

ITEM NOS.10+8

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 10851/2016

ARVIND KUMAR GUPTA

Appellant

VERSUS

UNITECH LTD. & ORS.

Respondents

(and IA No.23393/2018-impleading party and IA No.23396/2018-  
CLARIFICATION/DIRECTION )

WITH

C.A. No. 10856/2016 (XVII)

C.A. No. 2511-2526/2017 (XVII)

(IA No.66938/2017-EXTENSION OF TIME and IA No.90673/2017-EXTENSION  
OF TIME)

C.A. No. 5174-5181/2017 (XVII)

C.A. No. 9391-9404/2017 (XVII)

(FOR FOR impleading party ON IA 98431/2017 and INTERVENTION/  
IMPLEADMENT ON IA 98431/2017)

C.A. No. 15493/2017 (XVII)

(IA No.77581/2017-CONDONATION OF DELAY IN FILING and IA No.77582/  
2017-CLARIFICATION/DIRECTION and IA No.78654/2017-PERMISSION TO  
FILE ADDITIONAL DOCUMENTS and IA No.82788/2017-PERMISSION TO FILE  
ADDITIONAL DOCUMENTS)

SLP(Cr1) No. 5978-5979/2017 (II-C)

(APPLNS. FOR APPROPRIATE ORDERS/DIRECTIONS, FOR SUBSTITUTION, FOR  
CLARIFICATION/DIRECTION, FOR EXEMPTION FROM FILING CERTIFIED AS  
WELL AS ORDINARY PLAIN COPY OF THE IMPUGNED ORDER, FOR  
INTERVENTION, FOR INTERVENTION/IMPLEADMENT, FOR PERMISSION TO  
APPEAR AND ARGUE IN PERSON, FOR PERMISSION TO FILE ADDL.  
DOCUMENTS/FACTS, FOR PERMISSION TO FILE APPLN. FOR DIRECTION, FOR  
PERMISSION TO FILE SLP WITHOUT CERTIFIED/PLAIN COPY OF THE IMPUGNED  
ORDER, FOR PERMISSION TO PLACE ON RECORD SUBSEQUENT FACTS, FOR  
RECALLING THE COURTS ORDER and FOR SEEKING CUSTODY CERTIFICATE)

C.A. No. 11008/2017 (XVII)

(IA No.80805/2017-EXEMPTION FROM FILING C/C OF THE IMPUGNED  
JUDGMENT and IA No.85513/2017-INTERVENTION/IMPLEADMENT and IA No.  
85519/2017-INTERVENTION/IMPLEADMENT and IA No.85880/2017-  
INTERVENTION/IMPLEADMENT and IA No.95992/2017-impleading party and  
IA No.98113/2017-APPROPRIATE ORDERS/DIRECTIONS and IA  
No.98117/2017-DELETING THE NAME OF RESPONDENT)

C.A. No. 17008-17011/2017 (XVII)

(and FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS ON IA 94736/2017,  
FOR APPROPRIATE ORDERS/DIRECTIONS ON IA 96100/2017 and FOR  
CLARIFICATION/DIRECTION ON IA 15770/2018)

C.A. No. 16858/2017 (XVII)

(FOR ADMISSION and IA No.97166/2017-PERMISSION TO FILE APPEAL and

IA No.112640/2017-impleading party and IA No.112648/2017-APPLICATION FOR TRANSPOSITION and IA No.128215/2017-impleading party)

C.A. No. 20003/2017 (XVII)

(IA No.119851/2017-CONDONATION OF DELAY IN FILING and IA No. 119859/2017-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.119854/2017-CONDONATION OF DELAY IN REFILING and IA No.119862/2017-APPROPRIATE ORDERS/DIRECTIONS)

SLP(C) No. 30997/2017 (XVII)

(FOR ADMISSION and I.R.)

C.A. No. 3727/2018 (XVII)

(FOR ADMISSION and I.R. and IA No.41950/2018-CONDONATION OF DELAY IN FILING and IA No.41952/2018-APPROPRIATE ORDERS/DIRECTIONS)

C.A. No. 6837-6838/2018 (XVII)

SLP(C) No. 12667/2018 (XVII)

(FOR ADMISSION and I.R.)

Diary No(s). 20540/2018 (XVII)

(IA No.104959/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.104957/2018-CONDONATION OF DELAY IN FILING APPEAL and IA No.104958/2018-CONDONATION OF DELAY IN REFILING)

Civil Appeal No. 8524/2018 (XVII)

(I.A. No. 111987/2018-CLARIFICATION/DIRECTION)

Date : 19-09-2018 This matter was called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE A.M. KHANWILKAR  
HON'BLE DR. JUSTICE D.Y. CHANDRACHUD

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Mr. Shish Pal Laler, Adv.  
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Mr. Sonit Sinhmar, Adv.  
Mr. Devesh Kumar Tripathi, Adv.

Petitioner-in-person

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Mr. Rahul Shyam Bhandari, AOR  
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UPON hearing the counsel the Court made the following  
O R D E R

On 11.9.2018, after hearing learned counsel for the parties and the learned Amicus Curiae, the following order was passed:-

“Mr. Agarwal has drawn our attention to the order dated 27.07.2018 wherein it was thought of keeping aside certain amount so that 514 flats can be constructed and delivered to the home buyers. The Committee has demarcated five projects, which have been filed before us by way of a chart by Mr. Pawanshree Agarwal. The said chart is as follows:

Project	Location	Block/Tower	Fund allocation as per Unitech	Fund as per the Committee
Vistas#	Gurgaon	A9/A10/A11	7.11	7.0

Unihomes	Mohali	B1 - B16 B146-B164 A43-A52	5.15	5
Horizon	Greater Noida	T22	2.2	2
Verve	Greater Noida	T1	5.6	5
Unihomes 117	Noida	A1	1.7	2
<b>TOTAL</b>			<b>21.76</b>	<b>21</b>

It is also worth-noting that the Committee has recorded certain observations with regard to the aforesaid projects and the work which will be done by Unitech. On the basis of the suggestions given by the Committee, learned amicus curiae has requested for issue of following directions:

1. The amount of Rs.21 crores should be transferred by the Registry of this Hon'ble Court to an Unitech Escrow account opened by the Chairman of the Committee where the Chairman is a signatory.
2. The allocation of funds and construction in the aforesaid projects should be monitored by Justice S.N.Dhingra Committee.
3. The construction should be made strictly within the timeline agreed to and mentioned by the Unitech before the Committee with regard to aforementioned projects.

Mr. Agarwal has given the Unitech Ltd. Committee Escrow Account No.50200032645915 (IFSC/RTGS HDFC0009239) of HDFC Bank. Let a draft of Rs.21,00,00,000/- (Rupees twenty one crores only) be prepared by the Registry in the name of Unitech Ltd. Committee Escrow Account and handed over the same to Mr. Pawanshree Agarwal, who shall hand over the same to the Chairman of the Committee, who in turn, shall deposit the said amount and oversee the allocation of funds and construction. M/s Unitech shall carry the construction as per the instructions of the Committee.

At this juncture, learned counsel appearing on behalf of certain home buyers submitted that they are also interested to take

over possession after the building is complete. Be it noted, their flats are situated in projects/towers other than the five mentioned hereinbefore. They may give their option to Mr. Pawanshree Agarwal, who will apprise the Committee. The Committee shall estimate the costs and apprise this Court so that further directions can be issued."

In pursuance of our earlier order, a sum of Rs.28,89,56,250/- (Rupees twenty eight crores eighty nine lakhs fifty six thousand two hundred fifty only) has already been deposited. The amount of Rs.21,00,00,000/- (Rupees twenty one crores only), as was directed to be transferred to Unitech Ltd. Committee Escrow Account No. 50200032645915 (with the HDFC Bank), be transferred by the Registry of this Court out of the amount aforementioned.

Mr. Krishnan Venugopal, learned senior counsel being assisted by Mr. Tanuj Bhushan, learned counsel, appearing for the auction purchaser submitted that he can deposit the balance sum amounting to Rs.85.88 crores after deducting TDS by 27.9.2018. The Registry shall accept the deposit directly from the auction purchaser.

After the amount is deposited, 60% of the same and the amount already in deposit, shall be disbursed on *pro-rata* basis in favour of the decree holders and home-buyers registered on the portal.

That apart, Mr. Pawanshree Agarwal, learned Amicus Curiae shall verify the details of home-buyers who have not been registered, from Mr. Abhinav Agrawal, learned counsel for the developer and if found eligible, register them on the portal. The portal shall be kept open till 26.9.2018 subject to further directions of this Court. The learned Amicus Curiae shall update the portal with the requests already

received by him, if any. Mr. Abhinav Agrawal, learned counsel and Mr. Pawanshree Agarwal, learned Amicus Curiae shall do the conciliation at an early date.

At this juncture, one issue has been highlighted, namely, that there are some people who had paid certain amounts with regard to the purchase of plots by way of sub-lease in the project - Unitech Golf and Country Club (earlier Unitech Grande), Sectors 96, 97 and 98, Noida. The sub-leases are to be executed by M/s. Unitech Ltd. However, there is some prior formalities of the NOIDA authority. We request Mr. Ravindra Kumar, learned counsel for the NOIDA authority to apprise us about the real position, on the next date.

The applicants in I.A. Nos. 85237/2018 and 60021/2018 in SLP(Crl.) Nos. 5978-5979/2017, namely, Housing Development Corporation Ltd. (HDFC) and Mridu Hari Dalmia Pvt. Trust, being represented by Mr. Anand Grover, learned senior counsel are at liberty to proceed in accordance with law in respect of any property mortgaged with them. Our previous order, if any, shall not cause any impediment in that regard. Needless to mention, the present order shall stand confined only to the aforementioned two applicants, and that too in respect of the mortgaged properties in their favour. We have not expressed any opinion on the fact whether the properties are mortgaged or not.

Both the above mentioned applications are accordingly disposed of.

At this stage, Mr. Ranjit Kumar, learned senior counsel appearing for the developer, after obtaining instructions, submitted that M/s. Unitech Ltd. may be permitted to deposit Rs.30,00,00,000 (Rupees thirty crores only) in the Registry of this Court by tomorrow

(20.9.2018). It may be so done. The said amount shall also be disbursed as per our directions issued herein before.

At this stage, we may note with profit that there are some home-buyers, who are interested in possession. Mr. Pawanshree Agarwal, learned Amicus Curiae shall prepare a list and give it to the Committee. We request the Chairman of the Committee to assess the approximate cost for completion of the relevant projects/towers.

Mr. Pawanshree Agarwal shall also furnish the names of the banks from where the home-buyers have taken loan, so that we may be in a position to hear the banks and pass appropriate orders.

A submission has been advanced by Ms. Tara V. Ganju and Ms. Rashi Bansal, learned counsel for the ex-employees of M/s. Unitech Ltd., the applicants in I.A. Nos. 139860/2017 and 12896/2018 in SLP(Crl.) Nos. 5978-5979/2017, that the employees are not able to get their gratuity, provident fund, TDS benefit etc. apart from their salaries. A copy of the said applications be served on Mr. Abhinav Agrawal, learned counsel, during the course of the day. The same may be pressed on the next date of hearing.

The balance amount which will remain with the Registry may be kept in a short term fixed deposit in the UCO Bank, Supreme Court Compound, New Delhi, so that interest can be accrued on the same. Until disbursement process fructifies, the amount already kept in FDRs may be renewed for a short term.

The grievance of the fixed depositors shall be addressed on a subsequent date.

Let the matter be listed on 28.9.2018.

**Civil Appeal No. 8524/2018**

The order passed in Civil Appeal No. 10851/2016 and connected matters shall apply *mutatis mutandis* to this matter.

**(Deepak Guglani)**  
Court Master

**(H.S. Parasher)**  
Assistant Registrar