

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****CONTEMPT PETITION NO. 4 OF 2013****IN****COMPANY PETITION NO. 387 OF 2011**

Mr. Srinivasan Parthasarathy

....Petitioner

vs.

M/s. Silvex Realty Pvt. Ltd. & Ors.

....Respondents

WITH**CONTEMPT PETITION NO. 6 OF 2013****IN****COMPANY PETITION NO. 386 OF 2011**

Mr. Pravin Padmakar Banavalikar

...Petitioner

vs.

M/s. Silvex Realty Pvt. Ltd. & Anr.

....Respondents

WITH**CONTEMPT PETITION NO. 3 OF 2015****IN****COMPANY PETITION NO. 386 OF 2011**

M/s. Silvex Realty Pvt. Ltd. & Anr.

...Petitioners

vs.

Pravin Padmakar Banavalikar

....Respondent

WITH**CONTEMPT PETITION NO. 9 OF 2015****IN****COMPANY PETITION NO. 387 OF 2011**

M/s. Silvex Realty Pvt. Ltd. & Anr.

...Petitioners

vs.

Mr. Srinivasan Parthasarathy

....Respondent

Mr. Mayur Khandeparkar, i/b. Mr. Jamshed Ansari, for the Petitioner in CNPCP 4/2013 and 6 /2013 and for Respondent in CNPCP/3/2015 and 9/2015.

Mr. Chirag Mody, a/w. Mr. Rishikesh Soni, i/b. DSK Legal, for Respondent in CNPCP 4/2013 and 6/2013 and for Petitioner in CNPCP 3/2015 and 9/2015.

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CORAM : S.C. GUPTE, J.

21 AUGUST 2015

P.C. :

. This is a group of four Contempt Petitions, two of which are filed by the Original Petitioners in Company Petition Nos.387 of 2011 and 386 of 2011, whilst the two others are filed by the common Respondent to the Original Company Petitions. The controversy arises out of a consent order passed by the Company Court on 19 December 2012. Both sides allege contempt against each other in respect of this order.

2. Original Company Petition No.387 of 2011 was filed by the Petitioner in Contempt Petition No.4 of 2013 - Mr. Srinivasan Parthasarathy ("Parthasarathy") - against the Respondent - Silvex Realty Private Limited ("Silvex"). Parthasarathy was an employee of Silvex and was claiming arrears of salary and perquisites from Silvex. He had issued a statutory notice to Silvex in respect of these dues. His Company Petition was in respect of these dues. It was also the case of Parthasarathy that Silvex had entered into an agreement dated 26 December 2008 with Parthasarathy for sale of an apartment. Under this agreement, Silvex was bound to handover possession of the flat by 31 December 2008. Since the possession of the flat was not handed over by the stipulated date, Parthasarathy had filed a

consumer complaint (Consumer Complaint No.77 of 2013) before the State Consumer Dispute Redressal Commission praying for various reliefs.

3. The case of the other Petitioner (Petitioner in Contempt Petition No.6 of 2013) – Pravin Padmakar Banavalikar (“Banavalikar”) - contains more or less similar facts. He was also an employee of Silvex and his Company Petition against Silvex (Company Petition No.386 of 2011) was based on his dues on account of arrears of salary and perquisites. Banavalikar had also entered into agreements for sale with Silvex for purchase of three flats, and on account of the latter's failure to give possession, had filed simultaneous Consumer Complaints against Silvex (Consumer Complaint Nos. 78 and 79 of 2013).

4. When the Company Petitions came up for hearing before this Court, the petitions were disposed of by a common consent order dated 19 December 2012. By this consent order, the parties' agreement to get the disputes resolved through arbitration was recorded. A sole Arbitrator was appointed to adjudicate upon the disputes. Silvex was directed to handover the respective flats to Parthasarathy and Banavalikar by stipulated dates. Parthasarathy and Banavalikar were in turn to withdraw the respective consumer complaints filed by them before the State Commission and agitate their respective claims concerning damages and interest in the arbitration proceedings.

5. The complaints in the contempt petitions filed by Parthasarathy and Banavalikar are that in spite of the order dated 19 December 2012, Silvex has failed to handover possession of the respective flats. They submit that Silvex has not obtained the requisite permissions and certificates from

statutory authorities in respect of the flats and in the absence of such permissions and certificates, the flats cannot be used for residential purposes. According to Parthasarathy and Banavalikar, this conduct of Silvex amounts to a willful breach and violation of the order dated 19 December 2012.

6. On the other hand, it is the case of Silvex that in spite of the order dated 19 December 2012, Parthasarathy and Banavalikar have neither withdrawn their consumer complaints pending before the State Commission nor commenced the references before the arbitral forum. Silvex submits that this conduct of Parthasarathy and Banavalikar amounts to a contumacious breach of the order. In reply to the contempt petitions of Parthasarathy and Banavalikar, it is submitted by Silvex that Silvex has not only offered possession of the respective flats to Parthasarathy and Banavalikar, but has also taken all requisite steps to obtain permissions and sanctions with a view to procure occupation certificates in respect of the flats. It is submitted that due to no fault of theirs, the sanctions and permissions have still not been forthcoming. Silvex submits that there is no intention on their part to breach the order dated 19 December 2012.

7. Now, as regards the contempt petitions of Parthasarathy and Banavalikar, the record of the case bears out that Silvex has taken various steps for obtaining the requisite sanctions and permissions of statutory authorities for issuance of occupation/building completion certificates for the concerned buildings. Silvex has produced photographs and other record before the Court to show that the construction of the buildings, in which the respective flats are situated, is complete. Silvex has also produced letters addressed by it to the Collector of Raigad-Alibag and other authorities in

support of its case that all requisite steps have been taken by Silvex and the matter has been duly followed up with the authorities. According to Silvex, the respective flats have been ready for occupation and have even been offered to Parthasarathy and Banavalikar for taking possession thereof. Though it is a fact that, in the absence of an occupation/building completion certificates, the flats cannot be used and occupied by Parthasarathy and Banavalikar, it is not disputed that the flats have been actually offered to be handed over by Silvex to Parthasarathy and Banavalikar. There is nothing on record to suggest that the respective flats are, in any way, incomplete or cannot be used for residence but for the fact that there is no occupation/building completion certificate issued in respect of the flats as yet. On 24 December 2014, a letter has been addressed by Silvex to the Collector of Raigad for issuance of an occupation/building completion certificate. A similar letter has also been addressed to the Chief Executive Officer, Raigad. Reminder letters have, thereafter, been addressed both to the Collector of Raigad and the Chief Executive Officer. The Collector, by his letter of 2 January 2015, has communicated to the Assistant Director Town Planning Raigad-Alibag that a survey ought to be carried out in respect of the property, whereafter a completion certificate could be issued. There is nothing brought on record to suggest that Silvex has deliberately failed or neglected in any statutory compliance or that it has deliberately, or by way of a contumacious conduct, violated the order of 19 December 2012.

8. It is submitted by learned Counsel for Silvex that Silvex undertakes to pursue its application for occupation/building completion certificate diligently and vigorously and that based on the feedback/response received from the statutory authority, it is expected that

an occupation certificate in respect of the entire project would be received within a period of three months. Silvex has also offered to keep Parthasarathy and Banavalikar informed of the progress in the matter from time to time till the final occupation certificate is obtained. Silvex also undertakes not to start any new construction work at the project site in the said property by consuming any further additional FSI that may be available till it obtains occupation certificate at least in respect of the flats to be handed over to Parthasarathy and Banavalikar. Silvex submits that if necessary, even a part occupation certificate involving the subject flats would be obtained so as to enable Silvex to handover the possession of the flats to Parthasarathy and Banavalikar.

9. Considering the fact that there is no willful breach on the part of Silvex in compliance with the order of 19 December 2012 and also considering the fact that there is a genuine attempt on the part of Silvex to obtain occupation/building completion certificate and requisite undertakings in that behalf are furnished at the hearing, there is no need to proceed against Silvex in the contempt jurisdiction of this Court.

10. As far as the objections filed by Silvex against Parthasarathy and Banavalikar are concerned, it appears from the text of the order dated 19 December 2012 that handing over of the flats to Parthasarathy and Banavalikar and withdrawal of the respective complaints filed by them against Silvex before the State Commission with a view to prosecute their remedy for damages before an arbitral forum, were reciprocal obligations. Silvex has yet to handover possession of the flats to Parthasarathy and Banavalikar after obtaining the requisite occupation/building completion certificate and, in the premises, Silvex cannot expect the two to withdraw

their consumer complaints and restrict their disputes to damages alone before the arbitral forum. There is, thus, no merit in the complaint that there is a willful breach of the order of 19 December 2012 by Parthasarathy or Banavalikar by failure to withdraw the respective consumer complaints or to agitate the disputes before the arbitrator.

11. In that view of the matter, there is no merit in any of the contempt petitions.

12. In the premises, the following order is passed:

(i) Contempt Petition Nos. 4 of 2013 and 6 of 2013 are disposed of by accepting the undertakings of the Respondents contained in paragraph 8 above. Before handing over the flats to Parthasarathy and Banavalikar, the Respondent Silvex Realty Pvt. Ltd. shall ensure that the flats are complete in all respects. If there is any defect, the same will be rectified. Needless to add that balance payment, if any, due in respect of the sale of the flats shall be tendered by Parthasarathy and Banavalikar to Silvex Realty Pvt. Ltd. at the time of final handing over of possession of the flats.

(ii) Contempt Petition No.3 of 2015 and 9 of 2015 are dismissed.

(S.C. Gupta, J.)