2026 INSC 1236

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).4622 OF 2026
(Arising out of SLP(Crl.) No(s). 12440 of 2025)

EDELWEISS ASSET RECONSTRUCTION COMPANY LIMITED ....APPELLANT(S)

VERSUS

STATE OF NCT OF DELHI & ORS. ....RESPONDENT(S)

WITH

CRIMINAL APPEAL NO(S).4623 OF 2026
(Arising out of SLP(Crl.) No(s). 13060 of 2025)

J U D G M E N T

Mehta, J.

1. Heard.

2. Leave granted.

3. These two appeals are directed against the common judgment and order dated 4th August, 2025[1] passed by learned Single Judge of the High Court of

[1] For short, 'the impugned judgment'

Delhi at New Delhi[2] in CRL.M.C. No. 371 of 2025 and CRL.M.C. No. 426 of 2025. By the impugned judgment, the High Court dismissed two petitions filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023[3] (or, Section 482 of the Code of Criminal Procedure, 1973[4]) wherein the appellants sought quashing of: (i) the order dated 15th January, 2025 passed by the learned Chief Judicial Magistrate, South District, Saket Courts, New Delhi[5] in CT Case No. 322 of 2024, titled *Gurmeet Kaur Gill v. Government of NCT of Delhi & Ors.*, allowing an application under Section 156(3) CrPC and directing registration of an FIR; and (ii) the consequential FIR No. 0005 of 2025 dated 16th January, 2025 registered at Police Station Economic Offences Wing, New Delhi for offences punishable under Sections 406, 409, 420 and 120B of the Indian Penal Code, 1860[6].

4. The appellant in Criminal Appeal No. 4622 of 2026 is Edelweiss Asset Reconstruction Company Limited[7], an asset reconstruction company registered

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[2] For short, 'the High Court'
[3] For short, 'BNSS'
[4] For short, 'CrPC'
[5] Hereinafter, referred to as 'the Magistrate'
[6] For short, 'IPC'
[7] Hereinafter, referred to as 'EARC'

under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002[8]. EARC is arrayed as accused no. 6 in the FIR. The appellant in Criminal Appeal No. 4623 of 2026 is L and T Finance Limited[9], a non-banking financial company. L&T is arrayed as accused no. 3 in the FIR. L&T Housing Finance Limited (accused no. 4) and L&T Infrastructure Finance Company Limited (accused no. 5) have since merged with L&T. Unless the context otherwise requires, the expression "L&T" in this judgment includes these entities and their predecessors-in-interest.

5. The complainants are Mrs. Gurmeet Kaur Gill, Mrs. Jesleen Kaur Papneja, Mrs. Ajit Kaur Gill and Mr. Mohinder Pal Singh Gill, respondent nos. 3 to 6 in both appeals, and they acted throughout through their attorney, Mr. Jagtar Singh, who is respondent no. 2. We are informed that Mr. Mohinder Pal Singh Gill passed away on 29th April, 2024. Raheja Developers Limited[10] and its Chairman-cum-

[8] For short, 'SARFAESI Act'
[9] Hereinafter, referred to as 'L&T'
[10] Hereinafter, referred to as 'RDL'

Managing Director, Mr. Navin M. Raheja, are accused nos. 1 and 2 in the FIR and proforma respondent nos. 7 and 8 in both appeals. In the appeal filed by EARC, L&T and its group entities are respondent nos. 9 to 11. In the appeal filed by L&T, EARC is respondent no. 9.

6. Since both appeals arise from the same FIR, the same order of the Magistrate and a common judgment of the High Court, and since they turn on substantially overlapping facts and questions of law, they were heard together and are being disposed of by this common judgment. For convenience, we shall refer to the parties by the descriptions noted above, and to respondent nos. 2 to 6 collectively as "the complainants".

Factual Background: -

7. Before tracing how the criminal process came to be set in motion and travelled to this Court, it is convenient to first set out the underlying commercial transactions.

8. The complainants owned a parcel of land admeasuring 24.1563 acres in the revenue estates of Villages Dhankot and Gopalpur, Sector 99A, Gurugram, Haryana. On 13th August, 2012, they

entered into a Collaboration Agreement with RDL for obtaining licences and developing the land as a group housing project. They also executed a Power of Attorney in favour of RDL. The arrangement was modified by a Supplementary Collaboration Agreement dated 25th June, 2013, and a fresh General Power of Attorney was executed on the same date.

9. The Directorate of Town and Country Planning, Haryana granted RDL, Licence No. 64 of 2013 dated 20th July, 2013 for 10.10625 acres, and Licence No. 72 of 2014 dated 1st August, 2014 for an additional 2.3805 acres. The licensed area thus came to approximately 12.48675 acres[11]. The balance land measuring approximately 11.6695 acres remained unlicensed.

10. Vide letter dated 2nd September, 2016, L&T sanctioned a loan facility of Rs. 450 crores to RDL. A Facility Agreement followed on 15th September, 2016, which was meant for four projects of RDL: Raheja Vanya (Sector 99A, Gurugram), Raheja Luxury Villas (Hamirpur, Gurugram, on land of Raheja SEZs

[11] Hereinafter, referred to as 'the Licensed Land'

Limited), Raheja Atharva and Shilas (Sector 109, Gurugram, on land of Enkay Buildwell Private Limited), and Project Kathputli (Patel Nagar, New Delhi). It was secured by mortgages over all four project lands, together with project receivables.

11. On 7th October, 2016, the complainants and RDL executed a Memorandum of Understanding[12], which superseded the earlier collaboration agreements. It is not in dispute that the MoU conferred on RDL, the right to develop the Licensed Land and to market and sell the units; provided for a non-refundable security deposit and a refundable adjustable security deposit to be paid by RDL to the landowners; contemplated financing of the project and the creation of a mortgage over the Licensed Land for that purpose.

12. Also, on 25th October, 2016, the complainants executed an agreement, described as the Backup Security Agreement[13], with RDL, Mr. Navin M. Raheja, Raheja SEZs Limited and Enkay Buildwell Private Limited. According to the complainants, by virtue of Clause 2.2 of the BSA, a second charge was

[12] Hereinafter, referred to as 'the MoU'
[13] Hereinafter, referred to as 'the BSA'

created in favour of the complainants, ranking after the lender's first charge of up to Rs. 450 crores, over the assets furnished as security for the loan; it guaranteed the complainants a net minimum revenue share of Rs. 130 crores; by Clause 9.1, the Security Providers undertook not to create any further encumbrance on those securities, beyond the first charge in favour of the lender, without the complainants' prior written consent. Mr. Jagtar Singh, as attorney of the complainants, also executed a Memorandum of Entry and a Declaration-cum-Undertaking acknowledging the mortgage of the Licensed Land in favour of the lender.

13. In April 2018, upon RDL's request, L&T issued a second sanction letter enhancing the facility from Rs. 450 crores to Rs. 620 crores. A Supplemental Deed of Hypothecation dated 25th April, 2018 was executed between L&T and RDL and its group companies, extending the hypothecation over project assets and receivables to cover the enhanced facility.

14. From June 2018 onwards, L&T issued no-objection certificates to RDL for the sale of units in the mortgaged projects. The appellants state that these were conditional upon the sale proceeds being

deposited into the RERA-designated account. The complainants claim that the NOCs were issued illegally, in breach of the MoU and while RDL was in default of its revenue-share obligations.

15. On 7th December, 2018, the complainants issued demand notices under the Insolvency and Bankruptcy Code, 2016[14] claiming their revenue share as operational debt. They initiated proceedings before the National Company Law Tribunal, Principal Bench, in which they alleged a default of approximately Rs. 9.1 to 9.7 crores. By order dated 12th May, 2023, the NCLT dismissed those petitions, holding that the complainants were not operational creditors. Separately, a corporate insolvency resolution process was initiated against RDL by order dated 20th August, 2019, at the instance of homebuyers, but was set aside by the NCLAT on 22nd January, 2020 in Company Appeal (AT) (Insolvency) No. 864 of 2019. A fresh CIRP was initiated against RDL by order dated 19th November, 2024 in (IB) No. 239(PB)/2023. By order dated 21st November, 2024 in Company Appeal (AT) (Insolvency) No. 2168 of

[14] For short, 'IBC'

2024, the NCLAT confined it to the project "Raheja Shilas (Low Rise)".

16. Meanwhile, by two assignment agreements dated 30th December, 2019, L&T Finance Limited and L&T Infrastructure Finance Company Limited assigned the loan account of RDL, together with the underlying securities, to EARC.

Initiation of the Criminal Proceedings: -

17. On 15th June, 2022, the complainants, through their attorney Mr. Jagtar Singh, addressed a written complaint to the Deputy Commissioner of Police, Economic Offences Wing, New Delhi[15] arraigning RDL, Mr. Navin M. Raheja, L&T Infrastructure Finance Company Limited, L&T Finance Limited, L&T Housing Finance Limited and EARC. It sought registration of an FIR for cheating, criminal breach of trust, criminal conspiracy and criminal intimidation, as well as action under the Real Estate (Regulation and Development) Act, 2016[16]. The allegations in substance are that RDL used the Licensed Land as cross-collateral for a loan of Rs. 450 crores for purposes other than the construction and

[15] Hereinafter, referred to as 'EOW'
[16] For short, 'RERA'

development of the project, and L&T approved the loan without any notice and/or consent from the Complainants, although it was aware of the agreements between the complainants and RDL; L&T enhanced the facility to Rs. 620 crores behind the back of the Complainants, despite knowing of RDL's defaults in paying the revenue share; L&T issued NOCs enabling RDL to sell units in breach of the MoU, and failed to notify RERA; L&T and RDL utilised project receivables for repayment of the loan instead of releasing the complainant's revenue share, in contravention of the MoU and the RERA Act.

18. EARC is referred to in the complaint at three places, alleging that the loan facility was unilaterally enhanced to Rs. 620 crores and assigned to EARC without the complainant's consent; that EARC, along with L&T, colluded with RDL in the alleged round-tripping of funds and evergreening of loans; and that EARC extended loan facilities to RDL against securities belonging to third parties, including the complainants.

19. The EOW conducted a preliminary enquiry. By notice dated 6th October, 2022, EARC was called upon to join the enquiry. Its authorised

representatives appeared before the Inquiry Officer on 15th October, 2022 and submitted written replies dated 17th October, 2022 and 21st October, 2022, enclosing the relevant transaction documents and a tabulated chronology. The replies emphasised that EARC had stepped into the shoes of the original lenders only on 30th December, 2019, by way of assignment agreements, and was not a party to any of the transactions of which the complainants were aggrieved. L&T was likewise issued notices dated 6th October, 2022 and 4th November, 2022. Its officers appeared before the EOW on 7th October, 2022, 12th October, 2022 and 9th November, 2022, and it also responded with documents and a flow of events under cover of its letter dated 11th November, 2022.

20. Upon completion of the preliminary enquiry, the EOW closed the complaint and informed the complainants, by letter dated 29th November, 2022, that no cognizable offence was made out on the allegations made by them.

21. The complainants then moved an application under Section 156(3) CrPC before the learned Additional Chief Metropolitan Magistrate-02, Patiala House Courts, New Delhi, registered as Ct. Case No.

2305 of 2023. That court called for an Action Taken Report[17] from the police. An ATR dated 30th May, 2023 was filed by the Sub-Inspector of Section-II, EOW. The ATR recorded the outcome of the preliminary enquiry in the following terms:

> "...during the enquiry, complainant was examined wherein he reiterated that M/s Raheja Developers through a well-planned conspiracy and collusion with alleged M/s L&T Finance Services used the licensed land as cross collateral to avail a loan facility of Rs. 450 Crores without any notice/consent from the complainants. During further enquiry, alleged persons were also examined and the documents were scrutinized/analyzed. From the enquiry conducted, it was revealed that complainants are landowners of land admeasuring 24.1563 acres, situated in Gurugram, Haryana, in 2013, the complainant and alleged M/s Raheja Developers Ltd mutually entered into a Collaboration Agreement wherein alleged developer was supposed to bear all the expenses of LCU and procure License for the aforesaid land. ... In order to develop the said project, the alleged developer applied for credit facility for which the Landowners through their GPA/AR knowingly mortgaged their land to secure the facility sanctioned by the lender to the extent of sanctioned facility of Rs. 450 Crores. The said credit line was later increased by Rs. 170 Crore to a total of Rs. 620 Crores by the lender against the security of four projects land and cash flow, however, the Landowners/complainants have never

[17] Hereinafter, referred to as 'ATR'

executed the loan document for extension of charge on their part of security/project land. The complainants have already obtained Rs. 45 Crores from alleged developer. Moreover, the amount disbursed by the Lender till date out of the total sanctioned facility of Rs. 620 Crores is only 414.36 Crores. Later, during covid phase, the alleged developer defaulted the loan and now the payments of inventories being sold by alleged developer qua questioned project is being utilized as per the MOU dated 07.10.2016. The complainants have also filed a petition before NCLT, Delhi and same is pending sub-judice over there. **No police action was warranted in the present matter as the matter pertains to recovery of money of landowners. From the preliminary enquiry conducted into the matter, no cognizable offence was made out. Accordingly, the complaint was closed/filed and intimation of the same was conveyed to the complainant.**"

[Emphasis supplied]

22. The complainants withdrew the said application on 2nd January, 2024, on the ground that the court lacked territorial jurisdiction. Liberty was granted to the complainants to approach the court of competent jurisdiction.

23. On 23rd January, 2024, the complainants filed a fresh application under Section 156(3) CrPC before the learned Chief Judicial Magistrate, South District, Saket Courts, registered as CT Case No. 322 of 2024. Jurisdiction was invoked on the averment that the

main accused no. 1 and 2 (that is, RDL and Mr. Navin M. Raheja) resided within the jurisdiction of Police Station Neb Sarai. The application prayed for a direction to register an FIR against all six accused under Sections 34, 120B, 406, 417, 418, 420 and 506 IPC.

24. The Magistrate called for an ATR. The ATR so filed reiterated, in substance, the findings recorded in the ATR dated 30th May, 2023. By order dated 15th January, 2025, the Magistrate allowed the application and directed the DCP, EOW to register an FIR on the basis of the allegations set out in the complaint.

25. The reasoning and the operative directions of the order of the CJM are contained in paragraphs 5 to 11, which read thus:

> "5. Arguments heard. Record perused.
>
> 6. Admittedly, accused persons are the builders who have entered into a collaboration agreement with complainants who are the landowners of land admeasuring 24.1563 acres situated in Gurugram, Haryana, in 2013 wherein the alleged developers was supposed to bear all the expenses of LCU and procure license for the aforesaid land. The alleged developers defaulted the loan and the complaint discloses serious allegations

against the alleged accused persons need to be thoroughly investigated.

7. Considering the gravity of the allegations, the Court is of the opinion that it is expedient to order investigation in the present matter in exercise of the judicial power under Section 156(3) Cr.P.C. The facts pleaded by complainant are such which necessitate intervention of State machinery in the form of police investigation and the complainant would not be in a position to collect evidence.

8. In view of the facts and circumstances, the complaint discloses commission of cognizable offences for which an FIR is warranted. Present application under Section 156(3) Cr.P.C is allowed. DCP, EOW South is directed convert the contents of complaint as FIR and investigate the matter fairly.

9. Copy of this order be sent to DCP, PS EOW for necessary intimation and compliance.

10. The application stands disposed of accordingly.

11. Be put up on 17.01.2025 for compliance report."

26. Pursuant to that order, FIR No. 0005 of 2025 was registered at PS EOW, New Delhi on 16th January, 2025, under Sections 406, 409, 420 and 120B IPC. The period of occurrence is shown as 1st August, 2012 to 15th June, 2022. The body of the FIR reproduces, verbatim, the complaint dated 15th June, 2022 that had been addressed to the EOW and had been closed after the preliminary enquiry.

27. L&T filed CRL.M.C. No. 371 of 2025 on 20th January, 2025, and EARC filed CRL.M.C. No. 426 of 2025 on 21st January, 2025 before the High Court, invoking Section 528 BNSS praying for quashing of the order dated 15th January, 2025 and the FIR No. 0005 of 2025 dated 16th January, 2025 registered consequent to the above Order. The EOW filed status reports in the proceedings before the High Court including the one dated 17th February, 2025. In those reports, the EOW emphasized that from the enquiry conducted into the complaint, no cognizable offence was made out. Therefore, the above complaint was closed, while adding that the investigation of the FIR was at a nascent stage and the quashing petitions were opposed. Both petitions were heard analogously and after noticing the allegations and extracting the order passed by the learned CJM, the High Court observed that:

> "25. …a perusal of the impugned order reflects that the learned Magistrate first took note of the contents of the complaint filed by the complainants, and thereafter considered the ATR filed by the police, wherein it was opined that the matter appeared to be of a civil nature. After examining both, the learned Magistrate briefly discussed the allegations against the accused persons in paragraph 6 of

> the order and concluded that the complaint disclosed serious allegations which warranted a thorough investigation…
>
> 26. As far as the ATR is concerned, this Court is of the view that although it is desirable for the Magistrate to provide reasons for not concurring with the ATR, in the present case, the learned Magistrate, after considering its contents, specifically recorded that the allegations were serious and grave in nature, and that the matter required a fair and proper investigation."

28. The High Court then went on to hold that where allegations of cheating, criminal breach of trust and conspiracy arise out of a series of contractual arrangements, including multiple agreements, MoU, and further undertakings, neither the Magistrate under Section 156(3) CrPC nor the High Court under Section 482 CrPC could undertake a detailed evaluation of disputed facts or a roving inquiry into the allegations prima facie pointing towards criminality that police investigation was crucial to collect documents from various authorities, record statements and test the veracity of the allegations.

29. On the contention that the dispute was civil in nature, the High Court held that when the allegations *prima facie* disclosed elements of criminality, it was for the investigating agency to ascertain whether any

offence was made out, and that simply by the fact that the petitioners were arraigned in the FIR would not *ipso facto* imply that a chargesheet would necessarily follow. It observed that once the Magistrate has recorded satisfaction that a cognizable offence is disclosed, such satisfaction is not liable to be interfered with in exercise of inherent powers.

30. Aggrieved by the same, EARC filed SLP (Crl.) No. 12440 of 2025 on 13th August, 2025, and L&T filed SLP (Crl.) No. 13060 of 2025 on 25th August, 2025. On 29th August, 2025, this Court issued notice in both the matters and directed stay on further proceedings pursuant to the aforementioned FIR qua the present appellant(s) only. The proceedings against the other accused persons were directed to continue.

Submissions on behalf of EARC: -

31. The learned senior counsel appearing for EARC, advanced the following submissions:

31.1 Neither the complaint nor the FIR contains any specific allegation of any act or omission by EARC. The entire narrative concerns transactions of 2012 to 2018: the collaboration agreements, the sanction of

2016, the MoU, the mortgage, the BSA, the Declaration, the enhancement of 2018 and the NOCs. EARC entered the picture only on 30th December, 2019, as assignee of the loan account under a statutory regime. It was totally unconnected with every transaction of which the complainants are aggrieved. Apart from a solitary, omnibus assertion that EARC and L&T are colluding to cause round-tripping of funds and evergreening of loans, for which no particulars of time, place, transaction or amount are given, the FIR attributes nothing to EARC.

31.2 The order of the Magistrate extracts the ATR but does not record any reason for differing with it. The only reasoning assigned by the Magistrate refers to builders and developers who *"defaulted the loan"*. It has nothing to do with EARC. A direction under Section 156(3) CrPC must reflect what weighed with the Magistrate. Reliance was placed on ***Anil Kumar v. M.K. Aiyappa[18]; Ramdev Food Products (P) Ltd. v. State of Gujarat[19]; Priyanka Srivastava v. State of U.P.[20]; and Dayle De'Souza v.***

[18] (2013) 10 SCC 705
[19] (2015) 6 SCC 439
[20] (2015) 6 SCC 287

Government of India[21], which emphasize the grave consequences of setting the criminal law in motion.

31.3 A specialised wing of the police and so also, EOW extensively examined the complainants and the accused, scrutinised the documents and found that no cognizable offence was disclosed. When the Magistrate himself calls for such a report, he must deal with it. He cannot simply refer to the same and then reach the opposite conclusion without assigning cogent reasons.

31.4 Cheating requires deception and dishonest inducement at the inception of the transaction. EARC never made any representation to the complainants, and the complainants did not part with any property on the faith of anything said or done by EARC. Since EARC came into the picture only in December 2019, it could not be clothed with any wrong doing at the inception of transactions which stood concluded between 2012 and 2018.

31.5 There was no entrustment of any property by the complainants to EARC. EARC acquired the debt

[21] (2021) 20 SCC 135

and the securities by assignment. Holding a mortgage as a secured creditor is not entrustment.

31.6 The core grievance concerns revenue share, the extent of security and the alleged breach of the MoU and BSA. These are contractual matters. The complainants have pursued IBC proceedings and are parties to an arbitration. The criminal process has been invoked to pressurise the lender and to stall recovery. Referring to ***S.N. Vijayalakshmi & Ors. v. State of Karnataka & Anr.***[22], which the High Court relied upon, it was pointed out that the judgment requires an *"overwhelming element of criminality"* before a criminal case can co-exist with civil proceedings on the same facts. No such element exists in the case at hand.

31.7 The complainant's e-mail dated 24th August, 2022, offering to withdraw cases against all parties with EOW, RERA, RBI and DTCP in exchange for Rs. 80 crores, shows that the criminal complaint is nothing but a tool of recovery.

31.8 The complainants, through their own attorney, executed the GPA, the Supplemental GPA, the

[22] 2025 INSC 917

Memorandum of Entry and the Declaration, creating the mortgage over the Licensed Land. The complaints blatantly conceal this and allege that the land was used without any notice and/or consent. They also conceal that the facility was secured by four distinct project lands, not only the Licensed Land, and that no fresh charge was created on the Licensed Land upon enhancement. As per the MoU, the landowner's revenue share was subordinate to the lender's dues.

31.9 The transactions were complete between 2016 to 2018, and the complaint was filed only in June 2022, after steps for recovery had commenced.

31.10 Section 32 of the SARFAESI Act protects action taken in good faith by a secured creditor. In ***Priyanka Srivastava*** *(supra)*, this Court cautioned that when a party aggrieved by the action of a financial institution covered by the SARFAESI Act invokes Section 156(3) CrPC, the approach has to be of more care, caution and circumspection. The Magistrate disregarded this caution.

31.11 The case falls within categories (1), (5) and (7) enumerated in ***State of Haryana v. Bhajan Lal***[23].

[23] 1992 Supp (1) SCC 335

Continuation of the FIR against an asset reconstruction company for merely acquiring a loan account would, it was urged, set a precedent harmful to the statutory scheme for the resolution of non-performing assets.

Submissions on behalf of L&T: -

32. Learned senior counsel appearing for L&T, adopted the submissions made on behalf of EARC on the infirmities in the order of the Magistrate, and additionally submitted as follows:

32.1 When the police, after a preliminary enquiry, reported that no cognizable offence is made out, the Magistrate must engage with that report and record why he disagrees with it.

32.2 The High Court merely endorsed the Magistrate's reference to the gravity of the allegations, without itself examining whether the ingredients of any cognizable offence were disclosed against L&T.

32.3 The loan of Rs. 450 crores was sanctioned on 2nd September, 2016, even before the MoU was executed. It was secured by four project lands, of which the Licensed Land formed only one component. The complainants consented to the

mortgage of the Licensed Land through their own attorney, by the Supplemental GPA, the Memorandum of Entry and the Declaration. On enhancement of the facility to Rs. 620 crores, no additional charge was created or registered over the Licensed Land. The Licensed Land continues to stand as security only for the facility for which it was originally mortgaged.

32.4 L&T is not a party to the collaboration agreements, the MoU or the BSA. It never made any representation to the complainants. The complainants did not part with any property on the faith of any representation by L&T. The complaint itself attributes the false guarantees and assurances to RDL. The property was admittedly entrusted by the landowners to the developer under the development arrangements. Holding a mortgage as security for a loan is not entrustment within the meaning of Section 405 IPC as observed by this Court in ***Anand Kumar Mohatta v. State (NCT of Delhi)***[24].

32.5 Far from acknowledging the BSA, L&T expressly refused to accept its validity, and communicated so

[24] (2019) 11 SCC 706

in writing to the complainant's attorney. A party that openly declines to be bound by an agreement cannot be said to have deceived the other party about it.

32.6 The NOCs were conditional on the deposit of sale proceeds into the RERA-designated account. The obligations under RERA rest on the promoter. Any contravention of RERA is to be addressed by the authorities under that statute. The assignee, EARC, itself complained to the Haryana RERA on 6th December, 2022 about RDL's projects.

32.7 The FIR invokes both Sections 406/409 and Section 420 IPC on the same set of allegations, although criminal breach of trust presupposes lawful entrustment while cheating presupposes dishonest inducement from inception. Both offences cannot be applied in tandem. Reliance was placed on ***Delhi Race Club (1940) Ltd. v. State of U.P.***[25]**.**

32.8 The complainants' own case, stated in the complaint, is that they "only sought to have a simple contractual relationship". The complainants have pursued IBC proceedings, which were dismissed, and are pursuing a counter-claim in arbitration. Their e-

[25] (2024) 10 SCC 690

mail of 24th August, 2022 sought a monetary settlement in return for withdrawal of all proceedings.

32.9 The allegations, even if taken at face value, do not disclose any cognizable offence against L&T. The proceedings are manifestly attended with an ulterior motive and tantamount to abuse of criminal prosecution to settle civil liabilities.

32.10 The last of the transactions relied upon was executed in October 2016, and the enhancement occurred in April 2018. The complainants pursued insolvency and other fora, proposed a monetary settlement, and invoked the criminal process years later. No explanation has been offered for the delay.

32.11 In its rejoinder, L&T further contended that the CJM, Saket lacked territorial jurisdiction, since the lands are located in Gurugram, the principal agreements were executed in Gurugram or the United Kingdom, and the only connecting factor pleaded was the residence of accused nos. 1 and 2.

32.12 It also contended that Section 409 IPC cannot be invoked against a corporate entity without identifying any individual who was entrusted with property in a capacity enumerated in that provision.

Submissions on behalf of the complainants: -

33. Learned senior counsel appearing for the complainants, opposed the appeals. The submissions, as advanced orally and in the counter affidavits and written submissions, are as follows:

33.1 The appellants have not even averred that the complaint fails to disclose a cognizable offence. Both courts below have found that it does.

33.2 L&T accepted the Licensed Land, owned by the complainants, as cross-collateral for a loan to RDL for four projects, knowing fully that RDL had no entitlement to use it for its other projects. The sanction letter required Project Vanya to be mortgaged, and the Facility Agreement required the borrower to *"create and perfect"* the security. These facts clearly establish that L&T knew the project stood on land not belonging to RDL. The complainants were never parties to the loan.

33.3 The complainant's attorney had objected to the cross-collateralisation by communication dated 28th September, 2016. Their consent was thereafter procured by false guarantees and assurances, culminating in the BSA. The Declaration was executed after the loan had already been sanctioned.

The consent was therefore obtained fraudulently, to confirm a cross-collateralisation already in existence.

33.4 The BSA gave the complainants a second charge over all the securities of the Security Providers beyond the lender's first charge of Rs. 450 crores, and barred further encumbrance without their written consent. L&T enhanced the facility to Rs. 620 crores in April 2018 by the Supplemental Deed of Hypothecation without the complainant's consent. This increased the encumbrance on the very securities over which the complainants held a second charge, and rendered that charge meaningless.

33.5 EARC received all the transaction documents on assignment, including the BSA. Its reply to the EOW dated 21st October, 2022 itself refers to the BSA. The factum of the complainant's legal notice dated 13th August, 2019 was mentioned in the assignment deed. EARC thereafter further enhanced the facility to about Rs. 902 crores, as evident from its notices under Section 13(2) of the SARFAESI Act, thereby further denting the complainant's security.

33.6 The lenders continued to lend public money to a builder that repeatedly defaulted, against which

CIRP was initiated more than once, and none of whose projects is complete. They allowed RDL to operate without the RERA-mandated escrow account and to divert project receivables towards loan repayment. They issued NOCs in breach of the MoU. Project Vanya, like RDL's other projects, is stalled, to the prejudice of the complainants and of homebuyers.

33.7 The Magistrate considered the complaint, heard the complainants, perused the ATR, and recorded that the allegations were grave and disclosed cognizable offences requiring police investigation. A Magistrate directing investigation under Section 156(3) CrPC is not required to give detailed reasons as observed by this Court in ***Supreme Bhiwandi Wada Manor Infrastructure (P) Ltd. v. State of Maharashtra***[26]**.**

33.8 The existence of civil, insolvency or arbitral proceedings does not bar criminal proceedings where the facts also disclose an offence. The arbitration was invoked by RDL, not by the complainants, who have merely filed a counterclaim. The insolvency petitions

[26] (2021) 8 SCC 753

failed only because the complainants were held not to be operational creditors. The suggestion that the complainants exhausted civil remedies before turning to the criminal law is contrary to the record.

33.9 The complainants are senior citizens residing in the United Kingdom. One of them, Mr. Mohinder Pal Singh Gill, died on 29th April, 2024 while awaiting justice. The accused are influential and have done everything to frustrate the process.

Submissions on behalf of the State: -

34. Learned Additional Solicitor General appearing for the State, submitted that the FIR was registered pursuant to a judicial direction and that the investigation is still at a nascent stage. It was contended that the allegations prima facie disclosed criminality, the truth of which could be ascertained only upon investigation, and that the FIR was not required to contain every detail of the case. It was further submitted that, in view of the contractual nature of the transactions and the allegations of misappropriation and inducement, disputed questions of fact ought not to be examined at the pre-investigation stage.

Discussion and Analysis: -

35. We have given our anxious consideration to the rival submissions. The following questions arise for our determination:

(i) Whether the order of the Magistrate dated 15th January, 2025 directing registration of the FIR reflects the application of judicial mind required of a Magistrate exercising power under Section 156(3) CrPC, particularly when the police, after a preliminary enquiry, had reported that no cognizable offence was made out.

(ii) Whether the allegations in the complaint and the FIR, even if taken at their face value and accepted in their entirety, disclose the ingredients of the offences punishable under Sections 406, 409, 420 and 120B IPC against L&T and EARC.

(iii) Whether the alleged breaches of the MoU and the BSA, and the alleged non-compliance with RERA, can by themselves furnish a foundation for criminal prosecution of the lenders, and whether, in the totality of the circumstances, the continuation of the criminal proceedings against the appellants amounts to an abuse of the process of the court.

36. Before we take up these questions, we must state the limits within which we examine them. At the stage of quashing, the court does not weigh evidence, determine the truth of the allegations, or adjudicate the rights of parties under their contracts. The question is whether the allegations, taken at face value, disclose the essential ingredients of the offences alleged. In undertaking that exercise, the court reads the complaint as a whole and in its proper context. It may take into account documents of unimpeachable character that are admitted by the complainant or relied upon by him, and the attendant circumstances emerging from the record, so long as it does not embark upon an appreciation of disputed evidence and facts. In ***Iqbal alias Bala v. State of U.P.***[27], this Court held that where proceedings are alleged to be frivolous or vexatious, the court owes a duty to look into the attendant circumstances and, if need be, read between the lines.

37. The application of the complainants was filed on 23rd January, 2024, before the BNSS came into force

[27] (2023) 8 SCC 734

on 1st July, 2024. By virtue of Section 531(2)(a) of BNSS, it was governed by the CrPC. Section 156 CrPC reads:

> "156. Police officer's power to investigate cognizable case. - (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.
> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.
> (3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."

38. The word "may" in sub-section (3) signifies a discretion, not a duty. When a complainant approaches the Magistrate, three courses open to the court: to direct the police to investigate under Section 156(3); to take cognizance and proceed under Chapter XV by examining the complainant and witnesses under Section 200 and, if necessary, directing an inquiry or investigation under Section 202; or to decline both if no offence is disclosed. Which course is adopted is a judicial discretion, and it must be the product of application of judicial mind.

Parliament has since made explicit what judicial decisions had already interpreted. Section 175(3) BNSS, the successor provision, reads:

> "(3) Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under sub-section (4) of section 173, **and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.**"

39. The new provision does not apply to the order under challenge. But it reflects the legislative intent that, before directing investigation, the Magistrate must consider the application on affidavit, may make such inquiry as he thinks necessary, and must consider the police officer's submission.

Point (A): The Order under Section 156(3) CrPC

40. The order of the learned Magistrate having been assailed as the very foundation of the FIR, it would be appropriate to examine its validity at the outset, *albeit* briefly. The further contention of the appellants, that the allegations, even if accepted in their entirety, do not disclose the commission of any

offence against them, shall be examined independently under Points (B) and (C).

41. As regards the requirement of application of mind by the Magistrate while passing an order under Section 156(3) CrPC, the law is well settled. In ***Maksud Saiyed v. State of Gujarat***[28], this Court held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind. A caution is also provided that the Magistrate must examine whether the averments disclose an offence by the persons sought to be proceeded against, particularly where the accused is a company.

42. In ***Priyanka Srivastava*** *(supra)*, this Court took note of the growing tendency to invoke Section 156(3) CrPC in a routine manner to settle scores. It held that applications under that provision must be supported by an affidavit, so that the applicant is accountable, and that the Magistrate must be vigilant about the nature of the allegations. Of particular

[28] (2008) 5 SCC 668

relevance to the present case are the following observations:

> "27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. ... But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) CrPC and also there is a separate procedure under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to."

43. Most significantly, ***Anurag Bhatnagar v. State (NCT of Delhi)***[29], on which the High Court placed heavy reliance, itself affirms that a reasoned order, passed upon application of judicious mind, is inherent in the exercise of power under Section 156(3) CrPC.

44. Further, on the issue of nature and weight to be given to the ATR, undeniably, it is not a report under

[29] 2025 INSC 895

Section 173 CrPC, and it does not bind the Magistrate. But it is not an empty formality either. It informs the Magistrate of what the police have done with the complainant's information, and of whether, after any preliminary enquiry, they found that the information disclosed a cognizable offence.

45. A preliminary enquiry before registration of an FIR is permissible in certain categories of cases. In ***Lalita Kumari v. Government of U.P.***[30], the Constitution Bench, while holding that registration of an FIR is mandatory when information discloses a cognizable offence, recognised that a preliminary inquiry may be conducted to ascertain whether the information reveals a cognizable offence. It identified *"commercial offences"* and cases *"where there is abnormal delay/laches in initiating criminal prosecution"* as categories in which such an inquiry may be made. The Court also clarified that the scope of the preliminary inquiry is not to verify the veracity of the information, but only to ascertain whether the allegations genuinely reveal a cognizable offence. The present case falls squarely within both categories. It

[30] (2014) 2 SCC 1

concerns a commercial dispute arising out of land development projects and financing arrangements, and the complaint was lodged in 2022 in respect of transactions which took place way back between 2012 to 2018.

46. Therefore, when the police has indisputably conducted a preliminary enquiry of this kind, examined the complainant and the proposed accused, scrutinised the documents, and reported that no cognizable offence is disclosed, the report constitutes relevant material. The Magistrate may disagree. The ATR does not, as the complainants rightly say, take precedence over a judicial order. But if the Magistrate himself has called for the report, he must apply judicial mind to it and the consequential order must speak why he does not accept it. The duty to give reasons is at its highest where a judicial authority reaches a conclusion contrary to the material collected by the agency charged by law with the investigation of offences, and where the final order will trigger criminal investigation against the persons concerned. Such reasons need not be elaborate. But they must exist, and they must relate to the material.

47. For the same reason, we are unable to accept the view of the High Court that reasons for not concurring with the ATR are merely *"desirable"*. Reasons are the means by which the superior court tests whether the discretion was exercised judicially. An order that rejects the conclusion of the police on a mere *ipse dixit* cannot be tested. It is, in substance, an order without application of mind.

48. It is in this backdrop that the approach adopted by the High Court also calls for examination. The High Court, in the impugned judgment, correctly noticed the governing principles and recognised that an understanding of how the ingredients of the alleged offences are prima facie made out and the recording of reasons are necessary for a valid order under Section 156(3) CrPC. Nonetheless, having stated so, the High Court did not apply those principles to the order under consideration. In paragraph 25, it treated paragraph 6 of the CJM's order as containing a discussion of "the allegations against the accused persons", overlooking the fact that the said paragraph refers only to builders and developers and does not deal with the role of L&T or EARC. The High Court instead set out its own

summary of the allegations against the appellants and, on that basis, concluded that the allegations *"prima facie disclose elements of criminality"*. This approach cannot be sustained. While examining the legality of an order passed by the Magistrate, the High Court could not substitute reasons which the Magistrate himself had not recorded. In any event, the summary of allegations contained in the High Court's judgment merely reproduces the case set up by the complainants; it does not constitute an independent examination of whether the allegations, even if taken at their highest, satisfy the ingredients of any offence against the appellants.

49. We, accordingly, hold on Point (A) that the order of the learned CJM dated 15th January, 2025, insofar as it directs registration of an FIR against L&T and EARC, does not reflect the application of judicial mind required in law, and that the High Court erred in upholding it.

50. However, we may add a word of caution here. At the stage of directing registration of an FIR against multiple accused persons, it would be unreasonable to expect the Magistrate to undertake a hair splitting exercise of carving out the individual roles of the

accused. Thus, though finding the order of the Magistrate as not satisfying all parameters required under Section 156(3) CrPC, we are not drawing our conclusions on the legality of the subsequent proceedings as the same would by implication affect the proceedings against the other accused who are not before us. The appellants have raised much more weighty arguments on merits of the case which we shall be dealing in Point (B) & Point (C).

Point (B): Whether the ingredients of the offences are disclosed against the appellants

51. In ***Bhajan Lal*** *(supra)*, this Court enumerated, by way of illustration, the categories of cases in which the High Court may exercise its powers under Article 226 or Section 482 CrPC to prevent abuse of process or to secure the ends of justice. The first, third, fifth and seventh categories are directly relevant here:

> "(1) Where the allegations made in the first information report or 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 a case against the accused.
>
> ...
>
> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence

> collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> ...
>
> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
>
> ...
>
> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

52. In ***Indian Oil Corporation v. NEPC India Ltd.***[31], this Court summarised the principles. A complaint may be quashed where the allegations, taken at face value and accepted in their entirety, do not prima facie constitute any offence. For this purpose, the complaint is to be examined as a whole, without examining the merits of the allegations. The complaint need not reproduce the legal ingredients verbatim. But quashing is warranted where the complaint is so bereft of even the basic facts which

[31] (2006) 6 SCC 736

are absolutely necessary for making out the offence/s.

53. For ready reference, Sections 405, 406 and 409 IPC are reproduced hereunder:

> "405. Criminal breach of trust.- Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'."
>
> "406. Punishment for criminal breach of trust.- Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."
>
> "409. Criminal breach of trust by public servant, or by banker, merchant or agent.- Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

54. The ingredients of criminal breach of trust are well defined. In ***Prof. R.K. Vijayasarathy v. Sudha Seetharam***[32], this Court distilled them as follows:

> "i) A person should have been entrusted with property, or entrusted with dominion over property;
>
> ii) That person should dishonestly misappropriate or convert to their own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so; and
>
> iii) That such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust."

55. In ***Prof. R.K. Vijayasarathy*** *(supra),* this Court emphasised that entrustment is a *sine qua non* for the offence. In ***Delhi Race Club (1940) Ltd.*** *(supra),* this Court reiterated that without entrustment of property, or of dominion over property, there can be no criminal breach of trust. The expression "entrusted" connotes that the property is handed over to, or placed under the dominion of, the accused for a purpose. The person who hands it over reposes confidence in the recipient. The recipient holds the

[32] (2019) 16 SCC 739

property, or deals with it, subject to that purpose, and does not hold it as his own.

56. Section 409 is an aggravated form of the offence. In addition to the ingredients of Section 405, it requires that the entrustment be *"in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent"*. The aggravation lies in the breach of a trust reposed in the accused by reason of that particular capacity.

57. We shall now proceed to examine whether the complaint discloses any entrustment of property by the complainants to L&T. The property of the complainants alleged to be involved is the Licensed Land. The complaint does not allege that the Licensed Land, or any interest in it, was ever placed in the possession or under the dominion of L&T for any purpose of the complainants. The position of EARC, which acquired the debt by assignment in 2019, stands on an even stronger footing.

58. Since entrustment is absent, Sections 406 and 409 IPC are not attracted. The additional ingredient of Section 409, entrustment "in the way of [the accused's] business as a banker", is a fortiori absent. A lender advancing a loan against security does not

receive the security *"in trust"*. The relationship between a lender and a borrower, or between a lender and a third-party security provider, is that of creditor and debtor, not of trustee and beneficiary. There is another reason why Section 409 IPC cannot be invoked. The aggravation in that provision rests on entrustment received *"in the way of his business as a banker"*, that is, property placed with the banker in that capacity, such as a deposit or property held for a customer. A lender that takes a mortgage to secure repayment of its own loan does not receive the mortgaged property in that capacity; it holds the security for itself. Moreover, while a company can be prosecuted for offences requiring *mens rea*, the guilty mind is attributed to it through the individuals who control its affairs. The complaint does not identify any officer of L&T or EARC to whom any property was entrusted or who dishonestly dealt with it. It charges Section 409 IPC against two corporate lenders on the strength of a generic allegation of collusion. Section 409 IPC is, therefore, not attracted against either appellant.

59. Having concluded so, we shall now proceed to consider whether the ingredients of the offence of

cheating is made out against the appellant from the allegations set out in the complaint.

60. For the sake of completeness, Sections 415 and 420 IPC, which are relevant to the controversy, are reproduced hereunder:

> "415. Cheating.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'."
>
> "420. Cheating and dishonestly inducing delivery of property.- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

61. The essential ingredients of the charge of cheating are deception of a person, and fraudulent or dishonest inducement of that person, by reason of the deception, to deliver property, to consent to the retention of property, or to do or omit to do something

which he would not otherwise have done. For invocation of Section 420 IPC, there must in addition be a dishonest inducement to deliver property or to make, alter or destroy a valuable security. The deception must be practised by the accused, and the dishonest intention must exist at the time of the inducement. In ***Hridaya Ranjan Prasad Verma v. State of Bihar***[33], this Court held:

> "15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

[33] (2000) 4 SCC 168

62. Applying these principles to the facts of the present case, manifestly the complaint does not disclose the commission of an offence of cheating by L&T. The allegation of cheating necessarily requires deception and dishonest or fraudulent inducement, that too at the inception of the transaction, resulting in the person deceived doing or omitting to do something which he would not otherwise have done or omitted to do. The allegations in the present case, even if taken at their highest, do not satisfy these requirements insofar as L&T is concerned.

63. At the outset, the complaint does not attribute to L&T any representation, oral or written, made to the complainants, much less a false representation. Even if it is assumed, as alleged, that L&T suggested changes to the draft MoU, that would at best show its awareness of the arrangement between RDL and the landowners; it does not amount to a representation made by L&T to the complainants. The loan was sanctioned to RDL on 2nd September, 2016, whereas the MoU between the complainants and RDL was executed subsequently on 7th October, 2016. The complainants' contractual relationship throughout was with RDL. In the absence of any representation

by L&T to the complainants, the foundational requirement of deception by L&T is itself absent.

64. This is also borne out by the complainants' own case, which attributes the alleged inducement to RDL. The FIR itself states that *"Accused No. 1, RDL, procured consent of the Complainants based on false guarantees and assurances given by it to the Complainants"*. Whatever may be the merit of such allegations against RDL, on which we express no opinion, they do not give rise to even a barest suggestion that L&T deceived or induced the complainants.

65. The allegations that L&T extended the loan against the mandate, guidelines, and requirement of procedure for grant of high value loan and continued lending despite the borrower's alleged default also do not disclose the offence of cheating, much less cheating the complaints. Whether the credit decisions of a regulated lender were consistent with applicable prudential norms is a matter which may fall for consideration by the concerned regulator. Imprudent lending, even if assumed, may expose the lender to financial loss or regulatory consequences; it does not, without anything more, constitute cheating

of a third party who was neither the borrower nor induced by the lender to part with any property or alter his position.

66. The role of EARC is even more remote in the transactions. EARC acquired the loan account of RDL and the underlying securities by assignment agreements dated 30th December, 2019. An asset reconstruction company is expressly empowered to acquire financial assets under Section 5 of the SARFAESI Act. The following acts, of which the complainants complain, had all been completed before 30th December, 2019:

- the sanction of the loan;
- the alleged use of the Licensed Land as cross-collateral;
- the MoU and the alleged involvement of the lender in its drafting;
- the BSA and the alleged procurement of consent by false assurances;
- the Declaration;
- the enhancement of April 2018;
- the issuance of NOCs from June 2018.

67. EARC was a stranger to all of them. It could not have entertained any intention, dishonest or otherwise, at the inception of transactions to which it

was not a party and of contracts in which it had no existence as a counterparty. Nor could the complainants have been induced by EARC to do anything in relation to them.

68. We may also notice that the FIR invokes both Section 406/409 and Section 420 IPC on the same set of facts. In ***Delhi Race Club*** (*supra*), this Court explained that cheating requires a dishonest intention at the very inception, when the false representation is made, whereas criminal breach of trust presupposes a lawful entrustment, with the dishonest intention arising later. The Court deprecated the mechanical registration of FIRs under both provisions on a mere allegation of some dishonesty or fraud, without any proper application of mind.

69. We need not rest our conclusion on this ground alone, since the complaint fails to disclose either offence on a bare reading. So far as the appellants are concerned, nevertheless, the indiscriminate invocation of mutually inconsistent offences, without any attempt to identify which facts constitute entrustment and inducement, is itself an indication

that the complaint seeks to give criminal colour to a commercial grievance.

70. Resultantly, on Point (B), we can safely conclude, that the allegations in the complaint and the FIR, even if taken at their face value and accepted in their entirety, do not disclose the essential ingredients of the offences punishable under Sections 406, 409, 420 and 120B IPC against L&T or EARC.

Point (C): RERA violations, breach of contract, and abuse of the criminal process

71. A substantial part of the complaint is devoted to alleged contraventions of RERA. The complaint alleges that the project was run without an escrow or separate account, that receivables were diverted to repay the loan and to fund other projects, that NOCs were issued enabling sales, and that the lenders failed to notify RERA. It asserts that the lenders are liable to be prosecuted for contravention and violation of RERA Act. The High Court, in the impugned judgment, included these allegations among those that, in its view, prima facie disclosed elements of criminality. We are unable to agree.

72. RERA is a regulatory statute enacted to regulate and promote the real estate sector, and to protect the interests of allottees. The obligations it imposes, so far as presently relevant, are obligations of the *promoter*. Section 4(2)(l)(D) requires the promoter to declare, on affidavit, that seventy per cent of the amounts realised from allottees for a project shall be deposited in a separate account with a scheduled bank, to be used only for the cost of construction and land of that project. Section 11 sets out the functions and duties of the promoter. The statute provides its own regulatory machinery for enforcement.

73. Section 79 bars the jurisdiction of civil courts in respect of matters which the Authority, the adjudicating officer or the Appellate Tribunal is empowered to determine. Section 80 provides:

> "80. Cognizance of offences.- (1) No court shall take cognizance of any offence punishable under this Act or the rules or regulations made thereunder save on a complaint in writing made by the Authority or by any officer of the Authority duly authorised by it for this purpose.
>
> (2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act."

74. Sections 79 and 80 thus demarcate the jurisdiction of civil courts and criminal courts in matters arising under RERA and provide a specific statutory mechanism for cognizance of offences under the Act and adjudication of disputes.

75. As to the NOCs, the complaint itself does not allege that any sale of a unit was made in a manner that deprived the complainants of property entrusted to the lender. The grievance of the complainants is that the sales occurred while RDL was in default of the complainants' revenue share. The appellants' case is that the NOCs were conditional upon deposit of the sale proceeds into the RERA-designated account. Whether that condition was complied with by the promoter is, again, a matter between the promoter, the allottees and the regulator. Whether the sales breached the MoU is a matter between RDL and the complainants.

76. The complainants placed considerable reliance on the orders of this Court in ***Himanshu Singh v. Union of India***[34], including the order dated 29th April, 2025 directing the Central Bureau of

[34] SLP (C) No. 7649 of 2023

Investigation to register preliminary enquiries into the nexus between certain builders and banks in the National Capital Region. Those proceedings arise from grievances of homebuyers who availed housing loans under subvention schemes, in terms of which the banks disbursed loan amounts directly to builders and then pursued the homebuyers for instalments after the builders defaulted. This Court, in the exercise of its jurisdiction in those proceedings, considering the peculiar facts, directed enquiries by a central agency into specific patterns that had emerged on the record of that case. Nothing in those orders lays down that every lender to a real estate developer is, by reason of the developer's default, exposed to criminal prosecution at the instance of any party aggrieved against the developer. Nor do they relieve a complainant of the obligation to disclose the ingredients of the alleged offences. The present case does not directly involve transactions relating to homebuyers, subvention schemes or tripartite agreements. It involves a dispute between landowners and the developer over revenue share and the priority of security, in which the lenders are

sought to be drawn in. Therefore, reliance on the orders in ***Himanshu Singh*** *(supra)* is misplaced.

77. Having examined the allegations in the complaint in the context of the ingredients of the offences alleged against the appellants, we now turn to the nature and character of the underlying dispute. This assumes significance because the criminal process cannot be permitted to become a means of giving a criminal colour to a dispute which, in substance, is civil or commercial in nature. This Court has, time and again, drawn attention to the tendency of the litigants to convert purely civil or commercial disputes into criminal cases. In ***Indian Oil Corporation v. NEPC India Ltd.*** *(supra)*, this Court deprecated the use of criminal proceedings as a means of exerting pressure for settlement of disputes which do not involve any criminal offence. Likewise, in ***G. Sagar Suri v. State of U.P.***[35], this Court sounded concern and indicated that the jurisdiction under Section 482 CrPC must be exercised to prevent a matter which is essentially civil in nature from being given a cloak of criminality.

[35] (2000) 2 SCC 636

78. In ***S.N. Vijayalakshmi*** *(supra)*, this Court clarified that the mere existence of civil proceedings does not bar criminal proceedings where the allegations independently disclose an element of criminality. At the same time, where such element is absent, continuation of criminal proceedings in respect of the same dispute would amount to an abuse of the process of the court. The High Court, however, understood this decision as supporting the registration of the FIR and the investigative process. In our view, the decision lends no such support. It permits the coexistence of civil and criminal proceedings only where the allegations disclose a tangible element of criminality. In the absence of such element, the criminal proceedings cannot be permitted to continue.

79. In ***Punjab National Bank v. Surendra Prasad Sinha***[36], this Court, while quashing a complaint filed against a bank and its officers for the alleged offence of criminal breach of trust, observed that the judicial process should not be used as an instrument of oppression or needless harassment. It was held that

[36] AIR 1992 SC 1815

the Magistrate has a duty to see whether the persons named as accused can be held legally responsible for the offence alleged, and only then should the criminal law be set in motion. These allegations are conspicuously missing in the present case, insofar as the appellants are concerned.

80. Applying these principles to the present case, the nature of the dispute becomes apparent from the complainants' own pleadings. Their grievance, as set out in the FIR, is essentially that they have not received the revenue share allegedly payable to them under the MoU and that their contractual rights under the MoU and the BSA have been brought under dispute. They have themselves quantified the revenue share allegedly due to them at Rs. 17.7 crores. The substance of the grievance, therefore, concerns non-payment of the revenue share, alleged breaches of contractual covenants and the alleged erosion of their contractual second charge.

81. The course adopted by the complainants thereafter reinforces the concern raised in ***G. Sagar Suri*** (*supra*). They issued legal notices between 2019 and 2021 seeking remedial and corrective measures under the MoU; pursued insolvency proceedings

against RDL in respect of their revenue share; they have filed a counter-claim in the arbitration invoked under the collaboration agreements; and contested the SARFAESI proceedings on the very ground that the Licensed Land secured only Rs. 450 crores and that they held a second charge. Thus, the very grievances which form the basis of the criminal complaint have been and are being actively pursued before civil, arbitral, insolvency and statutory forums.

82. The subsequent conduct of the complainants also assumes significance. By an e-mail dated 24th August, 2022, they offered to withdraw the litigation against RDL, L&T and EARC upon payment of Rs. 80 crores against the amount claimed by them. The proposal also contemplated termination of the second charge security documentation. There is nothing improper in parties to a commercial dispute attempting to settle their differences by mutual understanding. However, the proposal to withdraw the criminal complaint upon payment of a specified sum depicts a conduct which bears upon the true nature of the grievance.

83. We are conscious that the existence of a civil remedy, or even its invocation, cannot by itself furnish a ground for quashing criminal proceedings where the allegations otherwise disclose the commission of an offence. We also take note of the submission that the arbitration was invoked by RDL and that the insolvency proceedings did not fail upon an adjudication of the complainants' claim on merits. These considerations, however, do not alter the position obtaining in the present case. The core question is not merely whether civil remedies exist or have been availed, but whether the allegations disclose the commission of any offence against the appellants. As already discussed, they do not. The fact that the complainants have simultaneously pursued their contractual and statutory remedies in several forums, therefore, assumes significance in determining the character of the dispute and the manner in which the criminal process has been invoked.

84. The chronology of events furnishes an additional circumstance which cannot be disregarded. The transactions forming the foundation of the complaint date back to September 2016,

October 2016, October 2017, April 2018 and December 2019. The complainants objected to the enhancement of the facility in May 2018 and commenced issuing legal notices from August 2019 onwards. The complaint before the EOW was lodged only in June 2022, followed by the applications under Section 156(3) CrPC in 2023 and 2024. These proceedings were initiated after the EOW had closed the complaint and after the secured creditor had commenced enforcement proceedings under the SARFAESI Act. While delay, by itself, cannot furnish a ground for quashing, unexplained delay assumes relevance where the allegations are otherwise predominantly civil in character and the subsequent sequence of events indicates an attempt to invoke the criminal process in relation to existing commercial disputes. The significance of the delay is further heightened in the present case by the fact that the EOW had already undertaken a preliminary enquiry and recorded its conclusions that the matter pertained to recovery of money and that no cognizable offence was made out.

85. On a conspectus of the aforesaid circumstances, the alleged breaches of the MoU and

the BSA are, at their highest, disputes primarily arising out of the contractual relationship between the complainants and RDL with no perceptible role of the appellants herein. The alleged non-compliance with RERA is a regulatory matter falling within the statutory framework governing the disputes. As noted above, the absence of the foundational facts constituting ingredients of the alleged offences fails to make out any criminal offence against the appellants. When this is considered alongside the civil, insolvency, arbitral and statutory proceedings already pursued by the complainants and the unexplained delay, the continuation of the investigation against the appellants would amount to an abuse of the process of the court. The present case therefore warrants exercise of the power to quash the proceedings in terms of the principles enunciated in ***Bhajan Lal*** (supra).

Conclusion and Directions

86. To summarise our conclusions:

(i) The order of the CJM dated 15th January, 2025, insofar as it directs registration of an FIR against L&T and EARC, does not reflect the application of judicial

mind required of a Magistrate exercising power under Section 156(3) CrPC. It overrides, without assigning any reason, the conclusion of the investigating agency in the ATR that no cognizable offence was disclosed. Where a Magistrate has called for an ATR and the police, after a preliminary enquiry, reported that no cognizable offence is made out, the Magistrate is not bound by that report. But if he disagrees, his order must indicate, however briefly, the reasons for the same. That is a requirement of law, not merely a matter of desirability.

(ii) The allegations in the complaint and the FIR, taken at their face value and accepted in their entirety, do not disclose against L&T or EARC the essential ingredients of the offences of criminal breach of trust (Sections 405, 406 and 409 IPC), cheating (Sections 415 and 420 IPC), or of criminal conspiracy (Section 120B IPC). There is no entrustment of the complainant's property to either appellant, no misrepresentation, fraud or deception by either appellant inducing the complainants to deliver property or to act to their detriment, and no fact from which an agreement to commit an offence

could be inferred. EARC, which entered the picture only on 30th December, 2019, was a stranger to every transaction complained of.

(iii) Alleged contraventions of RERA, which are primarily obligations of the promoter enforceable through the regulatory machinery of that Act and prosecutable only on a complaint by the Authority under Section 80, by themselves neither give rise to nor can they sustain prosecution for offences under the IPC. In particular, they cannot be made the foundation of a prosecution of a lender who is not the regulated entity, in the absence of the specific ingredients of the offence/s defined in IPC. The alleged breaches of the MoU and the BSA are civil wrongs, if at all, to the extent of the appellants.

(iv) The dispute is, in substance, a commercial dispute between the landowners and their developer concerning revenue share and the priority of security, in which the lenders are sought to be implicated with the obvious objective of exerting pressure to settle the monetary demands of the complainants. The complainants have already invoked insolvency, arbitral and statutory remedies for achieving the

same. Their own complaint states that all they wanted was the sale proceeds against their rights in the land, and they offered to withdraw the criminal complaint in return for a quantified sum of money. Continuation of the FIR against the appellants in these circumstances amounts to a gross abuse of the process of the court.

(v) The High Court erred in upholding the order of the CJM and in declining to quash the FIR against the appellants.

87. Accordingly, the appeals are allowed, and we direct as follows:

(a) The common judgment and order dated 4th August, 2025 passed by the High Court of Delhi in CRL.M.C. No. 371 of 2025 and CRL.M.C. No. 426 of 2025 is set aside.

(b) The order dated 15th January, 2025 passed by the learned Chief Judicial Magistrate, South District, Saket Courts, New Delhi in CT Case No. 322 of 2024 is set aside, insofar as it directs registration of an FIR and investigation against the appellants, namely L&T and EARC.

(c) FIR No. 0005 of 2025 dated 16th January, 2025 registered at Police Station Economic Offences Wing, New Delhi, under Sections 406, 409, 420 and 120B IPC, and all proceedings arising therefrom, are quashed insofar as they relate to the appellants, their officers and employees.

88. We make it clear as follows:

(a) This judgment is confined to the appellants. Nothing in it shall be construed as an expression of opinion on the allegations against RDL, Mr. Navin M. Raheja or any other person(s), who are not before us. In terms of the order dated 29th August, 2025, the proceedings against the other accused have continued, and they shall proceed in accordance with law, uninfluenced by any observation made in this judgment.

(b) The observations in this judgment are confined to the question whether the criminal proceedings against the appellants should continue. They shall not be construed as an expression of opinion on the rights, claims and interests of the other parties, which shall be decided by the competent forums in

accordance with law, uninfluenced by anything stated herein.

(c) The complainants shall be at liberty to pursue such civil, arbitral and statutory remedies as may be available to them in law, including any remedy against the appellants in respect of their claimed security interest.

89. Pending application(s), if any, shall stand disposed of. There shall be no order as to costs.

.....J.
(VIKRAM NATH)

.....J.
(SANDEEP MEHTA)

NEW DELHI;
SEPTEMBER 29, 2026.