

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO. 3078 OF 2021

Pra Wagholi Realty India Pvt. Ltd. And Ors. ... Petitioners

V/s.

The State of Maharashtra and Anr. ... Respondents

Mr. Manoj Gadkari, for the Petitioner.

Mr. J.P. Yagnik, APP, for Respondent State.

Ms. Kiran P. Jadhav, i/b. Harshalata Patil, for Respondent No.2.

Mr. P.S. Tilekar, PSI, EOW, Pune-City, present in Court.

***CORAM : NITIN JAMDAR &
SARANG V. KOTWAL, JJ.***

DATE : 22 DECEMBER 2021

P.C. :-

By this Petition the Petitioner has prayed for the following prayer :-

“(A) The Hon'ble Court may, by way of appropriate order, writ, or direction quash the criminal proceeding against the Petitioners in FIR bearing No. 464/2019 at Bund Garden Police Station, Pune in respect of alleged offences punishable under Section 13 read with

Sections 3, 4, 5, 10, and 11 of the Maharashtra Ownership Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963, and Section 82B of Indian Registration Act, 1908, and also to quash and set aside all the actions and proceedings thereon.”

2. The learned Counsel for the Petitioner and the learned Counsel for the Respondent No.2 state that the matter is settled between them and the Respondent No.2 has filed an affidavit giving consent for quashing the FIR.

3. The FIR was lodged by the Respondent No.2 under Section 13 r/w. Section 3,4,5,10 and 11 of the Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 and Section 82(B) of the Indian Registration Act. The case of the Respondent No.2 was that the Petitioner is a developer and the Respondent No.2 entered into a agreement with the Petitioner on 12 May 2014 in respect of a unit in the project for total consideration of Rs.28,42,000/- Thereafter, various cheques amounting to Rs.8,73,063/- were issued in favour of the Petitioner. Agreement to Sale was executed, however the unit was not transferred in the name of the Respondent No.2 for more than two years and seven months. On these allegations, the FIR was lodged.

4. The learned Counsel for the Petitioner submitted that there were technical difficulties in executing the project and by a mutual settlement, the Petitioner returned the amount of deposit of Rs.5,68,000/- along with the stamp duty, registration charges, service tax, MVAT that is Rs.14,26,944/- in addition and total amount of settlement was Rs.23,00,000/-.

5. The Respondent No.2 has filed a affidavit stating that this amount is received and therefore the Respondent No.2 is giving consent for quashing of the FIR. The affidavit is signed by the Advocate who is not on record. The Advocate on record is not present. As regard the signing and identifying the affidavit are concerned, the Advocate representing the Respondent No.2 has stated that the Advocate on record has authorized to appear in the matter and represent the Respondent No.2 and also to sign on the affidavit. The statement of the learned Counsel for the Respondent No.2 to that effect is accepted.

6. The learned APP on instructions from Mr. P.S. Tilekar, PSI, EOW, Pune-City states that the matter is examined and it appears to be a commercial transaction where the agreement of sell could not be executed and the deposited amount is returned with interest with additional charges. The learned APP points out that there are other FIR's against the Petitioner of similar nature to which

the learned Counsel for the Petitioner states that they are in respect of the same project and the Petitioner is resolving the issue with these prospective purchasers one at a time. Therefore this cannot be considered as antecedents.

7. Considering the contents of the FIR that there was a delay in execution of the agreement and that the Respondent No.2 is satisfied with the return of the deposit with additional compensation and that the dispute does not have reflection on the society at large, we are of the opinion that the case for exercise of extraordinary jurisdiction is made out.

8. The Writ Petition is accordingly allowed in terms of prayer clause (A).

SARANG V. KOTWAL, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

Digitally signed
by JYOTI
PRAKASH PAWAR
Date: 2021.12.24
14:45:35 +0530