

Prashant Kanaiyalal Doshi & Anr .. Applicants
Versus
The State of Maharashtra .. Respondent

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PSI Shri Dhiraj Waikos from Malad police station present.

DATED : 15th JULY, 2022

P.C:-

2 The applicants are the developers and are engaged in real estate and carry the business of construction in the name and style of “M/s.Om Sri Maa Shakti I Namah”.

The complaint filed by the complainant which resulted in registration of the FIR against the applicants allege that an agreement for redevelopment was executed between the firm through its partners and the Society Marve Co-operative Housing Society Limited for redevelopment of its dilapidated building, situated at CTS 162, Village Valnal, Malad (West), Mumbai Suburban District.

3 It was agreed between the firm and society that the developer shall provide flats free of cost to the existing 21 members in the new building by providing some additional carpet area over the existing carpet area of the flats on ownership basis, in lieu of the developer having assigned the rights and interest in respect of the remaining area for sale to prospective purchasers. After completing the procedural formalities, a consent was accorded for construction of a 7 storeyed building and even the papers were forwarded to the MCGM for approval. On 7/7/2013, a commencement certificate was issued and work of construction began and it was carried out till 5th floor.

.. As far as the complainant is concerned, it is alleged that the consideration of the flat to be purchased by him was determined as Rs.One Crore 21 lakhs and out of the agreed amount, a sum of Rs.70 lakhs was passed over by the father of the complainant to one of the partner of the firm. A registered agreement was also executed on 9/6/2015 for sale of the proposed

flat no.1102 situated on the 11th floor, with the father of the complainant.

The grievance of the complainant is despite receipt of the said amount, the possession of the flat was never made over to him and in fact the building is only completed till 5th floor. The complainant also allege that in the month of October 2015, as per the agreement, the Society invoked an arbitration clause and instituted an Arbitration Petition, and in pursuant to the said direction, the developer was directed to deposit amount of Rs.85,84,586/- before the Prothonotary & Sr. Master towards the rent arrears. The petition was thereafter disposed off.

4 The learned counsel for the applicant would submit that the very same complainant has instituted a civil suit in the year 2016 before this Court, wherein he seek a declaration that the agreement dated 9/6/2015 is valid and subsisting and binding upon the defendants to the suit and he sought specific performance. The plaintiff prayed that he is entitled of possession of flat no.1103 on the 11th floor.

In the alternative, relief was sought by praying that in the event, the Court coming to the conclusion that the existing agreement dated 14/12/2022 was terminated by the Society, the Court shall order defendant no.4 Society to hand over to the plaintiff, flat no.1103 as promised, upon completion of construction of the new building either by defendant no.4 or by

any other agency or developer that may be appointed by defendant no.4.

Pertinent to note that in the said Suit, the partnership firm of the present applicant was impleaded as defendant no.1 with its partners as defendant nos.2 and 3 and the co-operative Housing Society was impleaded as defendant no.4. It is informed by the learned counsel for the applicant that the interim protection has been granted in the said Suit by the High Court in favour of the plaintiff and it is directed that his right to claim flat no.1103 shall remain undisturbed.

Pertinent to note that the Society has terminated the agreement with the applicant's firm on 30/8/2016, by alleging violations and breaches of the terms and conditions of the development agreement dated 14/12/2011. Being aggrieved by termination of the said agreement, even the applicant's firm have also instituted arbitration proceedings which are pending.

5 This is a peculiar situation where the complainant through a civil court is seeking specific performance of the agreement by which the rights of redevelopment were conferred upon the applicant's firm, but the Society which was a party to the said agreement, has terminated the agreement in the year 2016 and the applicant is fighting his own battle for restoration for the said agreement. The complainant who is only one of the unit purchasers in the said scheme, seek specific performance of the

agreement which was executed between the applicant respondent and the Society. The applicant is helpless, since in the year 2016, his agreement has been terminated and he is unable to complete the said project. It is also informed that at present, no other developer has been appointed and the project is standstill.

6 In the wake of the aforesaid, the civil nature of dispute is tried to be cloaked as a criminal one by invoking Section 406 and 420 of IPC along with relevant provisions of MOFA Act.

In the wake of the above, in my considered opinion, the applicant deserve protection from arrest, which is however, subject to the applicant reporting to the police station. Hence, the following order :-

: ORDER :

(a) Application is allowed.

(b) In the event of arrest in connection with C.R.No.814/2022 registered with Malad Police Station, the applicant no.1 Prashant Kanaiyalal Doshi and applicant no.2 Dharmesh Kanaiyalal Doshi shall be released on bail on furnishing P.R. bond to the extent of Rs.25,000/- each with one or two sureties of the like amount.

(c) The applicants shall report to the concerned police station on 20/7/022 and 27/7/22 between 12 noon and 2.00 p.m and thereafter as and when called for.

(d) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(SMT. BHARATI DANGRE, J.)