

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO.216 OF 2013****IN****SUIT NO.35 OF 2013**

Vipul Jaychand Doshi and another

...Applicants

IN THE MATTER BETWEEN

Vipul Jaychand Doshi and another

...Plaintiffs

Versus

Vaishali Vipul Choksi and others

...Defendants

Mr. Sandip Parikh a/w Mr. Sunil Patel I/by Sunil and Co., for the Applicants/Plaintiffs.

Mr. Satya Shettigar, for Defendant No.4.

Mr. M. A. Narvekar, for Defendant No.6.

Mr. Omkar Kulkarni, for Defendant No.7.

CORAM : S. C. GUPTE, J.**DATED : 26 SEPTEMBER 2018****P.C.:**

1] Heard learned counsel for the parties.

2] This Notice of Motion is taken out by the Plaintiffs in a Specific Performance Suit. The Plaintiffs claim to be agreement purchasers/

transferees in respect of four tenanted premises being Room Nos.15, 25, 26 and 30 in a building known as Mohan Niwas, Building No.20, M. Jhaveri Marg, Kumbhar Tukda, Bhuleshwar, Mumbai-400 004. Defendant No.2 is the co-owner of the building who had entered into an agreement for development of the building with M/s. Darshan Group, who in turn sold the rights and benefits under the development agreement to one M/s. Rohan Group. M/s. Rohan Group is the present developer developing the suit property. A memorandum of agreement between the Plaintiffs and the transferors, who are Defendant Nos.1 to 3 to the present suit entitled the Plaintiffs to the benefits of the development agreement in respect of the four residential premises, namely, two permanent residential flats with regular amenities as provided by developer in the proposed tower presently in construction at site of an aggregate usable area of 1750 sq.ft. alongwith two parking spaces. It is the grievance of the Plaintiffs that the tenancy of the suit premises and the benefits of the development agreement have been illegally transferred by Defendant Nos.1 to 3 to Defendant Nos.4 to 6, who are nothing but alter egos of Defendant No.7, who is part of M/s. Rohan Group developing the building. It is confirmed by Defendant No.7, who is the developer of the suit building, that the possession of the suit premises was obtained by Defendant No.7 from Defendant Nos.4, 5 and 6 under the

agreement between the parties. It is Defendant Nos.4, 5 and 6, who will be allottees of permanent alternate accommodation in the new building to be constructed in the suit property. The new building re-housing tenants of the suit building has come upto 18th floor slab and is yet to be completed. Learned counsel for Defendant No.7 informs the Court that permanent alternate accommodation to be allotted to Defendant Nos.4, 5, and 6 in lieu of the tenanted premises is yet to be identified. The question to be considered by this Court on these facts is what relief ought to be granted to the Plaintiffs in their Notice of Motion.

3] It is firstly pertinent to note that Plaintiffs' agreement is of 2009, whereas the transfer of tenancy and benefits of the development agreement between Defendant Nos.1, 2 and 3 on the one hand and the Defendant Nos.4, 5 and 6 on the other hand has taken place as far back as in August 2011. Though the Plaintiffs have filed the present suit in the year 2013, no ad-interim relief has been obtained as of date. Defendant No.7 has admittedly obtained possession of the suit premises from Defendant Nos.4, 5 and 6 and it is these latter Defendants, who are to be allotted permanent alternate accommodation in the re-developed building. No relief can obviously be granted against Defendant No.7 in the premises. In

so far as Defendant Nos.4, 5 and 6 are concerned, there is, however, a case to go to trial on the entitlement of these Defendants as a result of prior obligations undertaken by their transferors, namely, Defendant Nos.1, 2 and 3, in favour of the Plaintiffs. Defendant Nos.1, 2 and 3 are not represented today before the Court. It is to be noted that the address of Defendant Nos.4, 5 and 6 is the same as Defendant No.7, suggesting thereby that the Defendants may be in some way connected. That prima-facie supports the Plaintiffs' case they are merely alter egos of Defendant No.7. On these facts, this Court is of the view that it will be in the interest of justice that though Defendant Nos.4, 5 and 6, who are transferees under Defendant Nos.1, 2 and 3, may be allowed to take possession of permanent alternate accommodation in the new building (which is yet to be notified), there will have to be a restriction on their entitlement to create third party rights or part with possession of such accommodation to the extent of total usable carpet area of 1750 sq.ft.. As and when the accommodation is crystalized, the Plaintiffs will have to be notified of the same.

4] In the premises, the Notice of Motion is disposed of in terms of the following order :-

ORDER

- A] As and when the entitlement of Defendant Nos.4, 5 and 6 is crystalized, Defendant No.7 is directed to give intimation thereof to the Plaintiffs.
- B] Pending hearing and final disposal of the present suit, Defendant Nos.4, 5 and 6 shall not create any third party rights or part with possession of the permanent alternate accommodation allotted to them upto usable carpet area of 1750 sq.ft. and two car parking areas.
- C] The Notice of Motion is disposed of in the above terms.
- D] The Defendants are directed to file their respective written statements in the suit, in case they have not filed the same already, within a period of four weeks from today.
- E] Place the suit for directions after four weeks.

Balaji
Govindrao
Panchal

Digitally signed by
Balaji Govindrao
Panchal
Date: 2018.09.27
11:12:33 +0530

(S. C. GUPTE, J.)