

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 503 OF 2015
IN
FIRST APPEAL (ST) NO. 2740 OF 2015

M/s. Jay Enterprises & Ors. .. Applicants

Versus

M/s. Satyam Shelters Pvt Ltd & Ors. .. Respondents

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• Mr. Ashotosh R. Gole for the Applicants
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CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : JUNE 28, 2019.

P.C.:

1. This civil application is filed by the applicants - appellants seeking stay of the execution and implementation of the judgment and decree dated 3.7.2014 passed by the learned Joint Civil Judge, Senior Division, Kalyan in Special Civil Suit No. 211 of 2008.

2. Though served, no one appeared for respondent No. 1 - original plaintiff.

3. The trial Court by the impugned judgment allowed the

suit of the plaintiff in following terms:-

- "1) Suit is decreed with costs.
- 2) Defendant Nos. 1 to 4 are directed to handover the flats amounting to 27% of the total project as per the Development Agreement dated 24.2.2006. It is also made clear that this 27% of the constructed area includes the flats, which were already allotted to the plaintiff.
- 3) On payment of 27% of staircase FSI premium, the plaintiff is entitled for the area of flats amounting to 27% as per the development agreement dated 24.2.2003
- 4) Defendant Nos. 1 to 4 are directed to intimate 27% premium amount of staircase FSI to the plaintiff within one months from today.
- 5) The plaintiff thereupon is directed to deposit the said amount in the Court or pay the same to defendant Nos. 1 to 4 within one month.
- 6) If defendant Nos. 1 to 4 thereafter failed to perform their part of contract as per above order in that case the plaintiff is entitled to get specific performance of order through Commissioner.
- 7) Decree be drawn up accordingly."

4. Learned counsel for the applicangts submitted that in so far as handing over flats amounting to 27% of the total project area as per development agreement dated 24.2.2003

is concerned, the same has already been complied with by the applicants. This is also noted by the learned Judge in the impugned judgment in sub para (2) of the operative portion of the order. He, however, strongly disputed the directions contained in sub para 3 of the operative portion where upon the plaintiff paying 27% of the staircase FSI premium, he would be entitled for area of flats amounting to 27% (of the additional FSI gained and utilized by the builder).

5. Learned counsel submitted that the plaintiff in the said development agreement had undertaken to pay the entire premium which he did not pay upon which the applicants paid the premium and utilized the additional FSI. The plaintiff now cannot claim 27% of such additional FSI that too by offering to pay only 27% of the premium.

6. Learned counsel for the applicants stated that one flat i.e Flat No. 702 in Building No. 2, 7th Floor, Govardhan Enclave having super built up area of 1050 sq ft is not yet sold. According to him, this would approximately be equivalent to 27% of the additional built up area which the

plaintiff is entitled to receive as per the impugned judgment.

7. Under these circumstances, the execution and implementation of the judgment and decree is stayed on the condition that the applicants shall not sale, transfer, lease out or in any manner create encumbrances on the said unsold flat No. 702 which is stated to be of 1050 sq ft.

8. Civil Application is disposed of.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]