

HIGH COURT OF PUNJAB AND HARYANA
Bench: JUSTICE DEEPAK GUPTA
Date of Decision: 12 January 2024

CRM-M-33274 of 2018 (O&M)

**M/s Realtech Developments and Infrastructure
(India) Pvt. Ltd and others**Petitioners

Vs.

Ranbir SinghRespondent

Legislation:

Section 482 of the Criminal Procedure Code (Cr.P.C.)

Sections 138, 141, 142 of the Negotiable Instruments Act

Subject: Petition for quashing criminal complaint and subsequent proceedings related to a cheque dishonor issue in a real estate transaction.

Headnotes:

Quashing of Criminal Proceedings – Petition under Section 482 Cr.P.C. to quash criminal complaint No.7507 dated 13.06.2016 and subsequent proceedings – Concerns cheque dishonor under Sections 138/141/142 of the Negotiable Instruments Act, related to a real estate transaction [Paras 1, 9].

Dispute Over Payment Amount – Respondent paid ₹23,54,573/- as advance for flat registration – Petitioners issued a cheque of ₹36,76,234/-, which was stopped due to a purported error in the amount – Respondent alleges an agreement to pay ₹36,76,234/- considering market conditions [Paras 2-4, 7].

Payment Details and Legal Notice – Respondent's calculation sheet (Annexure R1), prepared independently, not accepted or signed by petitioners – Petitioners replied to legal notice, clarifying the intended refund amount as ₹23,54,573/- [Paras 4, 7].

Judicial Analysis and Decision – No evidence of petitioners agreeing to pay more than ₹23,54,573/- – Continuing proceedings seen as misuse of legal process – Order for quashing the complaint and all consequential proceedings issued [Paras 6, 9].

Referred Cases: Not mentioned.

Representing Advocates:**Mr. Mukesh Rao with Mr. Shubham Aneja for the petitioners.****Mr. Amardeep Hooda for the respondent.**

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C., petitioners have prayed to quash criminal complaint No.7507 dated 13.06.2016 pending in the Court of learned Judicial Magistrate Ist Class, Gurgaon titled “Ranbir Singh Vs. Realtech Developments and Infrastructure (India) Pvt. Ltd. and others”, (copy Annexure P1) filed by the respondent so as to prosecute the petitioners under Section 138/141/142 of the Negotiable Instruments Act; besides summoning order dated 11.08.2016 (Annexure P2) and notice of accusation dated 28.08.2017 (Annexure P3) along with consequential proceedings.

2. The complaint was filed to prosecute the petitioners regarding dishonour of a cheque No.33017904 dated 30.03.2016 for an amount of ₹36,76,234/- drawn on Union Bank of India, Sector-27, Gurgaon, Haryana. It was claimed by the complainant- respondent that he had paid an amount of ₹23,54,573/- as advance for provisional registration of a flat to the accused petitioners but at the time of cancellation of the said flat, the accused had agreed to make payment to the tune of ₹36,76,234/- by considering the market situation and other relevant factors. It is further alleged that cheque in question was dishonored due to stop payment and that despite legal notice served upon the accused to make payment of the cheque amount within 15 days, the same was not paid.
3. It is contended by learned counsel for the petitioners that in fact respondent-complainant had booked residential flat in the Petitioners' Housing Project in Sector-73, Village Behramur, Gurgaon and paid an amount of ₹23,54,573/-. Flat No.606 at 6th Floor was provisionally allotted to the respondent-complainant. However, on account of recession in the Real Estate Market, the complainant showed his unwillingness to continue in the Project and requested the petitioners to refund the amount paid by him. Although as per the terms and conditions of the provisional registration, the petitioners could have deducted the amount spent on administrative expenditure and pay the balance amount but still the petitioners agreed to pay the entire amount of

₹23,54,573/- as paid by the respondent- complainant. Learned counsel for the petitioners contends that due to mistake, cheque for an amount of ₹36,76,234/-, instead of the cheque for an amount of ₹23,54,573/- as agreed between the parties, was paid. Learned counsel contends that when petitioners received legal notice from the respondent- complainant, petitioners promptly replied to the said notice and mentioned the same facts but by ignoring these facts, the summoning order has been passed.

4. Refuting the afore-said contentions, it is argued by learned counsel for the respondent- complainant that as the petitioner did not complete the project, therefore, it agreed to pay the amount of ₹36,76,234/- after taking into consideration the market situation and other relevant factors. Learned counsel for the respondent also drawn attention towards the calculation sheet (Annexure R1) as prepared by the respondent so as to contend that an amount of ₹36,76,234/- was calculated as per a formula. It is also contended that apart from the respondent- complainant, the amount in excess to the amount deposited was also paid to the other similarly situated persons. Prayer is made for dismissal of the petition.
5. I have considered the submissions of both the sides and have appraised the record.
6. It is not disputed by the respondent - complainant that he had deposited an amount of ₹23,54,573/- with the petitioner, towards provisional allotment of a residential apartment during 02.12.2011 to 15.11.2013. Details of the payment are duly mentioned in the surrender letter dated 14.09.2015 (Annexure P.6). The said surrender letter would reveal that it is the respondent complainant, who had made a request to the petitioners for surrendering the provisional booking of the residential apartment No.606. Respondent had given details of payment of ₹23,54,573/- which was made by him and prayed for refunding the said amount. No doubt that in the said letter, it is mentioned that respondent- complainant had received cheque for ₹36,76,234/- dated 30.03.2016 but neither in the surrender letter nor in any other document, there is anything to show that the petitioner had ever agreed to pay the amount in excess of ₹23,54,573/-. It is conceded during arguments by learned counsel for the respondent that calculation sheet (Annexure R1) has been prepared by the respondent on his own as per his own formula, formulated by the respondent and the said calculation sheet was never executed nor signed nor approved by the petitioner-accused.

7. Besides above, prior to filing of the complaint, respondent had sent a legal notice (copy Annexure P.9) for making payment of the cheque amount within 15 days. In the reply dated 16.05.2016 (Annexure P.10) petitioners had clearly mentioned that payment of the cheque for an amount of ₹36,76,234/- had been stopped because it is the net amount of ₹23,54,573/-, which was to be refunded.
8. It has not been disputed before this Court that the amount of ₹23,54,573/- has already been paid by the petitioner – accused to the respondent complainant.
9. Having regard to all the afore-said facts and circumstances, continuation of the proceedings in the complaint will be misuse of the process of law. Consequently, the complaint No.7507 dated 13.06.2016 pending in the Court of learned Judicial Magistrate 1st Class, Gurgaon titled “Ranbir Singh Vs. Realtech Developments and Infrastructure (India) Pvt. Ltd. and others”, (copy Annexure P.1) filed by the respondent, besides summoning order dated 11.08.2016 (Annexure P.2) and notice of accusation dated 28.08.2017 (Annexure P.3) along with all consequential proceedings arising therefrom deserve to be quashed.

Ordered accordingly.

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