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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION (L) NO. 736 OF 2016
IN
COMPANY PETITION NO. 949 OF 2014

Naresh B Jain ...Applicant
Versus
Official Liquidator of Mantri Realty Ltd ...Respondent

Mr Kalpesh Joshi, *for Applicant.*
Mr D Tiwari, *i/b S Murarka for Petitioner in Company Petition No. 949 of 2014.*
Mr Sahil Mahajan, *for ex-director.*
Mr H Dhoklawala, *for Official Liquidator.*

CORAM: G.S. PATEL, J
DATED: 23rd August 2019

PC:-

1. This is an application by one Naresh Babulal Jain. The only prayer is for leave under Section 446 (1) of the Companies Act 1956 to permit Jain to proceed with a complaint that he filed against the Respondent company Mantri Realty Limited ("**Mantri Realty**") before the Maharashtra State Consumer Disputes Redressal Commission ("**the State Commission**"). That complaint is numbered as 1813 of 2013.

2. Although the application is straightforward, the background facts in relation to Mantri Realty are not, and I believe it is necessary to put this in some context in the interest of all concerned. It is undisputed that Mantri Realty is under an order of this Court appointing the Official Liquidator of this Court as Provisional Liquidator. The Official Liquidator has taken charge of several assets of Mantri Realty including its registered office, other movables and so on.

3. As a developer, Mantri Realty had development and construction projects not only in Mumbai, where there are at least two in the Northern Suburbs, and a separate property under some sort of development at Walkeshwar, but also in other cities in and outside the State. Most prominently, there were two very large residential complexes being developed in Bangalore known as Mantri Premero and Mantri Royale. There was another project of residential and commercial premises at Solapur, and yet another in Gwalior in Madhya Pradesh.

4. For the Mantri Premero project, there was a very unusual turn of events. There, Mantri Realty was only the developer. It did not own the land. It had an arrangement with the land owners under which Mantri Realty was to carry out or complete the construction, and, instead of receiving financial remuneration, was entitled to sell a defined, agreed percentage or number of the constructed flats. The owner and the owner's family were entitled to sell the rest. Mantri Realty abandoned the project halfway. It remained incomplete. The condition at site deteriorated. No flat purchaser was able to gain possession. It is at this stage that an association of flat purchasers came to be formed. They came together along with the land owners and presented a proposal to this Court proposing that they take over the completion of the construction. This required a series of orders not only permitting this proposal but making other provisions as well. There were questions of appointment of a contractor and a project management consultant, payment of fees, clearing of the site and also the question of what was to be done in respect of flat purchasers who had not agreed to contribute the additional amount necessary to complete this construction. This revamped Mantri Premero endeavour was largely successful. Construction is now complete. There are few remaining issues but these are being addressed separately. Purchasers are now poised to get possession of completed flats. They have been saved a potential financial loss, and an additional burden of having to litigate their rights in different courts. The Official Liquidator has been kept informed and involved throughout. None have been prejudiced by this collaboration.

5. There is yet pending for consideration of this Court recently a very similar proposal in regard to the second project in Bangalore, Mantri Royale. No effective orders have been yet made for want of an agreed proposal.

6. The Premero project orders are being used by flat purchasers in Mantri Royale, as also stake holders in the Gwalior and Solapur projects as a template to complete their respective projects. These are all at a different stages.

7. Perhaps common to some or even all of these projects is that there are flat purchasers who have unregistered agreements. In some cases, the agreements are of a kind that has come to be called "barter agreements". This means that where Mantri Realty was unable to pay a vendor or a supplier, it agreed to provide a flat or premise in exchange. These are therefore different categories of entitlements in these projects.

8. The projects in the Mumbai Suburbs stand on a significantly different footing. The present Application is concerned with Mantri Park. Jain says that he booked Flat No. 1705 of 634 sq ft carpet area on the 17th floor of one building called Bloom in the Mantri Park project. This is one of several buildings. There seems to be no dispute that the construction of this building is complete. So far as Mantri Park is concerned, on behalf of the ex-directors of Mantri Realty it is stated that these project is complete. It is the other project known as Mantri Serene that remains incomplete and which may well be the subject matter of other orders similar to those passed in regard to Mantri Premero but for the fact that no association of flat purchasers has come forward in regard to the Mantri Serene project. There are pending application that are yet to be considered in regard to Mantri Serene.

9. Thus, the present Application is in respect of the project of which the construction is complete. Jain however has an agreement that is unregistered. Whether this entitles him to maintain a claim or a complaint before the State Commission is not a question that can possibly fall for determination in these proceedings. Undoubtedly it is the State Commission that will determine its jurisdiction. I am making this clear because the grant of leave should not be misunderstood by any before me to be an expression of an opinion one way or the other as to the State Commission's jurisdiction. All contentions including that of the Official Liquidator are left open in that regard.

10. Necessarily I will also have to leave open all contentions on merits including any contentions that the ex-directors may have and they wish to place before the State Commission in regard to the agreement itself and the transaction with Jain. I may only note that it is an accepted possession before me that this project, i.e. Mantri Park, was completed before the Real Estate (Regulation and Development) Act 2016 came into force ("**RERA**") and it is not, therefore, a project registered under RERA. That said, Mr Joshi for the Applicant maintains that Jain's agreement complies with the requirements of the Maharashtra Ownership of Flats Act and is therefore a MOFA agreement entitling him to certain remedies in law. Those contentions are also kept at large without any decision.

11. At the cost of repetition, therefore the only order being made today is granting Jain leave to proceed with his complaint to which the Official Liquidator of Mantri Realty is joined as the representative in law of Mantri Realty Limited. It is pointed out that there being only an Provisional Liquidator, and not an Official Liquidator in winding up, such leave may not be strictly necessary. Yet, there is no reason the Applicant should have to encounter an additional technical argument regarding leave. If, therefore, this leave is granted by way of abundant caution, so be it.

12. Mr Jain states that he has already made the one ex-director who signed the agreement a party to the complaint before the State Commission. If necessary he will take such steps as are required to join the other ex-directors of the company.

13. The Company Application is made absolute in these terms and subject to these clarifications in terms of prayer clause (a).

(G. S. PATEL, J)