

Intiyaz Hasanali Maredia and anr .. Applicants
Versus
The State of Maharashtra .. Respondent

Mr.Aniket Nikam i/b Piyush Toshniwal for the applicants.
Mr.Vivek Pandey for the intervenor.
Mr.S.V.Gavand, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 30th SEPTEMBER, 2022

P.C:-

1 Heard Mr. Aniket Nikam, the learned counsel for the
applicants, Mr. Vivek Pandey, learned counsel for the
complainant and Mr. Gavand, learned APP for the State.

2 The applicant are apprehending their arrest in C.R.No. 805/2022 registered with Amboli police station which invoke Sections 406, 420, 465, 467, 468, 471, 504, 506-II r/w Section 34 IPC.

The occurrence of events as per the FIR, are from 12/12/2020 to 11/9/2022.

3 The complainant is one Saabit Yunus Mehsania, who reported to the police, that he had invested his money in 7 flats to be constructed by the present applicant and his brother, who were constructing a residential building styled as “Maridian Heights”. The FIR allege that from the year 2010 to 2022, he has evinced his intention to purchase 7 flats and paid the entire consideration towards the said flats, on the promise by the developer that the construction would be completed by 2018 and the possession would be delivered. The allegation is that till date, the possession is not delivered.

Other part of the allegation faced by the applicant is in respect of Flat nos.1702 and 1703 which were sold to the complainant, without a commencement certificate being issued and a sale deed has been registered when there is no permission to construct these two flats.

The third accusations in respect of flat no.402 which was also booked in M/03 Wing, which was subsequently exchanged for flat no.604 and the consideration towards this flats to the tune of Rs.90 lakhs has been already paid to the applicant/developer in cash. It is alleged that some cheques were issued to the complainant, but they were not honored and therefore, he lodged a complaint.

4 As far as the flats which were assured to be constructed and possession of which was assured to be delivered

at the end of 2018, Mr.Nikam submit that the Maridian Heights flat Owners Welfare Association had approached the Maharashtra Real Estate Regulatory Authority, Mumbai by filing a complaint and on 22/9/2022, it has been entertained and directions are issued to respondent no.1, the Promoter to complete the project within the timeline given before the MAHARERA and this timeline is slated as 31/12/2023.

The Authority has also permitted the individual members of the complainant Association to redress their grievance as regards their individual claims by invoking the provisions under Section 12, 13, 14, 18 and 19 of RERA.

5 The submission, is admittedly that there is delay in construction of the flats, but now since RERA is seized of the dispute, the police has no jurisdiction to entertain the complainant and since the applicant is also one of the flat purchaser in the said Society, the orders of RERA are binding on him.

As regards flat nos.1702 and 1703 are concerned, learned counsel for the applicant has invited my attention to the certificate from Maha RERA in form of "Form No.C in respect of flat which is annexed along with the sale deed In respect of flat no.1703.

6 In the wake of the aforesaid, as regards the 7 flats, the flat nos.1702/1703, in my considered opinion, the issue is

pending before the RERA and the applicant is at liberty to approach the Authority, in case he wants to raise any grievance. As far as amount of Rs.90 lakhs, which was alleged to have been paid in cash as against flat no.604, the applicants have filed their affidavit dated 30/9/2022, where an undertaking is given to deposit an amount of Rs.90 lakhs, in respect of purported allotment letter pertaining to flat no.604 M-03 of Maridian Heights, to be paid in the manner set out in the affidavit.

The affidavit is taken on record and marked “X” for identification.

The undertaking given is contained in paragraph nos.1 and 2 to the following effect :-

“1 The Applicants Imtiyaz Hasanali Maredia and Pyarali Hasanali Maredia without prejudice to their rights and contentions, in order to show their bonafides and without admitting any allegations leveled against the applicants in the present FIR bearing C.R No.805/2022 dated 11/09/2022 registered with Amboli Police Station, District Mumbai, the applicants hereby undertake to deposit an amount of Rs.90,00,000/- in respect of the purported allotment letter pertaining to Flat No. 604 M-03 Wing of “Maredian Heights” in the Registry of this Hon’ble Court in the following manner:-

Sr.No.	Amount	On or before
1	Rs.30,00,000/-	15/11/2022
2	Rs.30,00,000/-	30/11/2022
3	Rs.30,00,000/-	03/01/2023

2. The Applicants humbly submit that they shall abide by the aforesaid timeline and shall deposit an amount of Rs.90,00,000/- in abovementioned manner in the Registry of this Hon'ble Court in order to show their bonafides.”

7 The aforesaid amount is agreed to be deposited without prejudice to the rights and contentions of both the parties.

It is open to the complainant to make a request for cancellation of allotment or file an application for withdrawal of the amount, at appropriate time when the amount is deposited.

8 In the wake of the undertaking, as regards the third grievance in the complaint, and the grievance as regards 1 and 2, being already taken care of by the Maha RERA, I do not think that the custodial interrogation of the applicants is necessary and they deserve protection from arrest.

This is however, subject to the stipulation that the Applicants shall abide by the undertaking given in the affidavit dated 30/9/2022, and by reserving the liberty in the complaint to take appropriate steps thereafter. Hence, the following order :-

ORDER

- (a) The Applicant no.1 Imtiyaz Hasanali Maredia and applicant no.2 – Pyarali Hasanali Maredia in connection with C.R.No.805/2022 registered with Amboli Police Station shall be released on bail on furnishing P.R. bond to the extent of Rs.50,000/- each with one or more sureties of the like amount.
- (b) 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. The Applicants should not tamper with evidence.
- (c) The Applicants shall attend the trial on regular basis.
- (d) On being released on bail, the applicants shall furnish their contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

The Application is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)