

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

**APPEAL FROM ORDER NO.46 OF 2017
WITH
CIVIL APPLICATION NO.66 OF 2017
IN
APPEAL FROM ORDER NO.46 OF 2017**

M/s. Venture Pragati Reality LLP and
Ors.

...Appellants

Versus

Veerang Jiran Karia and Ors.

...Respondents

...

Mr. Harish R. Pawar for the Appellants.

Mr. K.K. Holambe Patil with Mr. Nitin Murkute for Respondent Nos.1
and 2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 9th DECEMBER, 2022.

P. C. :-

1. By this appeal the Appellant herein assails order dated 14/12/2016 in Notice of Motion No.1424 of 2016 in S.C. Suit No.1196 of 2006. By the impugned order learned Judge, City Civil Court at Dindoshi (Borivali Division), Goregaon, Mumbai, made the notice of motion absolute in terms of prayer clause (b) and thereby restrained the Appellant and the society from dispossessing of or creating third party rights in respect of flat No.D 1002 on the 10th floor, Prathamesh

Residency.

2. Respondent Nos.1 and 2 had entered into a MoU with Respondent Nos.3 to 7 with whom the society had entered into a development agreement to develop the property being Plot No.9, TPS-II of CTS No.219, Dadabhai Road, Andheri (West). It appears that the first Developer had entered into an agreement with Respondent Nos.1 and 2 -Plaintiff for sale of flat No.D 1002 on the 10th floor, Prathamesh Residency, for sale consideration of Rs.1,37,50,000/-. Respondent Nos.1 and 2 have stated that they had paid to the first Developer an amount of Rs.62,00,000/- by cheque and Rs.48,000/- in cash. It appears that subsequently the Society terminated the development agreement with the first developer and entered into a fresh development agreement with the Appellant herein. The Appellant claims that he is not liable to execute any sale deed in favour of the Plaintiff in respect of the agreement entered into by the Plaintiff with the first developer. In these circumstances, Respondent Nos. 1 and 2-Plaintiff filed a suit for specific performance.

3. The first developer in his written statement has admitted having received an amount of Rs.62,00,000/-, which was paid by cheque but has disputed receipt of Rs.48,000/-, which was allegedly

paid in cash. Nevertheless, the facts on record prima facie indicate that Respondent Nos. 1 and 2-Plaintiffs had entered into an agreement with the first developer and as a bonafide purchaser he had paid major part of the sale consideration. The question whether the Appellant being the second developer had taken over the project along with liabilities, if any, is a matter of trial and till such time interest of the Plaintiffs needs to be protected. It is stated that issues are already framed and the suit is pending trial. In such circumstances, I am not inclined to interfere with the impugned order.

4. Hence, the appeal is dismissed.

5. The Civil Application stands disposed of in view of dismissal of the appeal.

6. Learned Judge is directed to decide the suit as expeditiously as possible, and in any event within a period of one year from the date of receipt of copy of this order.

(SMT. ANUJA PRABHUDESSAI, J.)