

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMPANY PETITION NO.1036 OF 2015

Tajinder Singh Setia & Anr.

....Petitioners

Vs.

D.B. Reality Limited

....Respondent

Mr. Akshay Patil i/b. Mr. Mandar Soman for petitioners.

Mr. Zal Andhyarujina a/w. Ms. Niyathi Kalra and Mr. Rahul Sabne i/b. Negandhi Shah and Himayatullah for respondent.

CORAM : K.R.SHRIRAM, J.

DATE : 20th DECEMBER, 2017

PC.:

1 This petition has been filed on the basis that respondent is unable to discharge its debts, is commercially insolvent and therefore, requires to be wound up.

2 Petitioners have purchased an apartment from respondent pursuant to an Agreement to Sell dated 10th December, 2012. Admittedly possession of the apartment has been given to petitioners. It is, however, the case of petitioners that respondent was to give possession for fitout purposes from 30th June, 2013 and because respondent delayed, petitioners are entitled to 9% p.a. interest from that date till the actual handing over took place. According to petitioners, the hand over for fitout purpose happened only on or about 29th November, 2014 and therefore, for the period 30th June, 2013 to 29th November, 2014 petitioners are entitled to a sum of Rs.34,40,090.25/-. Petitioners relied upon Clause 14 and Clause 16

of the Agreement to Sell and the same read as under :

“14. The Developers shall offer possession of the said Flat/Shop/Office to the Purchaser on or before 30th day of June 2013. Provided Always that the Developers shall be entitled to reasonable extension of time, if the completion of the said Building and/or receipt of Occupation Certificate thereof from BMC is delayed on account of situations beyond the control of the Developers including non receipt or inordinate delay in receiving payment of the installments from the Purchaser herein and/or Purchaser of other flat/shop/office in the said Building as also on account of

a) Non-availability of steel, cement, other building material, water or electric supply;

b) War, civil commotion or Act of God;

c) Any notice, order, rules, notification of the Government and/or other public or competent authority; or the Court/s,

d) Any force majeure or Vis majeure cause or circumstances.

.....

16. If Developer fails to handover possession to the Purchaser for fitout purpose by 30/06/2013, the Developer agrees to pay to the Purchaser simple interest at the rate of nine percent per annum from that date till the Developers handover the possession of the said flat for fitout purpose, on the amount received by the Developer from the Purchaser till agrees to handover possession of the said flat subject to clause 14.”

3 As the amount was not paid, petitioners caused a notice dated 20th February, 2015 issued through his Advocates to respondent, to which there was no response. At the same time, respondent has now filed an affidavit in reply of one Laxman Gadade affirmed on 13th September, 2017 denying liability. It is the case of respondent that the delay if any happened, it was due to reasons beyond the control of respondent and therefore, the question of paying any interest did not arise.

4 Clause 14 and Clause 16 have to be read together. Clause 14 expressly provides that “the developers shall be entitled to reasonable

extension of time, if the completion of the said Building and/or receipt of Occupation Certificate thereof from BMC is delayed on account of situations beyond the control of the Developers including non receipt or inordinate delay in receiving payment of the installments from the Purchaser herein and/or Purchaser of other flat/shop/office in the said Building as also on account of”.

5 Therefore, in my view, even assuming we accept that there has been delay caused by respondent and respondent did not strictly meet with the time schedule as mentioned in Clause 14 and Clause 16 of the Agreement, until respondent is given an opportunity to prove, and the onus will be on respondent to prove, that the delay happened on account of situation beyond the control of respondent, Court cannot come to a conclusion that there is a debt payable to petitioner.

6 In the circumstances, petition stands dismissed with no order as to costs.

(K.R. SHRIRAM, J.)