

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1389 OF 2015

Azam Khan	... Applicant
vs.	
The State of Maharashtra	... Respondent

Mr. Rajiv Patil, senior advocate i/b. Mr. V.L. Kolekar, for the Applicant.

Mrs. P.P. Shinde, APP for Respondent – State.

Mr. J.R. Kamble (API), E.O.W.- Palghar present.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **1st APRIL, 2016**

P.C.:

. The application is moved for pre arrest bail as the applicant/accused is facing charges for the offence punishable under Section 420 read with 34 of the Indian Penal Code in C.R. No. 152 of 2015 registered with Arnala Sagri police station, Dist. Palghar. The offence is registered at the instance of one Paramveer Singh on 23rd September, 2015.

2. It is the case of the prosecution that complainant wanted to purchase a flat. In the year 2011 he came across one agent

Indarjeet Sohi. He informed him that booking of residential premises is going in the project launched by Ionic “Ionic Realty (Eco City) Pvt. Ltd.” at Vasai. Therefore, on 2nd November, 2011 he booked a 1 BHK flat and paid the amount of Rs. 7,10,200/-. Out of this, he paid Rs. 2,83,300/- in cash on 19th October, 2011 and remaining amount by cheque. The applicant/accused Azam Khan is one of the Director of Ionic Realty (Eco City) Pvt. Ltd. It was promised that the flat will be ready till 2014 and the possession will be handed over to the complainant. However, it was not done so. It is the case of the complainant that in the year 2014, he came to know that the applicant/accused has assigned the development rights of the said project to M/s. Crystal Homecon Pvt. Limited without giving any instructions to the complainant and the other flat purchasers. Thereafter the directors Mr. Uday Oberai and Mr. Viraj Masurkar of M/s. Crystal Homecon Pvt. Limited held meeting of all the purchasers and informed them that they would have to pay Rs. 2 lacs each for the fresh booking and the area of the flat will be reduced. It is the case of the prosecution that along with complainant many other persons have booked flats with Ionic Realty (Eco City) Pvt. Ltd and they are nearly 1400 persons. Hence, this offence was registered.

3. The learned counsel for the applicant/accused has submitted that the applicant/accused has accepted money through agent and as he could not complete the project within time, he assigned the development rights to M/s. Crystal Homecon Pvt. Limited. The learned counsel further submitted that the applicant/accused has offered amounts to each of the flat purchasers and also gave them option of booking flats in another project. However, they all refused to either accepting money or to go for the another project.

4. The learned prosecutor and the learned counsel for the complainant both oppose the application. She submitted that nearly 1400 persons have booked the flats and the applicant/accused has collected around 38 Crores from these persons. The statement made by the learned senior counsel in respect of an offer for repayment or giving alternate accommodation is not correct and it is further submitted that the applicant/accused did not execute any document like agreement of sale after accepting the major portion of the consideration from the complainant and others. The learned prosecutor submitted that statements of about 901 flat purchasers are recorded till today as witnesses.

5. Perused the first information report, statements of the witnesses, submissions of both the parties and other documents. In a case where one or two tenements are booked and if the tenements are not given by the builder and developer in time, then it is a case to avail civil remedy by filing the suit for specific performance. However, in the present case, a peculiar fact is that the applicant/accused has accepted money from 1400 persons in the year 2011 and till today not a single building is constructed. The submission of the learned senior counsel for the applicant/accused that the applicant/accused has offered repayment of the amount or alternate accommodation would have been considered if the amount of Rs. 38 Crores or part of the said amount would have been deposited in the Court. However, nothing is done to that effect. Moreover, if the builder launches a scheme, it is accepted that he has to follow the rules and law under Maharashtra Ownership Flats Act, 1963 (MOFA) under which it is a statutory obligation on the part of the builder and developer to follow the requirement of the sections 4, 11 of the Act wherein some amount has to be deposited and to enter into agreement of sale is obligatory. This is not done in the present case in respect of 1400 purchasers. *Prima facie* it is case of cheating under Section 420 of Indian Penal

Code. Under such circumstances, I am not inclined to grant anticipatory bail to the applicant/accused.

6. Hence, anticipatory bail application No. 1389 of 2015 stands rejected.

(MRS.MRIDULA BHATKAR, J.)