



2025:DHC:7461



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of decision: 27<sup>th</sup> August, 2025*+ **CRL.M.C. 5965/2025, CRL.M.A. 25401/2025****BIMAL RAI BINDRA**

S/o Sh. Surya Prakash Bindra

R/o 3A/W-15/G, Western Avenue,

Sainik Farm, Air force Station, Tugalkabad,

South Delhi, Delhi-110062

.....Petitioner

Through: Appearance not given.

versus

**1. State (NCT of Delhi)**

Through SI-IO PS: Neb Sarai

New Delhi

.....Respondent No. 1

**2. M/S ZESTHA PROJECTS PVT. LTD.**

Through its Managing Director

Registered office: 402, 4th floor,

Shahpuri Tirath Singh Tower, C-58,

Janakpuri, New Delhi-110058

.....Respondent No. 2

**3. MR. RAJU VERMA**

Director, M/s Zestha Projects Pvt. Ltd.

Address: 402, 4th floor, Shahpuri Tirath

Tower, C-58, Janakpuri,

New Delhi-110058

.....Respondent No. 3

**4. MR. HARINDER BASHISTA**

Director, M/s Zestha Projects Pvt. Ltd.

Address: 402, 4th floor, Shahpuri Tirath Singh

Tower, C-58, Janakpuri,

New Delhi-110058

.....Respondent No. 4

Through:

Mr. Utkarsh, APP for the State.

Counsel for R-2 to R-4 Appearance  
not given.



**CORAM:**  
**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**J U D G M E N T (oral)**

1. Petition under Section 528 of Bhartiya Nagarik Suraksha Sanhita 2023 (*hereinafter referred to as BNSS*), has been filed on behalf of the Petitioner for setting aside Order dated 03.06.2025 passed by learned Special Judge (NDPS-02), Dwarka Courts, New Delhi in CRL.REV. No.1858/2024, wherein the Order of learned MM dated 23.03.2024, *dismissing the Application under Section 156(3) Cr.P.C. has been upheld.*
2. In brief, Respondent No.2 is a real estate Company and Respondent Nos.3 and 4 are its directors. This Company had launched a commercial project namely “*Vardhaman i-valley*” on the Plot bearing No. 26/1, Knowledge Park - III, Greater Noida, District - Gautam Budh Nagar, Uttar Pradesh, which was allotted to Respondent No.2 Company by Greater Noida Industrial Development Authority (GNIDA) for the purpose of setting up I.T. Industries, I.T. Enabled service parks, open spaces, roads and public parking. The property was leased out to Respondent No.2 for a period of 90 years.
3. Respondent Nos.2 to 4 were offering to sell different units in the said project to prospective buyers by way of sub-lease deed and promised to handover possession of fully furnished units to the respective buyers within the agreed timeline. The Petitioner booked three units/office spaces in this Project in the year 2019 and paid the entire amount against each Unit/office spaces, within four months. Respondent Nos.2 to 4 handed over notional possession of the aforesaid Units by executing the respective agreements to sub-lease deeds dated 28.01.2020 in favour of the Petitioner.



4. Thereafter, Respondent No.3 approached the Petitioner and demanded an additional amount of Rs.9,30,000/- under the false pretext of furnishing the Units and putting them on rent. Believing such promise to be true, the Petitioner made a further payment of Rs.9,30,000/- on 03.10.2022 through NEFT to Respondent No.2, over and above the entire sale consideration. However, even after receiving the entire amount of Rs. 9,30,000/-, Respondent Nos.3 & 4 did not do anything.

5. Initially, the Respondents were responding to the queries of the Petitioner but later on, they stopped responding to his calls. Upon enquiry and visits to the Project site, the Petitioner came to know that the Units in question have neither been furnished nor have they been put out on rent. He also came to know that Respondents not only have misappropriated his money paid for furnishing and renting out of the said Units, but have also cheated other allottees of the said project in the same manner.

6. A Petition was filed before the Hon'ble National Company Law Tribunal (NCLT), New Delhi by similarly placed Unit buyers under Section 7 of the Insolvency and Bankruptcy Code, 2016. Vide Order dated 07.02.2023 in CP(IB) No. 674/2021, NCLT initiated Corporate Insolvency Resolution Process (CIRP) against Respondent No.2 in reference to the project namely, "*Vardhaman i-valley*".

7. It was asserted that Respondent Nos.3 & 4 have induced the Petitioner to pay a sum of Rs. 9,30,000/- under false promise to furnish the Units and to put them on rent, despite being aware about the fact that they are not in a position to even complete the project. This inducement has caused wrongful loss to the petitioner and wrongful gain to the Respondents, who have illegally and fraudulently taken Rs.9,30,000/- from the Petitioner on false



pretext of furnishing, which they had no intention to honour. It is submitted that several visits and requests were made by the Petitioner, but no response was given by Respondent Nos.2 to 4.

**8.** Respondent Nos.3 and 4 are the Directors of Respondent No.2 Company and are responsible for day-to-day affairs of the Company. They being in the dominant position, had induced the Petitioner to pay the amount of Rs. 9,30,000/- under false promise of furnishing the Units/office spaces.

**9.** The Petitioner gave a legal Notice dated 14.12.2022 demanding the Respondents to refund the amount of Rs.9,30,000/- paid by him along with interest @ 18% per annum within a period of 7 days from the receipt of the Notice. However, they neither responded to the legal Notice nor refunded the aforesaid amount. They have misappropriated the money paid by the Petitioner and hence, they have committed a criminal offence.

**10.** Left with no option, a Complaint was made to SHO, PS: Neb Sarai, Delhi on 28.01.2023 and also to the DCP, South District, Delhi on 27.01.2023, but no action has been taken and nor FIR has been registered.

**11.** Petitioner then filed a Criminal Complaint bearing. CC No.1783/2023 under Section 200 Cr.P.C. along with an Application under Section 156(3) Cr.P.C. before the learned MM for directing the Police to register the FIR and take action against the Respondents.

**12.** *Vide Order dated 23.03.2024, learned MM dismissed the Application under Section 156(3) Cr.P.C., by observing that it was a mere case of Breach of Contract and not a case of Cheating wherein criminal prosecution is warranted.*

**13.** Aggrieved by the aforesaid Order dated 23.03.2024, Petitioner preferred Crl.Rev. No.1858/2024 before the learned Sessions Judge, Dwarka



Courts, New Delhi. *However, the same got dismissed vide Order dated 03.06.2025.*

**14.** Aggrieved by the aforesaid Order of learned Sessions Judge, present Petition has been filed. The *grounds of challenge* are that a clear case of commission of cognizable offence under Section 420/34 IPC has been made out against the Respondent Nos.2 to 4, despite which no FIR has been registered. The Courts below have erred in not considering the fact that the Petitioner is a victim of fraud and cheating committed upon him by Respondent Nos. 2 to 4 whose *mala fide* and criminal intent is evident from the fact that they have induced the petitioner to pay them a sum of Rs.9,30,000/- on the false pretext of furnishing the Units and putting them on rent, which were never furnished.

**15.** It has not been considered that the money paid towards consideration of goods or services is money entrusted to the goods/service provider, so long the goods or services are not delivered to the person making payment in respect of the same. Therefore, the money paid by the Petitioner to the Respondents, is money entrusted to the Respondents; since the Respondent Company has failed to deliver the said Units after furnishing and putting the same on rent as offered, it cannot be said the conduct of the Respondents amounts to a mere breach of contract.

**16.** It is a settled principle of law that if same transactions lead to both civil and criminal consequences, then the affected party can choose either or both remedies. Reliance has been placed on judgment passed by this Court in W.P. (CRL) 1645/2013 titled as *Arun Saxena vs. Today Homes & Infrastructure Pvt. Ltd.*

**17.** Moreover, no suit for *Specific Performance* or Recovery could have



been filed by the Petitioner as the Respondent No. 2 Company is under CIRP. Therefore, the Order is liable to be set aside.

**18.** *Learned APP for the State* as well as learned counsel for Respondent Nos. 2 to 4 appear on advance Notice.

***Submissions Heard and Record Perused.***

**19.** The Petitioner filed a Criminal Complaint bearing CC No. 1783/2023 under Section 200 Cr.P.C. along with an Application under Section 156(3) Cr.P.C. seeking directions to the Police for registering the FIR.

**20.** Brief facts are that the Petitioner had invested in three Units/ spaces in the Project of Respondent No.2, possession of which was duly handed over to him. Thereafter, they had demanded Rs.9,30,000/- on the alleged false pretext of furnishing the Units and putting them on rent. Unfortunately, after about four months, Respondent No.2 Company went into insolvency and CIRP proceedings have been initiated against it.

**21.** Essentially, the allegations made by the Petitioner are that there was entrustment of money, which has not been utilized by the Respondents for the purpose for which it was given. Moreover, they have been cheated because they had induced on the false promises of furnishing the Units and putting them on rent, while both these acts have not been done.

**22.** Essentially, the possession of three units has already been received by the Petitioner and sub-lease deeds have been duly executed in his favour. Subsequently, the Petitioner had entered into an Agreement for furnishing these units and put them on rent, for which Rs.9,30,000/- were given and it was agreed that after furnishing the units they would be rented out by the Respondents for and on behalf of the Petitioner.

**23.** Learned MM has rightly observed that the evidence is essentially in



possession of the Petitioner. It is not an evidence of technical nature, which is required to be collected through investigations. Moreover, if any such investigation is deemed necessary, the same can be undertaken under Section 202 Cr.P.C. These observations have been upheld by learned ASJ in the impugned Order.

**24.** It is clear from the averments made in the Complaint that neither any police investigation is required for collection of evidence nor the facts complex which merit any investigation. Clearly, it is a case based on the documents and Agreement that were entered into between the parties, which can very well be proved by leading Petitioner's evidence in the Complaint under Section 202 Cr.P.C.

**25.** Pertinently, even though the Application under Section 156 (3) Cr.P.C. has been dismissed, there is no conclusive finding that no criminal offence is made out. The Complaint under Section 200 Cr.P.C. is still pending, in which the Petitioner has ample opportunity to make out the criminal offence by inducing the evidence and producing documents.

**26.** There are no merits in the Application under Section 156(3) Cr.P.C, which has rightly been dismissed.

**27.** The present Petition is hereby dismissed. Pending Application, if any, also stands disposed of.

**(NEENA BANSAL KRISHNA)  
JUDGE**

**AUGUST 27, 2025/R**