and Karnataka are directed to expeditiously provide additional suitable police officials as per the request received from CBI, on deputation. The requisite suitable officers shall be nominated/deputed as early as possible, but not later than two weeks. In the event of any delay or failure, this Court will be constrained to take a serious view of the non-compliance;

(ii) The competent authorities of the Bank of India, the State Bank of India, the United Commercial Bank, HDFC Bank Ltd., ICICI Bank, and Samman Capital Ltd. are directed to expeditiously process and accord necessary sanction under Section 19 of the Prevention of Corruption Act, 1988 for prosecution of their officers/officials who have been prima facie found involved by the CBI during the course of investigation. The needful shall be done within two weeks, failing which the competent authority shall submit an explanation to this Court;

(iii) The CBI is directed to convey to the Directorate of Enforcement the details of such cases where the Directorate is required to take cognizance of offences relating to the proceeds of crime;

(iv) The CBI is directed to scrutinise and take cognizance of the representations, documentary evidence, and further material as forwarded by the learned *Amicus Curiae*;

(v) The CBI shall conduct a thorough investigation into the aspects highlighted by the learned *Amicus Curiae*, in his comments on the 3 charge-sheets. The detailed comments form part of Note No. 8, a soft copy whereof will be supplied by the learned Amicus Curiae in a pen drive or through email to the office of the learned Additional Solicitor General for the CBI's consideration;

(vi) **The CBI is further directed to conduct a thorough investigation into the allegations and relied upon documents of the six representations alleging offences by the Banks, land authorities, and the builder, namely, Ozone Group in the States of Karnataka, Maharashtra, and Tamil Nadu**; Vivansaa Baalsam in Bengaluru; Rudra Buildwell Construction Pvt. Ltd. in Greater NOIDA; and Omaxe Group in Chandigarh. **A separate status report with respect to the**

investigation against these builders/banking institutions shall be submitted before this Court; and

(vii) **In the course of ongoing investigation, particularly where there is no quadripartite agreement, despite the lessee and developer/builder being different, the CBI shall examine whether the banks/HFCs, either ignorantly, negligently, or consciously, signed an agreement to create a mortgage over the flat/apartment in the absence of the actual leaseholders and whether any wrongful loss was caused to the banks/HFCs due to such exclusion**."

(Emphasis supplied at each instance)

24.5. The sixth FIR, registered by the CBI as FIR No. RC2192025E0031 on 25-09-2025 pursuant to the directions issued by the Apex Court in the afore-quoted orders, is for offences punishable under Sections 420 read with 120-B of the IPC and Sections 13(2) read with 13(1)(d) of the PC Act. The gist of the allegations in the FIR read as follows:

"**In compliance to Order dated 29.04.2025 of Hon'ble Supreme Court of India In SLP (Civil) No. 7649/2023 titled Himanshu Singh vs Union of India & others; Preliminary Enquiry No. 2192025E0007 of projects falling outside Delhi/NCR was registered against various builders including M/s Ozone Urbana Infra Developers Pvt. Ltd having its project ""Ozone Avenue"** addressed at NH-7, Kannamangalla Village, KasabaHobli, DevanahalliTaluk, Bangalore Rural District, Bengaluru, Karnataka, Unknown Bank Officials, Unknown Private Persons and Other Unknown.

Enquiry revealed that there are 01 SLP and 03 petitioners involved in the SLPs pertaining to M/s Ozone Urbana Infra Developers Pvt. Ltd. as mentioned below:

SLP No.	**No. of Petitioners**
SLP/ Diary No. 49573 of 2024	03

It is revealed that M/s Ozone Urbana Infra Developers Pvt. Ltd. through its Directors, in connivance with officials of Indiabulls Housing Finance Limited (Now Sammaan Capital) innovated a subvention scheme for sale of its residential project stating "No Pre-EMI till delivery of possession of residential unit" and thereby lured the homebuyers for booking / purchasing residential units in its project. The homebuyers were induced by its attractive scheme and parted with their own fund to book the flats.

Enquiry revealed that M/s Ozone Urbana Infra Developers Pvt. Ltd. further entered into a Builder Buyer Agreement mentioning therein that the possession of the allotted unit shall be given to the allottee/s by the Company within a fixed period.

Enquiry revealed that M/s Ozone Urbana Infra Developers Pvt. Ltd. prima facie entered into criminal conspiracy with unknown officials of Indiabulls Housing Finance Limited (Now Sammaan Capital)from whom home loans were availed by the homebuyers. Officials of these financial institutions approved the subvention plan of the builder and financed home loans accordingly. Indiabulls Housing Finance Limited (Now Sammaan Capital) in pursuance thereof sanctioned and disbursed home loan to the account of M/s Ozone Urbana Infra Developers Pvt. Ltdwithout exercising any due diligence and caused undue pecuniary advantage to the Builder and ignored the directives of RBI/NHB.

Enquiry revealed that M/s Ozone Urbana Infra Developers Pvt. Ltd. defaulted in payment of Pre-EMIs as

promised till handing over the possession of the flat to homebuyers and did not complete the project/flats. Builder neither delivered possession of the residential units to homebuyers nor refunded their deposited amount and misappropriated the entire upfront booking amount/loan amount. It clearly indicates that the homebuyers have been cheated by M/s Ozone Urbana Infra Developers Pvt. Ltd in conspiracy with unknown officials of M/s Indiabulls Housing Finance Limited (Now Sammaan Capital) thereby causing wrongful loss to the homebuyers and corresponding wrongful gain to themselves.

Enquiry revealed that the M/s Indiabulls Housing Finance Umited (Now Sammaan Capital) started deducting EMI from the homebuyers and in the event of default reported the homebuyer's accounts as NPA and thereby CIBIL of the homebuyers were degraded.

Enquiry also revealed that the builder has sold the same flat to multiple homebuyers and same unit was also financed by the financial institution twice

On the basis of finding of preliminary enquiry, Hon'ble Supreme Court of India vide Order dated 23.09.2025 directed CBI to register regular case (copy enclosed).The Preliminary Enquiry prima facie discloses that M/s Ozone Urbana Infra Developers Pvt. Ltd had cheated the homebuyers in conspiracy with unknown officials of bank / financial Institution and their acts constitute the commission of offences of cheating, criminal conspiracy and criminal misconduct by public servants. Hence, a regular case is registered under section 120-B r/w 420 IPC and 13(2) r/w 13 (1)(d) of PC Act, 1988 against; 1.M/s Ozone Urbana Infra Developers Pvt. Ltd. and its directors at the relevant time,, 2. Mr. S. Vasudevan Managing director of M/s Ozone Urbana Infra Developers Pvt. Ltd. 3. Unknown officials of M/s Indiabulls Housing Finance Limited (Now Sammaan Capital) 4. Unknown private persons and 5. Unknown others. The investigation of this case is entrusted to Sh. Avinash Kumar, Inspector, CBI, EO-1, New Delhi."

(Emphasis added)

This CBI FIR is then added to the 2025 ECIR by way of an addendum dated 03-10-2025. The addendum reads as follows:

भारत सरकार / GOVERNMENT OF INDIA
प्रवर्तन निदेशालय / DIRECTORATE OF ENFORCEMENT
बेंगलुरु आंचलिक कार्यालय/ BENGALURU ZONAL OFFICE

ADDENDUM TO ECIR/BGZO/01/2025 DATED 05.02.2025

1.	ECIR No. as per assigned format	Year	Zone	Sub-Zone	Date of ECIR
	ECIR/BGZO/01/2025	2025	Bengaluru	-	05.02.2025

2. Detail and nature of the Scheduled Offence:			
i. Scheduled Act(s)	**ii. Section of the Act(s)**	**iii. Agency investigating the scheduled offence**	**iv. FATF Category**
Indian Penal Code, 1860 Prevention of Corruption Act, 1988	Section 120-B r/w 420 Section 13(2) r/w 13 (1) (d)	CBI, EO-I, New Delhi	(ix) Fraud

3	**Source from which the information / material has been received**	FIR No. RC2192025E0031 dated 25.09.2025 registered at Economic Offences Wing – I (EO-I), Central Bureau of Investigation, New Delhi
4	**Place(s) of Occurrence of Scheduled Offence**	Bengaluru
5	**Name and address of suspected person(s) with full particulars**	1. M/s. Ozone Urbana Infra Developers Pvt. Ltd. No. 38, Ulsoor Road, Bengaluru – 560042. 2. Mr. S Vasudevan, Director of M/s. M/s. Ozone Urbana Infra Developers Pvt. Ltd. R/o No. 32, Prime Street, Richmond Town, Bengaluru - 560025

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			3. Unknown officials of M/s. Indiabulls Housing Finance Ltd. (Now M/s. Sammaan Capital Ltd.)
6	**Details of property suspected to be Proceeds of Crime**		
	a.	**Movable**	Yet to be ascertained
	b.	**Immovable**	

7 **Material relating to commission of offence:**

- M/s Ozone Urbana Infra Developers Pvt. Ltd. through its Directors, in connivance with officials of Indiabulls Housing Finance Limited (Now Sammaan Capital) innovated a subvention scheme for sale of its residential project stating "No Pre-EMI till delivery of possession of residential unit" and thereby lured the homebuyers for booking / purchasing residential units in its project. The homebuyers were induced by its attractive scheme and parted with their own fund to book the flats.
- M/s Ozone Urbana Infra Developers Pvt. Ltd. entered into a Builder Buyer Agreement mentioning therein that the possession of the allotted unit shall be given to the allottee/s by the Company within a fixed period.
- M/s Ozone Urbana Infra Developers Pvt. Ltd. prima facie entered into criminal conspiracy with unknown officials of Indiabulls Housing Finance Limited (Now Sammaan Capital) from whom home loans were availed by the homebuyers. Officials of these financial institutions approved the subvention plan of the builder and financed home loans accordingly.
- Indiabulls Housing Finance Limited (Now Sammaan Capital) in pursuance thereof sanctioned and disbursed home loan to the account of M/s Ozone Urbana Infra Developers Pvt. Ltd. without exercising any due diligence and caused undue pecuniary advantage to the Builder and ignored the directives of RBI/NHB.
- Enquiry revealed that M/s Ozone Urbana Infra Developers Pvt. Ltd. defaulted in payment of pre-EMIs as promised till handing over the possession of the flat to homebuyers and did not complete the project/flats. Builder neither delivered possession of the residential units to homebuyers nor refunded their deposited amount and misappropriated the entire upfront booking amount/loan amount.
- M/s Ozone Urbana Infra Developers Pvt. Ltd in conspiracy with unknown officials of M/s Indiabulls Housing Finance Limited (Now Sammaan Capital) thereby causing wrongful loss to the homebuyers and corresponding wrongful gain to themselves.
- M/s Indiabulls Housing Finance Limited (Now Sammaan Capital) started deducting EMI from the homebuyers and in the event of default reported the homebuyer's accounts as NPA and thereby CIBIL of the homebuyers were degraded.
- M/s Ozone Urbana Infra Developers Pvt. Ltd has sold the same flat to multiple homebuyers and same unit was also financed by the financial institution twice.
- Hon'ble Supreme Court of India vide Order dated 23.09.2025 directed CBI to register regular case as the Preliminary Enquiry prima facie discloses that M/s Ozone Urbana Infra Developers Pvt. Ltd. had cheated the homebuyers in conspiracy with unknown officials of bank / financial institution and their acts constitute the commission of offences of cheating, criminal conspiracy and criminal misconduct by public servants. Hence, a regular case is registered under section 120-B r/w 420 of the IPC and 13(2) r/w 13 (1)(d)

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	of the PC Act, 1988. Section 120 B, 420 of the IPC and section 13 of the PC Act which are scheduled offences under PMLA,2002 have been invoked in the case. **Assessment of proceeds of crime:** • Prima facie, it is observed that "proceeds of crime" is generated by diverting the money received from the buyers/customers and also from financial institutions. The same has also been revealed during the investigation in ECIR/BGZO/01/2025.
Signature of I.O.:	03/10/25
Name of I.O.:	(Vishal Arya) ASSISTANT DIRECTOR
Counter signed by the Deputy Director:	विशाल आर्य / VISHAL ARYA सहायक निदेशक / Assistant Director प्रवर्तन निदेशालय / Directorate of Enforcement भारत सरकार / Government of India बेंगलूरु / Bengaluru 03/10/25
Name of the Deputy Director:	(Brij Shankar) DEPUTY DIRECTOR

बृज शंकर, भा.रा.से./ BRIJ SHANKAR, I.R.S.
उप निदेशक / Deputy Director
प्रवर्तन निदेशालय / Directorate of Enforcement
भारत सरकार / Government of India
बेंगलूरु / Bengaluru

Copy forwarded to:

(i) The Director, Directorate of Enforcement, New Delhi (through e-office only)

(ii) The Regional Special Director, Southern Region, Directorate of Enforcement, Chennai.

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(Emphasis added)

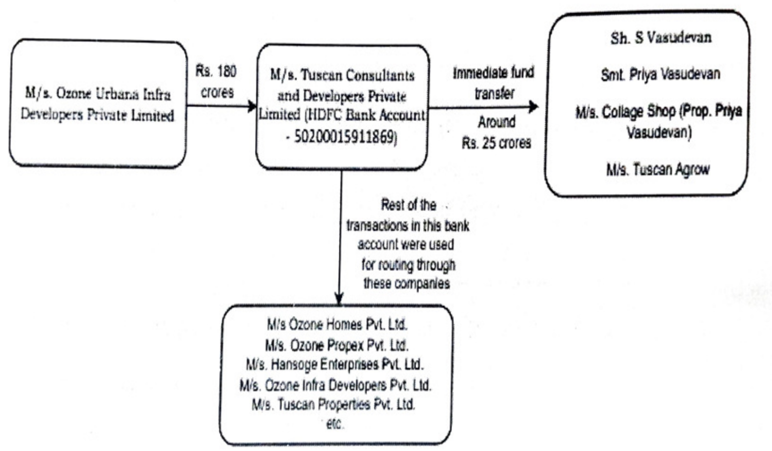
24.6. Subsequently, on 04-10-2025, a PAO was issued under Section 5(1) of the PMLA read with Rule 3 of the Prevention of Money Laundering (Issuance of Provisional Attachment Order) Rules, 2013, provisionally attaching the properties of the petitioner-Company, Mr. Vasudevan Sathyamoorthy and his wife, Mrs. Priya Vasudevan, to the extent of approximately Rs.423.38 Crores. The reasons to believe recorded in the order of attachment dated 04-10-2025 read as follows:

" ….. ….. …..

8. <u>RECORDING OF REASON TO BELIEVE UNDER SECOND PROVISO TO SECTION 5(1); AND UNDER SECTION 5(1) READ WITH SECTION 2(1)(u) OF PMLA:</u>

i. M/s Ozone Urbana Infra Developers Pvt. Ltd. (hereinafter "OUIDPL"), promoted and controlled by Shri S. Vasudevan, collected approximately ₹927.22 crores from around 1351 homebuyers in its Ozone Urbana township project at Devanahalli, Bangalore, apart from loans raised from financial institutions. The company failed to deliver possession of apartments/units against the said money, thereby dishonestly retaining and diverting the funds.

ii. **That the funds so collected from gullible customers and banks, instead of being applied for construction and delivery of the projects, were diverted, layered and siphoned-off to various group companies and personal bank accounts of Shri S. Vasudevan and his wife, Smt. Priya Vasudevan.** These diversions include inter-corporate deposits of ₹49.07 crores to several group concerns, and transfer of over ₹180 crores to M/s Tuscan Consultants and Developers Pvt. Ltd., out of which large sums were immediately routed to the personal accounts of Shri S. Vasudevan and his wife Smt. Priya Vasudevan.



iii. That Shri S Vasudevan himself admitted on oath under section 50 of the PMLA, 2002 that escrow funds were utilized for purposes other than construction, including corporate overheads, salaries, loan repayments and marketing expenditure. Further, substantial amounts were layered through multiple entities and were routed abroad into overseas ventures such as Ozone Agrow Pte. Ltd. (Singapore), Ozone Bolevine Agrow Ltd. (Laos), and Ozone Global DMCC (Dubai). **This entire process resulted in layering and integration of the proceeds of crime, generated by cheating customers.**

iv. That the books of accounts of OUIDPL falsely reflect a **Work-in-Progress (WIP)** of ₹1,310 crores, comprising largely of finance costs and overheads, despite the project land remaining undeveloped. This establishes manipulation of accounts to conceal the diversion of proceeds of crime.

v. **That despite directions of K-RERA (Karnataka, RERA) to refund amounts to homebuyers, Shri S. Vasudevan wilfully failed to comply with such orders. thereby reinforcing his fraudulent intent. Moreover, the company has not obtained RERA approval for construction post-2023, leading to a complete standstill of construction activity. Defaults in vendor payments have further worsened the standstill, creating a vicious cycle detrimental to innocent homebuyers who are left remediless that is they neither have possession of their flats nor they have been refunded of monies already paid. Further, there is no active construction on-going the project due to expiry of RERA approval and non- payment of dues to the vendors.**

vi. This situation has forced around 100 families to, reside in incomplete Ozone Urbana units, without possession letters or completion/occupancy certificates from the statutory authorities. This unfortunate situation has been created by the promoters by misappropriation of customer funds and in complete disregard for statutory obligations.

vii. **That Shri S. Vasudevan, with ill-intent, has further alienated Ozone Urbana properties by selling large parcels of land to third parties like Sattva Resi Pvt. Ltd., and used the proceeds thereof to settle debts with ACRE ARC and JC Flowers ARC, thereby**

alienating properties acquired out of customers' funds and depriving them of their right over such assets.

viii. Sh. S Vasudevan in order to safeguard properties of M/s OUIDPL and other group companies from any legal action from various agencies including K-RERA, had taken loans from various banks after mortgaging the same, which has now been taken over by JC Flower for Rs. 1030 Crores. It is mentioned here that the real value of the assets mortgaged to JC Flower is much more that the book value as the same were purchased and mortgaged around the Year 2018.

ix. It is also stated that the unsold inventory (only RC structure) in Urbana projects (Aqua2, Avenue, Prime etc.) measuring 8.83 lakh sq.ft. have also been constructed from the funds received from the customers (part of the Proceeds of Crime) and the same has not been completed till date, which has kept the customers waiting for delivery of the units. However, the funds received from them were used elsewhere illegally.

x. It is pertinent to mention here that in many cases, the customer has arranged funds through a tri-party agreement with the financial institution, wherein M/s OUIDPL has promised to pay the pre-construction EMIs. However, the company has failed to honour that commitment for hundreds of customers, leaving them exposed to the high-handed loan recovery practices of these financial institutions. Further, in many cases CIBIL score of the customers have

been adversely impacted due to inability to pay EMIs.

xi. Shri S. Vasudevan with ill intention, instead of constructing flats/apartments and delivering the same to the gullible customers, sold some of these prime properties at very high value to third parties. The proceeds of the sale are still not being used for construction of apartments. Instead, the same are being used for development of new projects in other group entities and for reimbursement of loan to JC Flower and others. This has rendered hundreds of customers as helpless and vulnerable.

xii. Therefore, the below mentioned properties are liable to be attached in M/s OUIDPL Project as value thereof of the proceeds of crime to safeguard the interests of the customers, leaving other properties for the financial institutions keeping in mind of their interest as well-

- 4.5 Acres of Commercial Land registered vide document nos. 5234/2005-06 in CD-DNHD 73 dt. 20.01.2006 and 3301/2004-05 in CD DNHD 29 dt 01.12.2004 situated at Sy. Nos. 115, 116 and 117, Kannamangala Village, Kasaba Hobli, Devanahalli Taluk, Bangalore Rural District.

- Unsold inventory in Urbana Projects i.e. Aqua 2 and Avenue (Total number of 105 unsold flats admeasuring 2,04,919 Sq. Ft.)

xiii. Sh. S. Vasudevan and Priya Vasudevan have received Proceeds of Crime to the tune of more than Rs. 28 Crores and exhausted the same for other purposes and hence, the properties below as the proceeds of crime are liable to be attached. In addition to this, Shri S. Vasudevan has also received Rs. 7.8 Crores from Ozone Urbana Infra Developers Pvt. Ltd., which is still outstanding and exhausted for other purposes/personal benefits.

- Immovable property admeasuring 294 acres situated at Kannehalli Village, Gonibeedu Hobli, Mudigere Taluk, Chikkamagaluru District valuing to Rs. 47,40,00,000/- (To the extent of Rs. 35.8 Crores)

xiv. **That the totality of facts and evidences demonstrate that funds collected from gullible customers constitute "proceeds of crime" within the meaning of Section 2(1)(u) of the PMLA, 2002, having been derived or obtained as a result of criminal activity relating to the scheduled offence of cheating, criminal breach of trust, and Criminal conspiracy under the IPC.**

xv. **That the said proceeds of crime have been (a) concealed in manipulated books of accounts, (b) layered through inter-corporate deposits and overseas transfers, and (c) integrated into immovable properties, group concerns, and personal assets of Shri S. Vasudevan and his wife Smt. Priya Vasudevan, thereby completing the cycle of money laundering.**

xvi. Thus, there are reasons to believe that properties mentioned at Schedule-A of properties at Para-6 above will be transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime, if not attached immediately. The subject assets may be transferred/disposed-of/encumbered without notice of this Directorate may result in frustrating any proceedings relating to confiscation of such proceeds of crime.

xvii. Therefore, to ensure that properties involved in the offence of money laundering are not concealed. transferred. alienated, disposed of or dealt with in any manner that may frustrate the proceedings under PMLA, there are reasons to believe that the properties, as detailed in Schedule A in Para-6 above are involved in money laundering are liable for attachment under section 5(1) read with section 2(1)(u) of PMLA, 2002.

9. THEREFORE, in view of the above discussion and material and evidences placed before me, I have reasons to believe that M/s Ozone Urbana Infra Developers Pvt. Ltd. and its promoters Shri S. Vasudevan along with others, who have been charged with Scheduled Offences i.e. Sections 419, 420 and 120B of IPC, 1860, within the meaning of Section 2(1) (y) of the PMLA, have indulged in criminal activities and committed scheduled offences and have generated proceeds of crime and from the part of the proceeds of crime they had acquired the immovable properties having **total value of Rs. 423,37,84,000/- (FOUR HUNDRED TWENTY-THREE CRORES THIRTY-SEVEN LAKHS AND EIGHTY-FOUR THOUSAND) as mentioned above in detail in Schedule A of the properties at Para - 6 of this attachment order,** and identified as proceeds of crime are hereby attached under section 5(1) read with section 2(1)(u) of PMLA, 2002. Such proceeds of crime are in conformity with the definition of proceeds of crime provided under section 2(1)(u) of PMLA, and the same are involved in money laundering. If such proceeds of crime in the form of immovable property (ies) involved in money laundering are not attached immediately under the provisions of the Act, the non-attachment of the properties are likely to frustrate any further proceedings under the Act. In addition, if the Proceeds of Crime are not attached, I have reasons to believe that the Proceeds of Crime would further be laundered;

10. NOW THEREFORE on the basis of material in my possession and in exercise of the powers conferred under Second Proviso to Sub-Section (1) of the Section 5 of the Prevention of Money Laundering (15 of 2013) read with Rule 3 of The Prevention of Money Laundering (Issuance of Provisional Attachment Order) Rules, 2013 and in terms of authorization to act as statutory authority under PMLA, I, Brij Shankar, Deputy Director, Directorate of Enforcement, Bengaluru Zonal Office, Bengaluru, hereby order provisional attachment of movable properties duly mentioned in the schedule - A of the properties at Para-6 above, for a period of 180 days (One Hundred and Eighty Days) from the date of issuance of this Order, and further order that the

> same shall not be transferred, disposed of, alienated, removed or parted with or otherwise dealt with in any manner whatsoever until or unless specifically permitted to do so by the undersigned."

(Emphasis added)

The PAO sets out in detail the investigation undertaken, the materials forming the basis for registration of the ECIR, the search and seizure proceedings, and the details of the buy-back and subvention schemes. It further details the financial transactions, including the alleged diversion and siphoning of funds, the properties of the Company, its promoters, directors and associated persons, and the manner in which the financial transactions were layered. Accordingly, the PAO records that the money generated from the aforesaid activities constitutes the "proceeds of crime". On the basis of the afore-quoted PAO a press release is also issued on the same day by the Directorate of Enforcement. It reads as follows:

" **PRESS RELEASE**
4/10/2025

Directorate of Enforcement (ED), Bangalore has issued a Provisional Attachment Order dated 04.10.2025 under the Prevention of Money Laundering Act (PMLA), 2002, attaching immovable properties amounting to Rs. 423.38 Crores, in

connection with an investigation against M/s Ozone Urbana Infra Developers Pvt. Ltd. and Others.

Investigation in this case by ED was initiated on the basis of multiple FIRs under sections 419, 420 and 120B of Indian Penal Code, 1860 registered at various police stations of Bengaluru City against M/s Ozone Urbana Infra Developers Pvt. Ltd and its promoters. Further, a FIR was also registered against the company and its promoter by the CBI, EO-1, New Delhi on the direction of Hon'ble Supreme Court.

The main allegation against the company M/s Ozone Urbana Infra Developers Pvt. Ltd. is that it has defaulted in completion of construction of projection in time and failed to hand over the possession to the customers. It is alleged that the company induced the gullible customer by offering to pay pre-construction EMIs till handing over the possession of the flat to homebuyers. However, it has failed to honour its commitments and did not complete the project/flats. The builder neither delivered possession of the residential units to homebuyers nor refunded their deposited amount and misappropriated the entire upfront booking amount/loan amount.

Earlier, (ED), Bangalore Zonal Office has conducted search operations under section 17 of PMLA,2002 on 01/08/25 at 10 premises in this case and seized various incriminating documents related to diversion and misappropriation of project fund from the various premises.

Further, during the course of ED investigation, it is revealed that M/s Ozone Urbana Infra Developers Pvt. Ltd. along with Sh. S Vasudevan (main promoter) have defrauded the home buyers to the tune of Rs. 927.22 Crores and did not deliver possession of apartments/units against the said money, thereby dishonestly retaining and diverting the funds. The accused diverted the funds to the other group entities and associated individuals including Sh. S. Vasudevan himself and his family members. Therefore, the company and Sh. S Vasudevan have generated proceeds of crime to the tune of Rs. 927.22 Crores and routed the same through various entities and used for the purpose other

> than the funds actually meant for i.e. for construction and development of projects in Ozone Urbana Infra Developers Pvt. Ltd.
>
> **Thus, in order to safeguard the interest of the customers, immovable properties of the M/s Ozone Urbana Infra Developers Pvt. Ltd. (Unsold stock in the Avenue (92 flats) and Aqua 2 projects (13 flats), 4.5 Acres of commercial land) and personal properties of itspromoter S. Vasudevan along with his wife (179 acres of land at Kannehalli Village, Mudigere) all totalling to the tune of Rs. 423.38 Crores has been provisionally attached**."

(Emphasis added)

The press release is issued stating that property of the petitioners worth Rs.423.38 Crores was attached in connection with the investigation against them by the Directorate of Enforcement in order to safe guard the interests of the customers – home buyers.

24.7. In the light of the allegations obtaining in the **2025 ECIR**, the orders and directions issued by the Apex Court from time to time in **HIMANSHU SINGH** *supra*, culminating in investigation by the CBI, and the dismissal of the companion petitions calling in question the predicate FIRs, the submission of the learned Senior Counsel for the petitioner that there exists no predicate offence to sustain continuation of the 2025 ECIR cannot merit acceptance.

24.8. The very foundation on which the contention is built that the scheduled/predicate offence has ceased to exist does not obtain on the facts. The predicate proceedings continue to subsist and, more importantly, one of the crimes owes its genesis to an investigation undertaken by the CBI pursuant to the directions of the Apex Court. The allegations forming the substratum of those crimes, therefore, remain alive and are yet to undergo the rigours of investigation and trial. At this stage, this Court cannot presume their extinction and, on that premise, pull down the consequential proceedings under the Act.

24.9. So long as the scheduled offence subsists and the proceedings concerning it have not been obliterated, the contention that the **2025 ECIR has been rendered foundationless** is plainly unavailable to the petitioner. The challenge to continuation of the 2025 ECIR on the ground of absence or non-existence of a predicate offence, therefore, **fails and is accordingly rejected**.

24.10. Further, the subsequent PAO sets out clear reasons for attachment of the properties. The contentions of the learned Senior Counsel for the petitioner on the merits of the PAO and determination of "proceeds of crime" also deserve to be rejected, as the properties have only been provisionally attached. What cannot be lost sight of is that the attachment at this stage is only **provisional**. A provisional attachment is not the final word on the character of the property; it is an interim statutory measure, subject to the further adjudicatory process contemplated under the Act. Questions concerning the nexus between the alleged criminal activity and the properties attached, their character as "proceeds of crime", and the sustainability of the attachment on merits are matters which can appropriately be urged before the statutory forum in the proceedings that follow.

24.11. In light of the aforesaid observations becomes apposite to notice the observations of the Apex Court in the case of **JSW STEEL LTD. v. ENFORCEMENT DIRECTORATE[10],** wherein the Apex Court holds that the Appellate Tribunal must first examine whether the attached property constitutes "proceeds of crime". The Apex Court observes as follows:

[10] **2025 SCC OnLine SC 2150**

" ….. ….. …..

27. It is submitted that the Directorate of Enforcement recorded ECIR/09/BZ/2012 on 25.09.2012 and after investigation found that INR 33,80,87,617/- (Thirty-Three Crore Eighty Lakh Eighty-Seven Thousand Six Hundred Seventeen Rupees) remained payable by JSW to AMC which constituted "proceeds of crime" under Section 2(1)(u) of PMLA. To secure this amount, PAO No. 08 of 2015 dated 27.03.2015 for INR 24,37,00,733.50 (Twenty-Four Crore Thirty-Seven Lakh Seven Hundred Thirty-Three Rupees and Fifty Paise Only) and PAO No. 11 of 2016 dated 30.03.2016 for INR 9,43,86,883.50 (Nine Crore Forty-Three Lakh Eighty-Six Thousand Eight Hundred Eighty-Three Rupees and Fifty Paise Only) were issued under Section 5(1) of PMLA, attaching specific amounts in three JSW bank accounts. The PAOs were duly confirmed by the Adjudicating Authority on 09.04.2021.

28. It is argued that despite a clear statutory bar, JSW, in collusion with bank officials, frustrated the attachment by withdrawing funds immediately after the issuance of PAO 08 of 2015 on 27.03.2015. He placed reliance on contemporaneous emails and letters from Vijaya Bank/Bank of Baroda, particularly communications dated 29.03.2016 and 25.05.2016, to submit that the lien on account no. 139500301000053 was wrongfully lifted despite written directions from the ED not to do so. The withdrawals left only INR 7.81 Crore available out of the attached sum, causing a shortfall of INR 16.55 Crore, which continues to be in the possession of JSW.

29. It is stated that possession of confirmed attached property by the accused, in defiance of lawful attachment, squarely falls within Section 8(4) of PMLA and constitutes "concealment, possession, acquisition and use" of proceeds of crime punishable under Section 3 of PMLA. The High Court had dismissed writ petitions of the Appellants challenging the PAOs on 11.12.2020 and the two Writ Appeals Nos. 68 of 2021 and 97 of 2021 were also dismissed on 04.05.2021. Hence, the attachment has attained finality.

30. The further contention is that, in pursuance to multiple summons issued under Section 50(2) of the PMLA to Shri M.V.S. Seshagiri Rao and Appellant No. 2, the officials of JSW Steel Ltd., on 10.12.2021, 15.12.2021, 04.02.2022, and 25.02.2022, there was no cooperation extended, and no authorised representative appeared to depose which shows the mens rea of the Appellants.

31. The learned ASG submitted that bank accounts are considered "property" within the meaning of Section 2(1)(v) of the PMLA, as established by this Court in *State of Maharashtra v. Tapas D. Neogy[State of Maharashtra v. Tapas D. Neogy, (1999) 7 SCC 685]*. He further argued that the attachment of a specified quantum from these accounts is therefore valid. Additionally, he contended that the withdrawal of funds, even during the pendency of a stay order, does not absolve JSW of liability. This is because the stay order was prospective in nature and did not annul the lien that had already been marked on the accounts.

32. In the light of the deliberate conduct of the appellants in dissipating attached amounts and their continued possession of INR 16.55 Crore of proceeds of crime, this Court ought not to exercise extraordinary jurisdiction to quash the cognizance order and prayed for dismissal of the appeals.

33. Having heard learned Counsel for both the parties and on perusal of the records, we note that the Appellants have already invoked their statutory remedy before the Appellate Tribunal under Section 26 of the PMLA, which remains pending.

34. It is important to note that the PMLA provides a comprehensive and self-contained adjudicatory mechanism. Section 5 enables Provisional Attachment, Section 8 contemplates confirmation by the Adjudicating Authority, and Section 26 provides an appellate remedy before the Appellate Tribunal. The appellants, in the present

case, have already invoked their statutory remedy of Appeal, which remains pending.

35. This Court has consistently held that constitutional or appellate jurisdiction should ordinarily not be exercised where an efficacious alternate remedy is available and is actively being pursued. Reference may be made to *Union of India v. Guwahati Carbon Limited[Union of India v. Guwahati Carbon Ltd., (2012) 11 SCC 651]*, which cautions against bypassing statutory forums except in cases of patent illegality or jurisdictional error.

36. We further note that it is undisputed that the ECIR registered by the ED does not name the appellants as accused persons. The charge-sheet filed by the CBI under RC 18(A)/2011/CBI/ACB/BLR also does not array them as accused, having dropped them in the supplementary report after finding no material to proceed. The complaint filed by the ED is predicated not on any independent act of laundering but on the allegation that the appellants withdrew certain sums from the attached bank accounts in violation of the PAOs, thereby frustrating the recovery of INR 33.80 Crore, alleged to be "proceeds of crime."

37. The core issue before us is not whether the appellants' entire banking operations are tainted, but whether the specific sum of INR 33,80,87,617/- (Thirty-Three Crore Eighty Lakh Eighty-Seven Thousand Six Hundred Seventeen Rupees), representing unpaid consideration for iron ore supplied by AMC, can be treated as "proceeds of crime" and whether its withdrawal post-PAO constitutes an offence under Section 3 PMLA. The apprehension that the entire account balance constitutes proceeds of crime is misplaced, particularly when the admitted position is that payments were made and received through regular banking channels and are duly reflected in the books of account.

38. Viewed thus, the appropriate course would be to permit the statutory process to run its route to reach its logical conclusion. Interference at this stage would prejudge issues that are squarely within the domain of the Appellate Tribunal, including

> **whether the attached property represents "proceeds of crime" within the meaning of Section 2(1)(u) PMLA and whether the withdrawals were in violation of law.**
>
> **39.** In light of these findings, we are unable to hold that the case for quashing the cognizance order or interdicting proceedings is made out. The allegations, at this stage, are confined to the recovery of the quantified amount of INR 33.80 Crore and do not extend to fastening criminal liability upon the appellants beyond that process. The apprehension of arbitrary prosecution is, therefore, misplaced.
>
> **40.** Accordingly, we decline to interfere with the proceedings at this stage. The appellants shall be at liberty to pursue their statutory appeals before the Appellate Tribunal, which shall decide the same on their own merits and in accordance with law, uninfluenced by any observations contained herein above."

(Emphasis supplied)

The Apex Court observes that the Act itself engrafts a **self-contained adjudicatory mechanism** for testing the validity and continuance of an attachment. Section 5 enables provisional attachment of the property; Section 8 places such attachment before the Adjudicating Authority for consideration and confirmation in accordance with the procedure stipulated therein; and Section 26 provides a further statutory remedy of appeal before the Appellate Tribunal. Thus, the statute does not leave a person aggrieved by an attachment remediless, but provides a complete hierarchy of adjudication for ventilation of every grievance concerning such attachment. The Apex Court further observes that constitutional or appellate jurisdiction ought not, ordinarily, to be exercised where an **efficacious alternative statutory remedy** is available, particularly when such remedy has already been invoked and the proceedings are pending consideration. In the teeth of the remedies available before the Adjudicating Authority and thereafter the Appellate Tribunal, interference with an order of provisional attachment at its very threshold would amount to short-circuiting the statutory mechanism deliberately engrafted by Parliament.

24.12. Interference at this stage would also run the risk of **prejudging issues which lie squarely within the province of the statutory authorities**, including whether the properties provisionally attached answer the description of **"proceeds of crime" within the meaning of Section 2(1)(u) of the Act**, whether the requisite nexus between the property and the alleged criminal activity exists, and whether the withdrawals or transactions complained of were contrary to law. These are matters requiring consideration on the material placed before the statutory forum and cannot appropriately be pronounced upon by pre-empting the adjudicatory process. Therefore, when the attachment is yet provisional and the statute provides a complete avenue for its adjudication, confirmation and appeal, **interference at this stage would be both premature and unwarranted**.

24.13. **What also cannot escape consideration is the nature and magnitude of the allegations obtaining against the petitioner. The offences alleged are not ordinary crimes confined to an individual complainant or an isolated transaction. They bear the unmistakable features of economic offences, with ramifications extending far beyond the immediate parties to the proceedings. The allegations concern financial transactions of considerable magnitude, diversion and siphoning of funds and their alleged deployment for purposes other than those for which they were collected, thereby affecting the interests of several stakeholders, most significantly, scores of home buyers.**

24.14. **Economic offences stand on a footing distinct from conventional crimes, for their consequences are seldom**

confined to an identifiable victim. Their ripples travel wider. Where monies collected from members of the public, particularly home buyers, are alleged to have been diverted or siphoned away, the injury complained of is not merely monetary; it strikes at the confidence reposed by ordinary citizens in commercial and financial arrangements through which they commit, often, the savings of a lifetime towards securing a home. For a home buyer, the transaction is seldom a mere investment in brick and mortar; it is frequently the culmination of years of savings, coupled with the continuing burden of a loan.

24.15. The allegations in the case at hand, therefore, cannot be viewed through the narrow prism of individual contractual disputes. They concern the alleged movement and diversion of substantial funds and the resultant prejudice to a multitude of persons whose financial interests are intertwined with the projects in question. Such allegations possess **far-reaching economic and societal ramifications** and warrant a full and unhindered investigation in accordance with law. At this stage, when the allegations are yet to be tested in the manner known to law, interdiction of the proceedings would be wholly inappropriate.

24.16. Where allegations disclose a complex web of financial transactions, diversion or siphoning of funds, the Court at the threshold cannot undertake a microscopic examination of the material, weigh its probative worth or pronounce upon defences which properly belong to the realm of investigation and trial. **Quashment at an embryonic stage should not become an instrument by which an investigation into an economic offence is strangled before the investigating agency has had a fair opportunity to unravel the transactions and trace the trail of money.** Unless the complaint or FIR, taken at its face value, fails to disclose the ingredients of any offence or continuation of the proceedings demonstrably amounts to an abuse of process, the investigative process ought ordinarily to be permitted to run its lawful course.

24.17. Therefore, on a conspectus of the reasons rendered hereinabove, no circumstance is made out which would warrant exercise of the extraordinary jurisdiction of this Court to interdict either the predicate proceedings or the proceedings initiated under the Act. The allegations are yet to travel through the process of investigation and adjudication, and this Court, at this stage, cannot embark upon an exercise which would have the effect of **prematurely putting the quietus to proceedings that otherwise warrant investigation in accordance with law**. The challenge laid by the petitioners, viewed from any angle, does not merit acceptance, except in W.P.No.20063 of 2022. The subject petitions other than W.P.No.20063 of 2022, therefore, **deserve to be dismissed and are accordingly dismissed**.

25. For the aforesaid reasons, the following:

<u>ORDER</u>

(i) Writ Petition No.20063 of 2022 is **allowed**.

(ii) All proceedings arising from P.C.R.No.54725 of 2022, pending on the file of the X Additional Chief Metropolitan Magistrate, *qua* the petitioners, stand quashed.

(iii) All other Writ Petitions, stand **dismissed**.

As a consequence, pending applications, if any, also stand disposed.

This Court places its appreciation to the able assistance rendered by Miss. Sai Suvedhya R., Law Clerk cum Research Assistants attached to this Court.

Sd/-
(M.NAGAPRASANNA)
JUDGE

bkp
CT:MJ