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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 804 OF 2018
ALONGWITH
INTERIM APPLICATION NO.2404 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO. 804 OF 2018**

Darshan Lalit Gandhi & OrsApplicants.
V/s
The State of MaharashtraRespondent

**WITH
CRIMINAL APPLICATION NO. 884 OF 2017
IN
ANTICIPATORY BAIL APPLICATION NO. 804 OF 2018**

Harish BulchandaniApplicant/
Intervener
In the matter between
Darshan Gandhi and Ors. Applicants.
V/s
The State of Maharashtra Respondent.

**WITH
CRIMINAL APPLICATION NO. 558 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO. 804 OF 2018**

Ratna Mahadev VasnaniApplicant/
Intervener
In the matter between
Darshan Gandhi and Ors. Applicants.
V/s

The State of Maharashtra

..... Respondent.

**WITH
CRIMINAL APPLICATION NO. 889 OF 2017
IN
ANTICIPATORY BAIL APPLICATION NO. 804 OF 2018**

Gaurav Motiani

.....Applicant/
Intervener

In the matter between

Darshan Gandhi and Ors.

..... Applicants.

V/s

The State of Maharashtra

..... Respondent.

Ms. Rohini Wagh a/w Aalekh Wagh & Priyanka Tiwari for the Applicant.

Mr. Niranjana Mundargi for the Intervener.

Mr. Ajay Patil, APP for the Respondent/State.

PI Pradeep Kerkar EOW, HSG-II present.

CORAM: NITIN W. SAMBRE, J.

DATE: NOVEMBER 25, 2021

P. C.:-

1] APPP/884/2018, APPP/558/2018 and APPP/889/2018 are not on board. They are taken on board.

2] Prosecution case against the Applicants is, complainant invested an amount of Rs 10,88,34,975/- and was offered 25% of share in the

developed property. The said promise was not honoured. As such, pursuant to the complaint, offence came to be registered. It can be noticed that complaint is at the behest of the investor. After offence was registered, scope of investigation has increased as other flat purchasers were not handed over possession after accepting consideration.

3] In the aforesaid backdrop, without going into merits of the matter, vide ad-interim order dated 4/5/2018 while granting protection, an undertaking/statement of the Applicants was recorded that they shall be paying appropriate rental compensation to the flat purchasers as the promise of delivery of developed property was not honoured. It appears that endeavour of the Applicants in developing the said property to its fullest extent was not materialized and the financial liability went on mounting. As a consequence, Applicants faced proceedings before NCLT. I am informed that Applicants have already suffered an order of appointment of Resolution Professional. Counsel for the Applicants further informs that appeal at the behest of the Applicants is very much pending and they have every chance of succeeding in such appeal.

4] In the aforesaid background, it is claimed that as far as original complainant is concerned, there exists an arbitration agreement. Majority of share, as was promised, was already honoured and it is open for the complainant so also other persons who have booked flats with the Applicants to appear before Resolution Professional appointed by NCLT.

5] In the aforesaid backdrop, it is claimed that Applicants having cooperated with investigation under the order of interim protection dated 4/5/2018 may be protected from their arrest in the crime in question.

6] While countering the aforesaid submissions, Mr. Patil, learned APP assisted by learned Counsel Mr. Mundargi would urge that interim protection was conditional as the Applicants had undertaken before this Court that rental compensation will be paid to the prospective buyers who are not handed over possession within time as was promised. My attention is invited by learned APP to the order of interim protection dated 4th May, 2018, particularly condition therein

wherein it is specifically provided that in case Applicants fail to pay rental compensation, as has been assured before this Court, interim protection shall cease to operate. I am informed that interim protection as such has already ceased to operate as, for long, rental compensation has not been paid. Though Applicants have moved an application for modification of the said undertaking/condition of interim bail, facts remains that Applicants, at relevant time, have accepted substantial considerations from prospective buyers by promising them delivery of developed property within the time stipulated and the said promise of handing over flats was not honoured. Rather, it appears that SRA Development Project undertaken by the Applicants with the help of the complainant/investor has gone in rough weather as a consequence of financial mismanagement. It appears that the amount accepted by the Applicants from various flat owners by promising them delivery of flats, has shattered dream of such individual flat purchasers of having their own house. Fact remains that necessary ingredients of section under which Applicants are booked are verymuch satisfied as Applicants having accepted the amount with promise to deliver the property, have not honoured the said promise.

7] As far as claim put-forth by the Applicants that there exists an arbitration clause or prospective buyers can approach Resolution Professional is concerned, in my opinion, the said remedy has to be read in addition to present remedy available to such aggrieved persons. The State cannot be a mute spectator to criminal act of the Applicants as is noticed hereinabove.

8] Facts remains that Applicants enjoyed ad-interim protection since 2018 on promise to pay rental compensation and not on merit. Application as such remained pending in the wake of aforesaid promise made by the Applicants and as such, Applicants tried to derive advantage out of such pendency, which cannot be considered to the benefit of the Applicants.

9] In the aforesaid backdrop, in my opinion, neither a case for revocation of undertaking as has been claimed through Interim Application nor for grant of protection from arrest is made out. Rather, material on record depicts that Applicants are prima facie involved in the serious offence which is punishable with imprisonment

for more than seven years. That being so, Application fails and same stands rejected.

10] As a consequence of dismissal of ABA/804/2018, all pending Applications taken out therein are also disposed of.

(NITIN W. SAMBRE, J.)