

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO. 409 OF 2013****IN****SUIT NO. 162 OF 2013**

Mohammed Yasin Usman Latiwala & Anr. ...Plaintiffs / Applicants

vs.

Mrs.Aruna Hiten Choudhary ...Defendant

Mr.Mahendra Ghelani with Ms.Sneha Vani i/b. M/s.Law Charter for Plaintiffs.
Mr.Suresh Sharma for Defendant.

CORAM : S.C. GUPTE, J.

07 JANUARY 2015

P.C. :

The Motion is taken out in a specific performance suit. The Plaintiffs are agreement purchasers of the suit property under an Agreement for Sale dated 30 June 2012. The suit property consists of a residential flat bearing No.402 situate on the 4th floor in the building known as "Kiran Towers" at Pali Hill in Mumbai. Under the suit Agreement for Sale, the Defendant has agreed to sell and transfer the suit flat to the Plaintiffs at and for a total consideration of Rs.5.40 crores. The agreement provides that a sum of Rs.40 lakhs shall be paid as an earnest money for the purchase of the flat on or before the execution of the agreement and the balance payment of Rs.5 crores shall be made within a period of 15 days from the date of the agreement towards full and final payment for purchase of the suit flat.

2 It is the case of the Plaintiffs that the Plaintiffs paid the earnest money of Rs.40 lakhs to the Defendant at the time of the execution of the suit agreement. After the execution of the suit agreement, it is the case of the Plaintiffs, the draft sale deed and declaration were prepared in consultation with the Defendant's Advocate on terms and conditions mutually finalized between the

parties. The Plaintiffs have thereafter addressed a letter dated 15 July 2012 to the Defendant calling upon the Defendant to complete the transaction of sale. It is the case of the Plaintiffs that the Defendant did not complete the suit transaction. It is further the case of the Plaintiffs that in the premises, the Plaintiffs continued to request the Defendant to perform the suit agreement and execute the sale deed of the suit flat in favour of the Plaintiffs, but that the Defendant failed and neglected to perform her part of the contract. The Plaintiffs claim that they have always been and are ready and willing to perform their part of the obligations under the suit agreement.

3 Apart from making the initial payment of Rs.40 lakhs and addressing a letter dated 15 July 2012, the Plaintiffs appear to have done nothing in the matter. There is nothing on record to show that the Plaintiffs were ready and willing to pay the balance consideration either at the relevant time or anytime thereafter. There is nothing on record to show that the Plaintiffs had either offered to pay the balance consideration of Rs.5 crores to the Defendant or even had the means at the relevant time or at any time thereafter to pay the balance consideration. In the absence of such tender or offer it cannot possibly be suggested that there was any breach on the part of the Defendant to complete the sale. The so called default on the part of the Defendant in payment of outstanding maintenance dues of the society, referred to in the Plaintiffs' letter dated 15 July 2012, is not only not supported by any material but there are no particulars submitted of any such alleged outstandings. There is no averment in the plaint that such outstandings continued to be due at any time thereafter or that the alleged outstandings was the reason for non-payment of the balance consideration by the Plaintiffs. The suit has been filed on 6 February 2013, i.e. more than six months after the only letter addressed after the execution of the suit agreement for sale. At no stage, was any attempt made to apply for ad-interim reliefs in the suit. There is no explanation on record why such application was not made.

4 In the premises, *prima facie* no case is made out either of the breach of the suit agreement by the Defendant or of the Plaintiffs' readiness and

willingness to complete the suit transaction. There is no explanation for delay in pursuing the remedy or applying for appropriate interim reliefs in the matter at any time earlier. In the premises, there is no case made out for grant of any interim relief.

5 The Notice of Motion is rejected. There shall be no order as to costs.

(S.C. Gupte, J.)