

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

WRIT PETITION NO. 3416 OF 2021

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Kumar Urban Development Pvt Ltd
Formerly Known As Kumar Builders
Mumbai Realty Pvt. Ltd., And Ors. ...Petitioners

Versus

The State of Maharashtra & Ors ...Respondents

- Dr. Abhinav Chandrachud a/w Mr. Lokesh Zade a/w Murlidhar Kumar for Petitioners.
- Mr. Amit P. Ghag for Respondent No. 2.
- Mr. J.P. Yagnik, APP, for the Respondent – State.

**CORAM : PRASANNA B. VARALE &
S.P. TAVADE, JJ.**

DATE : FEBRUARY 17, 2022.

PER COURT :

1. Heard learned Counsel appearing for respective parties.

2. Learned Counsel for Respondent No. 2 submits that on the earlier date the Respondent No. 2 was personally present in the Court. Today, as the Respondent No. 2 is under medical treatment and subject to surgery as such, he could not remain present before this Court.

3. The Counsel for Petitioners submitted that the

affidavit of Respondent No. 2 is placed on record at Exhibit 'C' page 61. Petitioners are before this Court for quashing the first information report bearing CR NO. 225/2017 initially lodged at Vakola Police Station for commission of offences punishable under Sections 406, 409, 420, 120(B), 34 of IPC as well as 3, 5, 8 and 13 of the Maharashtra Ownership of Flats Act, 1963 and subsequently the crime was transferred to Economic Offences Wing for further investigation. On the entry of EOW on the scene, the crime was re-registered as Crime No. 50/2017.

4. The perusal of the complaint dated 11.05.2017 show that the Respondent is the resident of Kalina, Santacruz area carrying out the transport business since 10 years. As the Respondent No. 2 was in need of a bigger accommodation, he was introduced to one estate agent Shri. Nandu Bhai thorough his brother. Nandu Bhai in turn provided certain details of the project which was undertaken by the Petitioners. It may not be necessary for us to refer to other details suffice it to say that the Respondent No. 2 expressed his willingness to purchase flat in the scheme of

Petitioners. The Respondent No. 2 also paid booking amount initially and subsequently paid a balance amount by issuing various cheques. The details of the amount and cheques are stated in the complaint/report.

5. The Respondent No. 2 also received an allotment letter dated 01.09.2011 in joint name of the Respondent No. 2 and his wife. The Respondent No. 2 was expecting the delivery of his flat and to his surprise when he approached the Petitioners he found that there was no progress in the project. Initially it was informed to Respondent No. 2 that certain permissions are awaited and subsequently the Petitioners and the representative of the Petitioners even avoided to respond to calls and queries of Respondent No. 2. It is further stated that on inquiry the Respondent No. 2 found that apart from him there were other 12 victims suffers at the hands of the Petitioners. Thus, all these three similarly circumstances victims approached the developers and made request to speed up the work and delivery flats. In spite of waiting for considerable period, when there was no delivery of the property flats to Respondent No. 2 and other similarly

circumstances purchasers, the Respondent No. 2 lodged the report to the police station submitting that the Petitioners have accepted an amount of Rs. 1,59,07,688/- from him and certain amount from other 12 flat purchaser. The total sum amount received by Petitioner was Rs. 22,00,00,000/- and in spite of accepting such large sum amount the Petitioners filed to maintain their terms of delivery of the property flats. The specialized agency of investigation namely, EOW considering the large sum amount involved in the matter and the scope of deceit and breach of trust, collected material evidence in the form of statement of witnesses and victims, various documents from Government offices, deeds of transactions arrived at between victim and Petitioners and also recorded statement of authorized architect.

6. Learned APP made available report submitted to the office of the Public Prosecutor on 16th February, 2021 through the Senior Police Inspector attached to Wing 2 (Housing 2). Certain details about the investigation carrying out by the economic offences wing are stated in the report. It is stated that as per

the material collected by the economic offences wing, the Petitioners have received total sum of Rs. 32,00,00,000/-.

7. The Counsel for Petitioners submitted that though there was some delay in delivering the property but during the passage of time Petitioners have taken necessary steps speedily. Learned Counsel further submits that as there was delay the Petitioners on their own gave certain discounts to the flat purchasers. The Counsel for Petitioners, on instructions from the Petitioners who are present in this Court personally, submitted that out of 20 flat purchasers occupation certificates are delivered to 18 purchasers including the Respondent No. 2 and occupation certificate in respect of remaining two flat purchasers, the Petitioners are taking steps and are expecting handing over of occupation certificates to those two purchasers within a short span of three months from today.

8. The perusal of documents placed on record under caption affidavit cum undertaking filed at the instance of Respondent No. 2 dated 16th December, 2019

show that the Respondent No. 2 has taken possession of its bearing A-901. It is stated in the said document that the building and project Kul Court has been duly completed by the developer under the provisions of Bombay High Court appointed Court receiver and developer had obtained occupation certificate. The said documents concluded with the statement of Respondent No. 2 and same reads thus:

6. I hereby unconditionally withdraw my complaint no. 225 of 2017 forming the basis of FIR no. 50/2017.

9. Our attention was also invited to the compilation placed on record under caption additional affidavit of the Petitioners. It is stated in the said affidavit in paragraph 3 that the Petitioners have sold 22 flats to various flat purchasers. One of the said flat purchasers is the first informant/Respondent No. 2 in the present petition who is already tendered his consent affidavit to this Hon'ble Court. Apart from Respondent No. 2, six other flat purchasers have been listed as witnesses in the subject Chargesheet. However, the said six flat purchasers have issued letters in favour of the Petitioners communicating

their consent for quashing the proceedings pending before the Ld. 47th Metropolitan Magistrate Court at Esplanade, Mumbai being C.C. No. 868/PW/2019 and the charge sheet submitted in the Court. The copy of the affidavits filed on behalf of Smt. Veena Wadkar dated 19.07.2021, Vinod Agrahari dated 25th June, 2021, Mrs. Smita Kapoor dated 25th June, 2021, Ram Khetan dated 25th June, 2021, are annexed to the said affidavit in reply.

10. Petitioners submits that the statement that the occupation certificate in respect of two flat purchasers would be handed over to them within three months to be accepted as an undertaking to this Court. Accordingly, the said statement is accepted as an undertaking to this Court.

11. In view of the above referred facts, the Counsel for Petitioners submit that the grievance of Respondent No. 2 no more survives and he is having no objection for quashing of the FIR.

12. Learned APP submitted that though he cannot make any comments on the affidavit as it refers to the will of the parties but fact remains that the

Petitioners have collected large sum amount by giving an assurance to deliver property flats and though as per the terms between the parties themselves, the Petitioners ought to have delivered the possession of the property to the purchasers within stipulated period. The Petitioners initially denied to maintain their promise and subsequently, after long time completed the promise.

13. There is some merit in the submissions of learned APP but the fact of the matter is, the Respondent and as many as 15 other flat owners have received the OC and the property is delivered to them and the affidavits of those flat purchasers are filed in this Court, in our opinion, no fruitful purpose would be served by continuing the subject FIR and subsequent proceedings.

14. In the light of the principles laid down by the Apex Court in the case of Narinder Singh vs. State of Punjab [2014 AIR SCW 2065], we are of the considered view that there is no impediment in quashing the FIR in question and subsequent proceedings arising out of said FIR.

15. Accordingly, Writ Petition is allowed in terms of prayer clause 'a'.

16. However, we also find it would be appropriate to saddle the Petitioner Nos. 2 and 3 each with the cost of Rs. 2,50,000/- (Rs. Two Lacs fifty thousand only), which shall be paid to "**National Association for the Blind, India**". The details of the said association are given as under:

Name: National Association for the Blind,
India.

Bank: Punjab National Bank.

A/c No. 3740000100008551.

IFSC Code: PUNB0374000.

17. For the quashment to take effect, the Petitioner nos. 2 and 3 shall pay the said cost and produce the receipt thereof on the file of this Court within the period of six weeks from today. Failing to pay cost and produce receipt within stipulated time, petition shall stand dismissed automatically without further reference to the Court and order quashing the proceedings / FIR shall be treated as *non-est*.

(S.P. TAVADE, J.)

(PRASANNA B. VARALE, J.)