

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.2323 OF 2016

Anil Dattatrey Nanaware

... Applicant

Vs.

The State of Maharashtra & anr.

... Respondents

Mr.Mateen Shaikh with Shriniwas Kshirsagar for the Applicant
Mr.Y.M. Nakhwa, APP, for Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: FEBRUARY 14, 2017

P.C. :

1. The applicant is prosecuted for the offence punishable under section 420 of the Indian Penal Code and under sections 4(1), 13(1) of the Maharashtra Ownership of Flats Act, 1963 at the instance of one Ganesh Kindiba Yelkar, the complainant. It is his case that in the year 2013, when he was in search of booking of a flat when he came across an advertisement of Sai Enterprises Builders and Developers that they are constructing residential buildings and shops near Panvel railway station. The complainant enquired with the applicant/accused Anil Nanaware and one Chandrakant Waghmare and booked flat No.402 admeasuring 375

sq.ft of 1 BHK for Rs.10 lakhs. The applicant/accused promised him that he would be giving possession in 15 months, so he initially paid an amount of Rs.1 lakh on 29.1.2013 and till 5.4.2014, he paid Rs.2,50,000/-. However, he found that there was no progress in the work and the applicant/accused avoided to register agreement of sale with the complainant. Thereafter, he demanded his money back as nothing was constructed. The applicant/accused first avoided and thereafter refused to either execute the registered agreement of sale or return the money. On enquiry, the complainant found that the applicant/accused had promised eight other persons, who had paid amount of Rs.18,35,000/- with whom as well, the agreements of sale were not executed. Thus, at the instance of the complainant, the offence was registered on 22.2.2016 at C.R. No.I-135 of 2016 with Khandeshwar Police Station, Navi Mumbai. The applicant/accused was arrested on 10.8.2016 and hence, this Bail Application.

2. The learned Counsel for the applicant/accused has submitted that the applicant/accused has not cheated any purchasers who have booked flats with him. He submitted that the applicant/accused has started construction of the building at

Survey No.6, hissa No.1 of Chiple village. He submitted that 70% of the construction is complete and the applicant/accused has spent money on the scheme and he wants to hand over the constructed flats to the complainant and other persons. However, he could not proceed because of the policy of CIDCO, which gave stop-work notice on 3.2.2015. He further submitted that the complainant has applied for regularisation of the scheme and he is in the process of getting NOC from CIDCO so that the stop-work notice can be withdrawn. The learned Counsel has further submitted that he shall execute and register the agreements of sale with the complainant and other flat purchasers who have paid 20% of the amount as per the requirement of scheme 4 of MOFA.

3. Learned Prosecutor has opposed the application and has submitted that the applicant/accused was aware that CIDCO has not given him clearance to construct the building and because of the Government's policy for the new Airport area where the building is coming up, the construction was stopped. The learned Prosecutor further submitted that the applicant/accused has cheated nearly 62 persons and, therefore, he is not to be granted bail.

4. Perused the FIR, the documents produced before him. Perused letters given by CIDCO. Seen the photographs produced by the learned Counsel that the applicant/accused wherein the skeleton and some construction of the building is found ready. Though the building is not complete, it appears from the submissions of the learned Counsel for the applicant/accused that wants to complete the construction of the building and hence, the Bail Application is allowed on the following terms:

- a) The applicant-accused shall be released on bail upon furnishing P.R. Bond in the sum of Rs.40,000/- (Rupees Forty thousand only) with one or two solvent sureties in the like amount;
- b) The applicant-accused shall not tamper with the evidence or pressurise the complainant;
- c) The applicant-accused shall not indulge into any criminal activity and shall attend on all the Court dates;
- d) The applicant-accused shall not abscond or leave India without prior permission of the Court and furnish his permanent address to the Investigating Officer alongwith documentary proof of his address.

e) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

5. Bail Application is disposed of on the above terms.
6. Parties to act on an authenticated copy of this order.

(MRIDULA BHATKAR, J.)