

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9317 OF 2018

Atal Buildcon Pvt Ltd

.. Petitioner

Versus

The Executive Engineer,
Public Works Division, Nashik & Ors.

.. Respondents

-
- Mr. Manoj Badgujar for the Petitioner
 - Ms. Shruti Vyas, 'B' Panel Counsel for Respondent Nos. 1, 2 & 5
-

CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : OCTOBER 14, 2019.

P.C.:

1. Heard learned counsel for the parties for final disposal of the petition.

2. The petitioner is a real estate developer. The developer was assigned the work of development of a final plot No. 152 admeasuring 8096 sq. mtrs. belonging to PWD department of the State Government situated at Nasik at his own cost. The petitioner would handover constructed area of 1884 sq. mtrs. In lieu thereof, the rest of the construction, the petitioner could sell. It is an admitted position that in the

constructed building comprising of four floors, the petitioner was not able to provide the full constructed area of 1884 sq. mtrs. to the Government. The petitioner, instead, after some negotiations with the authorities offered to provide 1208 sq.mtrs. in the said building and additional built up area of 764.88 sq mtrs in another building of the same city. This is borne out from a communication dated 28.11.2014 issued by the Chief Architect and the annexure attached thereto. Subsequently, a lease deed was also executed between the Government and the petitioner. Learned counsel for the petitioner would point out that in the said lease deed, the entire third floor was assigned to the petitioner.

3. The case of the petitioner is that on 15.3.2018, Assistant Commissioner of Police and other police officials came to the site and broke open the lock put up by the petitioner on the premises of the third floor and sealed the same with their own lock. The petitioner has, therefore, filed this petition with a prayer to direct the respondents to open the seal put on the third floor of the building.

4. The respondents have filed detailed reply interalia pointing out that :-

"7. With reference to the para No. 6 I say that, as per sanctioned plan, the petitioner was supposed to construct an area of 1208.00 Sqm on the top floor of the pinnacle mall. However the constructed area on the top floor measured only 893 Sqm. So the petitioner provided balance area of 315 Sqm on the third floor of the Pinnacle mall. The area of 315 Sqm was handed over willfully by the Petitioner. Only 85% of the built up area with sublease rights were released in favour of Petitioner in the year 2011-12. The remaining area was withheld due to final certification of area from Govt. Architect, non closure of Audit para from Govt. and compliance of points raised by the vigilance and Quality control Dept.

8. With reference to Para No. 7 of the petition, it is submitted that averment raised by Petitioner are denied. The Respondent never insisted the Petitioner for area 315.00 sq mt. However, the area on fourth floor was less by 315 sq.mt. as per measurement of project consultant. Hence the Respondent informed the petitioner to hand over the balance area in the letter dated 4/1/2012 (Annexed and marked as Exhibit-B page no. 95) in the present petition, in said letter Respondent No. 4 informed to transfer area 315.00 sq mt to PWD. Petitioner communicated letter about area and finalization area by Chief Architect Mumbai and assured to give remaining area at any place in Nashik vide letter dated 5/1/2012. (Annexed and marked as **Exhibit -E** page No. 96 in present petition). Again in reply to said letter, Respondent No. 1 informed Petitioner to handover possession of area 315.00 sq mt on 3rd floor vide letter dated 12/1/2012 (Annexed and marked as **Exhibit -D** page No. 97 in the present petition). After that on 31/3/2012 Respondent No. 1 again informed Petitioner about handover possession, unless to present personally

on 4/4/2012 on morning 11 a.m. and handover possession. (Annexed and marked as **Exhibit -F** page no. 99 in the present petition. The Petitioner handed over the remaining area of 315 sq mt on 12/4/2012 willingly to the Govt. (Here to annexed and marked as **Exhibit-III**. The same fact was reported by Respondent 4 to Respondent 1 on 12/4/2012 (hereto annexed and marked as **Exhibit-IV**. Petitioner did not reveal this fact in the petition, and had suppressed the same from this Hon'ble High Court.

9. With Reference to the para No. 8 I say that, as per tender condition, the area constructed by the entrepreneur is to be certified by the Chief Architect of Govt. of Maharashtra. The Petitioner was supposed to give 1208 sqm area in the pinnacle mall which was 893 sqm area on the fourth floor and 315 sqm on the third floor as per the measurements taken by the project consultant. Out of which area of 315 sqm on third floor was not handed over till 12/1/2012. The Executive Engineer directed the Petitioner to handover the remaining area which was subsequently handed over to PWD on 11/4/2012. There was common shutter on third floor for area of Govt. and the area of the Petitioner. Hence one key of lock of common shutter was given to the PWD and other key was with the Petitioner. The area was handed over to P.W. Department without any condition. It is to submit that the letter of 6/3/2012 (Annexed and marked as **Exhibit-E** page no 98 in the present petition) is self explanatory and nowhere it is mentioned that Petitioner handed over possession subject to finalization of measurements.

10. With reference to the para No. 9, I say that, the Executive Engineer vide letter dated 31/3/2012 directed the Petitioner to handover the remaining area of 315 Sqm as per contract condition. In response to the directions, the Petitioner willfully handed over the 312.54 Sqm area on the third floor, to Shri. Bafana Sectional

Engineer. On 11/1/2012 by marking with black oil paint which is still distantly visible on the third floor of the pinnacle mall marked as **Exhibit-H** Page No. 103 in present petition. Since there is common shutter on the third floor, the one key of lock is kept with department and one key is kept with the Petitioner."

5. The petitioner has not filed rejoinder disputing these averments.

6. Under these circumstances, it emerges that even the constructed area of 1208 sq mtrs provided by the petitioner in the same building was split into two floors. According to the respondents, an area of 893 sq mtrs was provided in the top floor and remaining area of 315 sq mtrs was provided on the third floor. It was because of this reason that the authorities had taken coercive measures to remove the obstruction put up by the petitioner on the 3rd floor preventing the authorities from occupying and enjoying the said constructed area of 315 sq mtrs. If the case of the petitioner was that 1208 sq mtrs of constructed area was provided in the said building, the same matches with the averments made by the respondents in the said affidavit. It may be that the petitioner would have provided a total constructed area of 1208 sq mtrs in the said building, the

same did not form a composite block. A part of it was on the 4th floor and remaining was of 315 sq mtrs was on 3rd floor.

7. Under these circumstances, the petitioner would approach the Chief Architect with all the measurements. The Chief Architect shall verify the constructed area surrendered by the petitioner to the Government in the said building and ensure that the remaining constructed area on the 3rd floor be allowed to be occupied and enjoyed by the petitioner. If the lease deed dated 26.9.2017 is at variance with the above position, both the sides are directed to amend the same by executing a supplementary lease deed. This exercise shall be completed within a period of two months from the date of receipt of copy of this order. Petition is disposed of accordingly.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]

Ravindra M.
Amberkar

Digitally signed by
Ravindra M. Amberkar
Date: 2019.10.15
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