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

WRIT PETITION NO. 4096 OF 2015

Manish Madhukar Shinde and others

.....Petitioners

V/s.

M/s. Ascent Housing Private Limited and othersRespondents

Ms. Gauri Godse for the petitioner

Mr. P. K. Dhakephalkar senior advocate a/w Ms. Kanorma Mohanty,
Mr. A. P. Singh I/b Mr. S. K. Srivastava & Co. for respondent nos. 1
to 3.

Mr. Mandar Limaye for respondent no. 4

Ms. Kiran Bhagalia I/b Mrs. Chitra Phadke for respondent no. 5.

CORAM : NITIN W. SAMBRE, J.

DATE : 27th JUNE, 2018.

P.C.

Petitioner/original plaintiff has filed petition with following prayers.

a) It be declared that the Defendants No. 1 and 2 do not have any right to create third party interest in respect of the suit property and construction thereon and the third party interest created in favour of the Defendant No. 3 is illegal, unlawful and bad at Law.

b) It be declared that the construction activities carried out by the Defendants in the suit property, as per said Second plans viz. The plans, drawings and specifications sanctioned

and approved by the municipal Corporation of City of Thane on 21/08/2008 vide V.P. No. 88/142, are illegal and unlawful.

c) It be declared that the Defendants No. 1 to 3 do not have any right to carry out the construction activities in the suit property as per the plans sanctioned and approved by the Municipal Corporation of The City of Thane on 21/08/2008 vide V.P. No. 88/142, as the same are illegal, unlawful and bad at Law.

d) It be declared that the Defendants No. 1 and 2 are required to execute with the Plaintiffs, an Agreement for Sale in respect of flat admeasuring approximately 1000 sq.ft. in building No. 2 to be constructed on the suit property viz. Property bearing Gut No. 66/1 and 61/2, situate lying and being at Manpada, Thane (W), as per the form prescribed in and in accordance with the Maharashtra Ownership of Flats Act, 1963 and Rules made thereunder.

d(i) It be declared that the suit property bearing gut no. 61/1 and 61/2 situate lying and being at Manpada, Thane is not eligible for the construction activities thereon under the rental housing scheme of the MMRDA; and it be further declared that the MMRDA has no right and authority to execute agreement with the defendants no. 1 to 3 for carrying out construction activities on the suit property under the rental housing scheme of the MMRDA;

d(ii) It be declared that the Thane Municipal Corporation had no right and authority to allow the defendants no. 1 to 3 to commence and carry out construction as per the second, third, fourth and fifth MMRDA plans on the suit property;

d(iii) It be declared that the Thane Municipal Corporation has illegally and unlawfully sanctioned and approved the plans for construction activities on the suit property on 26th March 2010 vide V.P. no. 88/142/TMC/TDD/845 (i.e. fifth MMRDA plan);

d(iv) it be declared that the defendants no. 1 to 3 do not have any right and authority to carry out construction activities on the suit property as per the plans approved by the Thane Municipal Corporation on 26th March 2010 vide V.P. no. 88/142/TMC/TDD/845;

e) The Defendant No. 1 to 3 be directed to get the said second plans viz. The plans, drawings and specifications sanctioned and approved by the Municipal Corporation of the City of Thane on 21/08/2008 vide V.P. No. 88/142, in respect of the construction activities on the suit property, duly cancelled from the Municipal Corporation of the City of Thane.

f) The Defendant No. 1 to 3 be directed to get the said first plans viz. The plans, drawings and specifications sanctioned and approved by the Municipal Corporation of The City of Thane on 11/03/2008 vide V.P. No. 88/142, in respect of the construction activities on the suit property, duly sanctioned from the Municipal Corporation of the City of Thane.

g) It be declared that the Defendants No. 1 and 2 are required to execute with the Plaintiffs, an Agreement for Sale in respect of flat admeasuring approximately 1000 sq. ft. in building No. 2 to be constructed on the suit property viz. Property bearing Gut No. 61/1 and 61/2, situate lying and being at Manpada, Thane (W), as per the form prescribed in and in accordance with the Maharashtra Ownership of Flats Act, 1963 and Rules made thereunder.

h) The Defendants No. 1 to 3, their agents, representatives, contractors, officers, employees, etc. and/or any one claiming through them may kindly be restrained by an Order of Injunction from creating third party interest in respect of the suit property and/or construction activities thereon.

i) The Defendants No. 1 to 3, their agents,

representatives, contractors, officers, employees, etc and/or any one claiming through them may kindly be restrained by an order of Injunction of this Hon'ble Court from creating third party interest in respect of their premises in the building to be constructed on the suit property as per the said second plans viz. The plans, drawings and specifications sanctioned and approved by the Municipal Corporation of the City of Thane on 21/08/2008 vide V.P. No. 88/142, in respect of the construction activities on the suit property.

j) The Defendants No. 1 to 3, their agents, representatives, contractors, officers, employees etc and/or any one claiming through them may kindly be restrained by an Order of Injunction of this Hon'ble Court from carrying out construction activities on the suit property as per the plans, drawings and specifications sanctioned and approved by the Municipal Corporation of the City of Thane on 21/08/2008 vide V.P. No. 88/142, in respect of the construction activities on the suit property.

k) The Defendants No. 1 to 3, their agents, representatives, contractors, officers, employees, etc and/or any one claiming through them may kindly be directed by an Order of Injunction of this Hon'ble Court to carry out construction activities on the suit property as per the plans, drawings and specifications sanctioned and approved by the Municipal Corporation of The City of Thane on 11/03/2008 vide V.P. No. 88/142, in respect of the construction activities on the suit property.

l) The Defendants No. 1 to 3 be directed to execute with the plaintiffs, an Agreement, for Sale in respect of suit flat admeasuring approximately 1000 sq.ft. in building no. 2 to be constructed on the suit property viz. Property bearing Gut No. 61/1 and 61/2, situate lying and being at Manpada, Thane (W), as per the form prescribed in and in accordance with the Maharashtra Ownership of Flats Act, 1963 and Rules made thereunder.

m) The Defendants No. 1 to 3 be directed to construct the suit flat in the building no. 2 on the suit property as per the plans drawings and specifications sanctioned and approved by the Municipal Corporation of the City of Thane on 11/03/2008 vide V.P. No. 88/142, in respect of the construction activities on the suit property.

m(i) the defendants no. 1 to 3 may kindly be restrained from carrying out the construction activities on the suit property as per the plans sanctioned by Thane Municipal Corporation on 26th March 2010 vide V.P. no. 88/142/TMC/TDD/845 (i.e. fifth MMRDA plan) and further, be directed to demolish the construction carried out by the defendants nos. 1 to 3 on the suit property and every part thereof;

m(ii) the Thane Municipal Corporation may kindly be directed to cancel and revoke the plans sanctioned by them on 26th March 2010 vide V.P. no. 88/142/TMC/TDD/845 (i.e. fifth MMRDA plan) and further to demolish the illegal and unlawful construction carried out by the defendants no. 1 to 3 on plot 'A' and plot 'B' of the suit property;

m(iii) the MMRDA may kindly be restrained from executing any agreement of any nature whatsoever, under its rental housing scheme with defendant no. 1 to 3 in respect of the suit property and further be directed to revoke and cancel the locational clearance dated 18th March 2009 bearing ref. no. MMRDA/RHS/19/09/239 and the approval granted vide letter dated 21st December 2009 bearing ref. no. MMRDA/RHD/RHS-19/09/257 issued by the MMRDA to the defendants.

n) Interim reliefs in terms of Prayer Clauses above.

o) Costs of this suit.

p) Such other and further reliefs to which this Hon'ble Court may find the Plaintiff entitled.

2 It is the claim of the present petitioner that the petitioner was amongst first 50 customers who have booked their flat pursuant to concession offered by respondent. However, after the advance amount of Rs. 21,000/- was accepted, the respondent has neither executed an agreement nor assured to deliver possession as promised. As such, suit in question.

3 Application Exhibit 5 for grant of injunction came to be partly allowed by an order dated 28/11/2013 to the extent of directing respondent/defendant to keep one flat reserved for the plaintiff, however, rest of the prayers were rejected. The said order was confirmed in an appeal by the learned District Judge. As such, this petition.

4 The learned counsel for the petitioner would strenuously urge that the courts below having regard to the pleadings and the evidence that was brought on record, should have restrained the respondent from changing nature of the property. According to the

petitioner, respondent-developer has substantially changed the nature of the property contrary to what was promised the day when part consideration was accepted from the petitioner/plaintiff. It is further alleged that even concessional rates at which the property was offered, drawings and other infrastructure as was promised are also substantially changed and as such, there needs to be a blanket injunction against the respondents as prayed above.

5 *Per contra* the learned senior counsel for the respondent Shri. Dhakephalkar would urge that interest of the petitioner/plaintiff is already secured as the respondent has already kept one flat vacant and unsold, subject to final outcome of the suit. According to him, the development activity is at advance stage and let the suit be decided expeditiously.

6 Considered rival submissions.

7 While weighing equities in favour of the present petitioner, both the courts below have secured the interest of the petitioner plaintiff by issuing directions to the respondent to keep one flat

reserved/unsold so that if in case a Decree passed in favour of the petitioner plaintiff, same can be taken to its logical end.

8 So far as other issues are concerned, since same can be dealt with by the learned Court below in the light of provisions of section 20 and 21 of the Specific Relief Act, by ordering possession/damages, in my opinion, no case for grant of injunction is made out.

9 Both the courts below have categorically held against the petitioner *qua* other reliefs claimed. In view thereof, no interference is warranted.

10 Petition stands dismissed.

11 In view of joint request made for expediting the hearing of the suit and the fact that the suit is pending for last 10 years, in view of litigation policy, the hearing of the suit is expedited.

[NITIN W. SAMBRE, J.]