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The complaint was filed by Gurgaon resident Paramvir Singh Narang alleging that he had booked a flat in Unitech Cascades at Greater Noida in 2006, which was to be handed over by April 2008 but the company failed to abide by its agreement.



A New Delhi court has ordered initiation of proceedings against real estate major Unitech Ltd and its top bosses in a case of alleged cheating lodged by an investor for not giving him possession of a flat booked in 2006 in Greater Noida, adjacent to the national capital.

Unitech Ltd, its chairman Ramesh Chandra, managing directors Ajay

Chandra and Sanjay Chandra and four other directors have been named as accused in the complaint.

Additional Sessions Judge (ASJ) Sandeep Yadav passed the order against them for the alleged offence of cheating under section 420 of IPC saying they had "guilty intention to cheat the petitioner from the beginning".

The complaint was filed by Gurgaon resident Paramvir Singh Narang alleging that he had booked a flat in Unitech Cascades at Greater Noida in 2006 for which he had paid a total sale consideration of Rs 39.07 lakh.

The flat was to be handed over by April 2008 but the company failed to abide by its agreement, following which he lodged a complaint. His plea was dismissed by a magisterial court after which he filed a revision petition before a sessions court.

"Since respondents after receiving total agreement payment of Rs 39.07 lakh neither offered possession of apartment nor refunded the amount with simple interest at 10 per cent per annum, it can be safely concluded that they were having guilty intention to cheat the petitioner from the very beginning of transaction," the ASJ said.

"Even the legal notice issued by complainant to accused persons was not replied. Hence, section 420 of the IPC gets attracted to the facts of present case," the judge said.

The court has ordered proceedings against M/s Unitech Ltd, its chairman Ramesh Chandra, managing directors Ajay Chandra and Sanjay Chandra and directors Anil Harish, Minoti Bahri, Ravinder Singhania and Sanjay Bahadur.

"It is clear from the averment of complaint and testimony of the complainant that respondents have neither handed over possession of the apartment to petitioner within stipulated period nor have they refunded the amount with interest.

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"In fact, legal notice issued by petitioner in this regard went unheeded. Therefore, a clear case of cheating is made out against respondents as respondents cheated the complainant and dishonestly induced him to pay a sum of Rs 39.07 lakh to them on the promise of handing over the possession of apartment," the court said.

According to the complainant, Narang had on April 18, 2006, booked a flat in a project of Unitech Ltd and accordingly, he was allotted an apartment on the 17th floor, Tower3, Unitech Cascades at Greater Noida.

Representatives of the accused induced and lured Narang to opt for cash-down plan promising that possession of apartment will be delivered by April 30, 2008 and, accordingly Narang opted for cash-down payment and paid a sum of Rs 39.07 lakh to the firm on June 1, 2006, it said.

It was alleged in the complaint that despite written as well as verbal assurances and promises, the accused failed to give him possession of the apartment.

Narang then lodged a complaint against the firm and its top bosses which was dismissed by a magisterial court.

The sessions court, however, reversed the order of the magistrate while relying on the documents submitted by Narang who claimed to have made the entire payment already.

It noted that as per a clause of the agreement between the parties, if for any reason the company is not in a position to offer the apartment altogether, the company shall offer the allottee(s) an alternative property or refund the amount in full with simple interest at 10 per cent per annum without any further liability to pay damages or any other compensation on this account.

It also said the magisterial court erred in saying that complainant cannot invoke criminal proceedings by alleging cheating.

"As can be seen from complaint, presuming evidence and conduct of respondents, the dispute between parties is not purely a civil dispute. Dispute has attributes of criminality.

"It is a settled law that if same transaction leads to civil and criminal consequences, the affected party can choose either or both remedy. It is, therefore, concluded that the Additional Chief Metropolitan Magistrate (South) erred in observing that it is a civil dispute and petitioner cannot maintain criminal proceeding by alleging cheating.

"The impugned order suffers from illegality and cannot be sustained. Accordingly, the revision petition is allowed and impugned order dated April 13, 2015 is set aside. Trial court is directed to proceed against respondents under section 420 of the IPC," the judge said.

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