

3 The learned Counsel Mr. Sugandh B. Deshmukh appearing on behalf of the Petitioners submits that the Petitioners are purchasers of flat in a project floated by Respondent Nos.8 and 9 on Survey No.210/1/1 Viman Nagar, Pune. The learned Counsel for the Petitioners submits that the Petitioners purchased the flats by registered agreements. Some of the agreements are placed on record in the present Petition from pages 26 to 667. The learned Counsel for the Petitioners submits that as Respondent Nos.8 and 9 failed and neglected to handover the possession of the respective flats to the purchasers, they filed the police complaint against Respondent Nos.8 and 9 for taking action under Section 406, 409, 420 and 120B r/w Section 34 of Indian Penal Code, 1860. He submits that the police authority failed and neglected to take action. Hence, the present Writ Petition.

4 The learned Counsel for the Petitioners submits that bare reading of the complaint dated 07.05.2019 clearly shows that Respondent Nos.8 and 9 misappropriated the amount of more than Rs.90 crores. Not only that Respondent Nos.8 and 9 in connivance with Pune Municipal Corporation handed over portion of land from the said plot for construction of road to Corporation. He further

submits that even Respondent Nos.8 and 9 agreed, as per terms and conditions of the agreement, that if there is delay in handing over possession of flats, in that case they will pay the monthly compensation, which they failed and neglected to do so. Not only that Respondent Nos.8 and 9 raised funds from several banks for the said project and utilized the said in some other projects. In this way Respondent Nos.8 and 9 committed criminal breach of trust and therefore they filed the complaint with the police authority.

5 The learned Counsel for the Petitioners submits that if the case of criminal breach of trust is made out, then the police authority are duty bound to register the offence. He further submits that even bare disclosure of criminal offence, then also Police Authority shall register the offence i.e. F.I.R. In support on this contention, the learned Counsel for the Petitioners relies on the judgment of Apex Court in the matter of *Lalita Kumari vs. Government of Uttar Pradesh and others*¹ Para 119 of the said judgment reads thus :

“119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In

1 2014 SCC page 1

such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.”

6 On the basis of these facts, the learned Counsel for the Petitioners submits that in the interest of justice this Hon’ble Court be pleased to direct the Police Authority to investigate and register the F.I.R. against Respondent Nos.8 and 9.

7 On the other hand the learned Counsel Mr. Amit A. Gharte

appearing on behalf of Respondent No.8 vehemently opposed the present Writ Petition. He submits that the Writ Petition as it is filed by the Petitioners, is not maintainable. He submits that as per the Code of Criminal Procedure, for failure to take cognizance of the complaint and/or non registration of F.I.R. then alternative remedy is available. He submits that as per Section 154(3) of Criminal Procedure Code, complainant can make application to the Superintendent of Police and/or filed complaint under Section 156(3) of the Cr.P.C. In support of this contention, he relies on the judgment of Apex Court in the matter of *Sakiri Vasu vs. State of Uttar Pradesh and others*². Para 11 of the said judgment reads thus :

11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156 (3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156 (3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be

² 2008 AIR SCW 309

made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

8 The learned Counsel for Respondent No.8 submits that as an efficacious alternate remedy is available to the Petitioners, there is no question to entertain the present Writ Petition. Same is required to be dismissed with costs.

9 The learned Counsel for Respondent No.8 submits that in respect of the flats purchased by Petitioner Nos.1-Mr. Kishor V. Patil, 3-Mr. Balbhim D. More, 4-Mr. Rameshchandra Manilal Dhodia, 5-Mr. Satya Swarup Udgata, 7-Mr. Swapnil Naik and 13-Mr. Kishor Dighe, they have already obtained occupation certificate last year. He submits that unless and until these Petitioners pay balance amount, there is no question of handing over possession to them. He further submits that he received instructions from his client that Petitioner Nos.6, 10 and 11 do not want to prosecute the Petition. This fact is not disputed by the learned Advocate for the Petitioners across the bar. The learned Counsel for Respondent No.8 submits that construction in the remaining Petitioners' five flats, is carried out upto 95%. He

submits that because of lock-down since last year it remained on their part to complete the work. He submits that the work of remaining five flats shall be completed immediately.

10 The learned Counsel for Respondent No.8 submits that before completion of construction of flats and obtaining NOC, they handed over possession of flats to the Petitioners, for carrying out their interior work. He submits that at the time of doing interior work, most of the Petitioners carried out unauthorised construction in those flats. Hence, the Corporation issued notice dated 27.01.2020 to Respondent No.8 for removing unauthorised work. He submits that unless and until the said unauthorised work is removed, there is no question getting occupation certificate from the Corporation.

11 The learned Counsel for the Petitioners submits that as per Clause 14 of the agreement between the parties, if there is a delay in handing over possession of flats, in that case purchaser can demand refund of the entire amount with interest.

Clause 14 of the said agreement reads thus :

“14. It is agreed between the parties hereto that if the Promoter/s fail to give possession of the said Unit in accordance with the terms of this Agreement on the

date mentioned in Clause 5(b) hereinabove, or if, the Promoter/s and/or its Agents for reasons beyond their control, are unable to give possession of the said Unit by the said date and after a period of three months if those reasons still exist, then in such case, the Promoter/s shall, without prejudice to their rights reserved hereunder and on demand therefor made by the Purchaser/s, be liable to refund the amounts already received by them in respect of the said Unit from the Purchaser/s with simple interest thereon at the rate of 9% per annum from the date it received the same till the date the amounts and interest thereon is refunded to the Purchaser/s and the said amount and interest shall be charged on the said Unit to the extent of amounts due, but subject to any prior encumbrance. Provided however, that the Promoter/s shall be entitled to a reasonable extension of time for giving delivery of the Unit by the aforesaid date, if the completion of the said Building in which the Unit is to be housed is delayed on account of :

- i) War, Civil Commotion or Act of God.*
- ii) Any notice, order, rule, notification of Government and/or Municipal or other public or competent authority which prevents the Promoter/s from carrying out with the work of development and construction on the said land.*

iii) Any delay on the part of the Municipal Corporation of Pune or any other Public Body or Authority, including the M.S.E.D.C.L. in issuing or granting necessary Certificates / Noc's / Permissions / Licenses / Connections of any service such as Electricity, Drains and Water Connections and Meters to the said Complex under construction by the Promoter/s on the said Land.

iv) Force-majeure Causes or other reasons beyond the control of the Promoter/s.

v) Any additional work in the said Unit undertaken by the Promoter/s at the instance of the Purchaser/s.

vi) Any delay or default by the Purchaser in making payments as per terms and conditions of this Agreement (without prejudice to the right of the Promoter/s to terminate this agreement under Clause 15 mentioned herein below).

The Purchaser/s shall take possession of the said Unit within seven days of the Promoter/s intimating to the Purchaser/s that the said Unit is ready for use and occupation and, in that behalf, comply with all necessary legal formalities. The Purchaser/s shall not without the prior written consent of the Promoter/s or

the ultimate body to be formed, as the case may be, to carry out any alternations of whatsoever nature in the said Unit or make any alterations in any of the fittings, pipes, water supply connections as this may result in seepage of water. The Purchaser/s shall also not chisel or cause damage to the columns, beams, walls, slabs, R.C.C. members and other structural members or damage the water proofing of the flooring of the said Unit. If any of such works are carried out without the written consent of the Promoter/s, the liability of the Promoter/s under the Ownership Flats Act, 1963 to rectify defects automatically shall become void and Purchaser/s shall be liable to pay all costs and damages towards restoration, repairs etc. arising from such unauthorized works. It is also mutually agreed that the said statutory liability period will start from the date of the Promoter/s obtaining Completion Certificate of the said Unit from the Municipal Corporation of Pune and shall extend for a period of three years. The Purchaser/s shall take possession of the said Unit after inspecting the same and satisfying itself / herself / themselves that the same has been constructed in accordance with the Building Plans in respect thereof and that the same has been provided with the Amenities agreed upon and that the quality of the workmanship and material used is of the requisite quality. Subject to what is stated above, save

and except any latent defects which become visible during the said defect liability period, the Promoter/s shall not be obliged to entertain any complaint or claim made by the Purchaser/s in respect of the said Unit after possession thereof has been handed over to the Purchaser/s.”

12 The learned Counsel for Respondent No.8 submits that even if there is a delay in handing over possession of the constructed flat, the purchasers can demand compensation for delay as per The Real Estate (Regulation and Development) Act, 2016. He submits that one of the purchasers Mr. Vivek Rameshchandra Dhodia with Mr. Rameshchandra Manilal Dhodia filed complaint before the Maharashtra Real Estate Regulatory Authority, Pune. The Maharashtra Real Estate Regulatory Authority, Pune, after hearing both the sides passed final order dated 25.05.2018 directing Respondent Nos.8 and 9 to pay simple interest @10.05% p.a. to the complainants on the amount of Rs.1,75,32,000/- since 01.01.2017. The operative part of the said order is thus :

“ORDER

- 1. The Respondents are directed to pay simple interest @10.05% p.a. to the complainants on the amount of Rs.1,75,32,000/- since 01.01.2017.*

2. The Respondent shall pay the interest due and payable to the Complainants within 30 days from the date of this order and shall be continued to pay for every month's delay till handing over possession of the respective flats to each of them.

3. In addition to this, the Respondents are also directed to pay the amount of Rs.10,000/- to the Complainants towards the cost of this litigation.”

13 The learned Counsel for Respondent No.8 submits that it is crystal clear from the order dated 25.05.2018 passed by the Maharashtra Real Estate Regulatory Authority, Pune, if there is delay in handing over possession on the part of developer, they have to pay compensation including interest to the purchaser on facts of each case.. Hence, there is no question of filing any complaint.

14 The learned Counsel for Respondent No.8 further submits that the present project is already registered with RERA. He submits that if any offence is committed, then cognisance of offence can only be taken in compliance with Section 80 of the Real Estate (Regulation and Development) Act, 2016. Section 80 reads thus :

“80. Cognizance of offences

(1) No court shall take cognizance of any offence punishable under this Act or the rules or regulations made thereunder save on a complaint in writing made by the Authority or by any officer of the Authority duly authorised by it for this purpose.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.”

15 On the basis of these facts, the learned Counsel for the Respondent No.8 submits that there is no substance in the present Petition and same is required to be dismissed with costs.

16 We heard both the sides at length. It is to be noted that in the present proceeding the Petitioners purchased flat from Respondent Nos.8 and 9 in their project at Pune. As per agreement there is delay on the part of Respondent Nos.8 and 9 in handing over possession. Therefore, the Petitioners made a complaint to the Police Authority for taking cognizance under Sections 406, 418 and 420 of Indian Penal Code. Bare reading of the said complaint dated 07.05.2019 clearly shows that, grievances made by the Petitioners are of civil nature only. Their main grievance is that, Respondent Nos.8 and 9 in connivance

with the Corporation handed over plot of land from the said project for construction of road. We find, there is no question of any connivance between the Corporation and Respondent/Developer. Corporation can take any land for construction of road after following due process of law. Same is not challenged by the Petitioners. Not only that, nothing is placed on record by the Petitioners in this complaint, how there is connivance between Respondent Nos.8 and 9 with Corporation. Further in respect of delayed possession, some of the purchasers filed complaint before the RERA.

17 Considering these facts, prima facie we do not find any case, that Petitioners have made out for criminal action against Respondent Nos.8 and 9. Apart from that, if the Police Authority failed to register the F.I.R. then alternative remedy is available to the Petitioners under Section 154(3) to approach the Superintendent of Police or file application before the Magistrate under Section 156(3) of Cr.P.C.

18 The Apex Court in the matter of *Lalita Kumari vs. Government of Uttar Pradesh*, specifically held in para 119 that unless and until information given to the police discloses commission of a cognizable offence, there is no question of registering F.I.R. Considering these facts and the decision of the Apex Court in *Sakiri*

Vasu (supra) and *Lalita Kumari* (supra), we do not find any reason to entertain the present Writ Petition.

19 In view of above mentioned facts, Criminal Writ Petition required to be dismissed. Hence, the following order is passed :

- i) Criminal Writ Petition stands dismissed.
- ii) No order as to costs.

(R.I. CHAGLA, J.)

(K.K. TATED, J.)