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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2676 OF 2019
WITH
ANTICIPATORY BAIL APPLICATION NO.2678 OF 2019**

HASMUKH PATEL ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

**WITH
INTERIM APPLICATION NO. 364 OF 2020
IN
ANTICIPATORY BAIL APPLICATION NO.2676 OF 2019**

ASHISH MANOHAR ZUNJARAO ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

**WITH
INTERIM APPLICATION NO. 1046 OF 2020
IN
ANTICIPATORY BAIL APPLICATION NO.2676 OF 2019**

RAGUNATH KUNCHU NAIR ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

**WITH
ANTICIPATORY BAIL APPLICATION NO.2690 OF 2019
WITH
ANTICIPATORY BAIL APPLICATION NO.2692 OF 2019**

RITTU WASNIK ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Mr. Karansingh Rajput a/w. Ms. Reshma Mutha i/b. Pritesh
Burad Associates for applicants in ABA/2676/19,
ABA/2678/19, ABA/2690/19 and ABA 2692/19.

Mr. A.K. Rajput for applicants in IA/364/2020 and IA/1046/2020 in ABA/2676/19.

Smt. Veera Shinde, APP for State.

Mr. Sudhir Patil, API-EOW, Thane City.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 14, 2022.

P.C. :

1. Heard learned counsel for the applicants, learned APP for State and learned counsel appearing on behalf of the interveners- complainants.

2. These applications, by consent of the parties, are heard together and disposed of by a common order.

3. The allegations pertain to failure on the part of the applicants to handover the flats in the project undertaken by the applicants with a promise to handover flats within the stipulated time. The complainants had parted with substantial consideration despite which the applicants who had undertaken to complete the project failed to do so and hence the allegations under sections 406, 420 read with 34 of the Indian Penal Code.

4. Anticipatory Bail Application No. 2676 of 2019 is in respect of a complaint filed on behalf of eleven (11) flat purchasers. Likewise, Anticipatory Bail Application No. 2678 of 2019 arises out of a complaint filed on behalf of eleven (11) flat purchasers. The only difference in Anticipatory Bail Application No. 2678 of 2019 is that the applicants therein (developers), the complainants (flat purchasers) and the

'DHFL' (finance company) had entered into tripartite agreement, the loan which the 'DHFL' had sanctioned in favour of the borrowers/flat purchasers was to be repaid by the developers as well as the flat purchasers on certain terms and conditions stipulated in the tripartite agreement. It is alleged by the complainants that the developers failed to pay the EMIs due and payable by them, as a result 'DHFL' is recovering even developers' liability from the flat purchasers.

5. The First Information Report (FIR) was registered by the flat purchasers – complainants under Section 406, 420 read with 34 of the Indian Penal Code against the present applicants and others on November 11, 2019 with the Mahatma Phule Police Station, Kalyan.

6. When the matter had appeared before this Court on December 6, 2019, the following order came to be passed granting interim protection to the applicants.

"Pending civil dispute (Arbitration Petition No.216 of 2019) fled and initiated by the flat purchasers, this Court on 14th March, 2019 appointed the Court Receiver. Order is at Page 154. Pending civil dispute, a group of flat purchasers filed the complaint and Crime No.I-0528 of 2019 came to be registered with the M. Phule Police Station, Kalyan under Sections 420, 406 read with Section 34 of the Indian Penal Code, 1860.

2. The learned counsel for the applicant has pointed out that the flat purchasers (complainants) have also approached authorities

under the RERA Act. Prima-facie, dispute is civil in nature.

3. In view of the facts aforesaid, in the event of arrest in Crime No.I-528 of 2019 and I- 551 of 2019 registered with M. Phule Police Station, Kalyan, applicant in both the applications shall be released on their executing PR bond in the sum of Rs.25,000/- each with one or more sureties in the like amount.

4. Applicant shall report to the Investigating Officer as and when called.

Stand over to 21st January, 2020.”

7. Briefly stated, the applicants are the developers of the building project. The society in respect of which the project was undertaken comprised of 448 members. The applicants – developers took possession of the premises/flats which were in occupation of the 448 members of the society by promising redevelopment of the society and giving new flats with larger areas free of cost to the said 448 members.

8. So far as the complainants are concerned, on various dates from August 2015 onwards, they had entered into agreements of sale in respect of the flats to be constructed in the sale component building. The rehab component was meant for 448 members of the society. It is an allegation that despite the complainants having paid substantial sums of money and in some cases after obtaining loan from DHFL, the developers failed to complete the project with the time stipulated

and hand over the sale component units to the respective flat buyers. The developer is not proceeding with the development, resultantly, the hard earned money of the flat purchasers is illegally utilised by the developers to their detriment. The complainants have been deprived of the possession of their flats which the developers had promised to hand over, the deadline for which has expired long back.

9. Learned counsel for the applicants submitted that it is in view of the various orders passed by this Court and as the Court Receiver was appointed that the project could not be completed. According to him, substantial construction was made in respect of the rehab component but later on it was not possible for the applicants to proceed with the development for reasons beyond their control. Learned counsel invited my attention to the various orders passed in the civil proceedings to contend that it was never the intention of the applicants to cheat the flat purchasers or deprive them of possession of their flats.

10. Learned APP and learned counsel for the interveners, on the other hand, were at pains to point out that having accepted their hard earned money pursuant to the agreement of sale entered into, it was obligatory on the part of the applicants to have then adhered to the timelines stipulated in the agreement and handed over the possession of the flats as

promised. According to the applicants, the developer accepted substantial sum of monies from the flat purchasers. Not only this, but in some of cases, where the flat purchasers entered into tripartite agreement with the developers and DHFL, though the developer had promised to pay the EMIs, but due to the default of the applicants, even liability to pay installments of the developers is being saddled onto them. Learned counsel for the interveners pointed out that let alone the flat purchasers getting possession of their flats, they are now faced with arbitration proceedings and even criminal proceedings initiated by DHFL under section 138 of the Negotiable Instruments Act for default on the part of the developers.

11. Learned APP and learned counsel for the interveners urged that the interest of the flat purchasers need to be secured and the amount which the flat purchasers had paid to the developers need to be recovered for which the custodial interrogation of the applicants is necessary.

12. Perused the FIR and the relevant documents. Heard Parties.

13. This is an unfortunate case where the project has been stalled and the hard earned money of the flat purchasers which they invested in the project is blocked.

14. At the instance of the 448 members of the society entitled for the rehab component, Arbitration Petition (L) No. 1171 of 2018 was filed in this Court. This Court on October 25, 2018 passed the following order which reads thus :

"1.The Petitioner Society has 448 members. The Respondent developer in the year 2011 admittedly took possession of the premises/flats which were in occupation of the 448 members of the Society by promising to redevelop the property of the Society and giving new flats with larger areas, free of cost to the said 448 members. The Respondent has in the last seven years not only failed to complete the project, but has since February 2017 also failed to pay compensation in lieu of temporary alternate accommodation to the 448 members of the Society. This is despite the developer having collected Rs.30 Crores from the flat purchasers under the free sale category and further availing a loan of Rs.170 Crores from Dewan Housing Finance Ltd. The members of the Society who were exasperated by the conduct of the Respondent-developer, terminated the development agreement with the Respondent.

2. The 448 members of the Society along with their family members are therefore, virtually brought on the streets by the Respondent developer who has not only failed to provide them the accommodation as promised, but has also not paid them the agreed compensation towards temporary alternate accommodation as promised, which amounts are desperately needed by them to finance their present stay on leave and license basis. The Respondent developer is even today not ready to forthwith pay to the 448 members of the Society the arrears of compensation towards

temporary alternate accommodation upto the date of termination and have left the 448 members of the Society along with their families, completely in the lurch. The developer has therefore, willfully cheated the 448 members of the Petitioner Society. In view thereof, the following order is passed :

(i) The Court Receiver, High Court, Bombay is appointed Receiver in respect of the Suit Project.

(ii) The Court Receiver shall forthwith take possession of the suit project and submit his report to this Court on the adjourned date.

(iii) The Developer undertakes to file an Affidavit disclosing the assets of the partnership firm, the personal assets of the partner of the Respondent as well as their immediate family members (encumbered and unencumbered), the bank accounts and the income tax returns of the partnership firm as well as the Partners of the Respondent Firm of the last five years.

(iv) The developer shall not deal with the project any further including collecting any monies from any flat purchasers or taking any loans from any financial institutions on the strength of the suit project.

(v) Stand over to 1st November, 2018."

15. Thereafter, on March 14, 2019, this Court disposed of the Arbitration Petition by a detailed order by observing that in the interest of justice and more particularly in view of the facts that about 448 members of the petitioner are out of their houses since 2011 and are not provided permanent alternate accommodation till date, the Arbitration Petition

deserves to be allowed partly. Paragraphs 18, 19, 20 and 21 which are relevant read thus:-

"18. In the light of the above discussion, in my considered opinion, the process of law is required to come to the aid and rescue of the petitioner, as the petitioner is made to suffer at the hands of respondent No.1. The members of the petitioner are in a miserable condition as observed by Justice Kathawalla in the previous orders. Thus, considering the facts and circumstances of the case, the petition is required to be partly allowed. It is allowed in terms of prayer clauses (e) and (f) which reads thus:

"e. That pending the hearing and final disposal of the Arbitration Petition this Hon'ble Chief Justice and Hon'ble designated Judge may be pleased to direct the Respondent to handover possession of the plot of land bearing Revenue S. No.22, 41A/1(p) & 2(p), 42A(p) & 42A/2(p), 3(p), 4(p),9(p) & 24(p) and 47A of the village Chikanghar, Kalyan West on land admeasuring 12,593.13 Sq. Mtr and bearing Revenue S. No. 22, 41A/1(p) & 2(p), 42A(p) & 42A/2(p),3(p), 4(p), 9(p) & 24(p) and 47A of the village Chikanghar, Kalyan West on land admeasuring 2557.01 Sq. Mtr. to applicant society and restrain Respondent from entering in the said plot as they are not ready and willing to perform their part of the Development Agreement.

f. That pending the hearing and final disposal of the Arbitration Petition this Hon'ble Chief Justice and Hon'ble designated Judge may be pleased to allow applicant society to carry out balance construction work through self Development."

19. The Court Receiver is accordingly directed to accept any requisition for redevelopment which may be submitted by the petitioner which shall be on the basis of general body resolution and supported by an affidavit and thereafter shall hand over the project in question to the petitioner or their nominees for the purpose of undertaking further construction of the balance redevelopment.

20. As regards the prayer clauses (a), (b), (c) and (d) which are for recovery of amount, the petitioner shall take appropriate steps to recover the said amount and by invoking arbitration. In the meantime, till application is filed and decided by the arbitral tribunal, respondent No.1 is injuncted from creating any third party rights in respect of any movable and immovable assets belonging to respondent no.1 and its partners, the details of which are on record at page Nos.324 and 325 of the paper book.

21. Needless to observe that this order is in no manner adjudication of any rights of respondent no.2 Deewan Housing Finance Ltd. who is not a party to the agreement as entered between the petitioner and respondent no.1."

16. It is pertinent to mention that, the developers (applicants) had challenged the order dated March 14, 2019 in Arbitration Petition No. 216 of 2019 in Appeal before the Division Bench of this court. By an order dated April 30, 2019, the appeal came to be dismissed. However, in paragraph 7 the Division Bench of this Court observed thus:

"7. We find no infirmity in the impugned order regarding appointment of a Receiver for the reasons that the contract has since been terminated and the society would be entitled to

complete the project. The further direction issued to the Receiver that completion of the redevelopment would be as per the decision by the general body of the members is also correct. Interim measure as to paragraph 20 is also justified on account of the fact that not only the appellant failed to comply with the reconstruction within the time envisaged by the agreement but additionally owes huge amounts by way of transit rent to the members of the respondent-society."

It is not in dispute that the entire project is in custody of the Court Receiver.

17. It is further necessary to mention that the complainants had approached the Maharashtra Real Estate Regulatory Authority, Mumbai (hereafter 'RERA' for short) for various reliefs. The complaints came to be disposed by passing orders dated April 1, 2019. So far as the order passed in complaint of K. Raghunathan Nair and others is concerned, the RERA in paragraphs 8, 9 and 10 made the following observations while disposing of the complaint.

"8. During the course of the hearing, the learned counsel for the Complainants stated that since there is no progress in the construction of the project, the allottees would like to explore the possibility of invoking the provisions of section 7 of the Act to revoke the project and for that would like to have the details of all the allottees to enable them to form Association of Allottees.

9. At this stage when the project is stand still, the only way forward would be to protect the right of the allottees and enable them to form an Association.

10. In view of the above facts, the Respondent is hereby directed to handover the list of allottees of the said project, along with their contact details, to the Complainants within 30 days from the date of this Order, to enable the allottees to take an informed decision pertaining to the said project and if the association of allottees may like to proceed with revocation of registration under Section 7 of the Act."

18. So far as complaint filed on behalf of Nirmala R. Said and others is concerned, the RERA in paragraphs 7, 8 and 9 while disposing of the complaint observed thus:-

"7. During the course of the hearing, the learned counsel for the Complainants stated that since there is no progress in the construction of the project, the allottees would like to explore the possibility of invoking the provisions of section 7 of the Act to revoke the project and for that would like to have the details of all the allottees to enable them to form Association of Allottees.

8. At this stage when the project is stand still, the only way forward would be to protect the right of the allottees and enable them to form an Association.

9. In view of the above facts, the Respondent is hereby directed to handover the list of allottees of the said project, along with their contact details, to the Complainants within 30 days from the date of this Order, to enable the allottees to take an informed decision pertaining to the said project and if the association of allottees may like to proceed with revocation of registration under Section 7 of the Act."

19. Learned counsel for the interveners submitted

that, the developers failed to comply with the order passed by the RERA. He, however, could not produce any document to suggest that RERA has been approached by the complainants alleging breach of the orders and details as regards further proceedings taken against non compliance of the directions.

20. Suffice it to say that civil proceedings have been initiated by the slum dwellers as well as the complainants entitled to occupy the units in the sale component for appropriate reliefs. The Civil Courts have issued orders in favour of those entitled to rehab components as well as sale components. It is not in dispute that a substantial portion of the rehab component has been constructed by the applicants whereafter the Court Receiver came to be appointed and the project now is in custody of the Court Receiver. Appropriate directions have been issued by this Court for taking the project further.

21. What the complainants and the learned APP urge while opposing these applications is that this Court should secure from the applicants the amounts which have been invested by them and also EMIs due and payable by the developers to the DHFL finance company pursuant to entering into tripartite agreement. The scope of these applications cannot be converted into one of recovery proceedings. It is not possible to grant this relief prayed for by the

interveners in these applications. In my opinion, having regard to the facts of the present case, the custodial interrogation of the applicants is not required. Moreover, the applicants have been granted interim protection of this Court since December 6, 2019. Learned APP, on instructions, submits that the applicants have attended the investigating officer as and when called and co-operated with the investigation. In this view of the matter, the following order is passed.

ORDER

1. The applications are allowed.
2. The interim protection granted by this Court on December 6, 2019 stands confirmed.
3. In the event of arrest of the applicants in Crime No.I-528 of 2019 and I- 551 of 2019 registered with Mahtma Phule Police Station, Kalyan, the applicants in the Anticipatory Bail Applications shall be released on executing their PR bond in the sum of Rs.25,000/- each with one or more sureties in the like amount.
4. Applicants shall report to the Investigating Officer as and when called.
5. The applicants are to surrender their passports to the investigating officer. Upon filing of the charge-sheet, the applicants are at liberty to move appropriate applications before the trial Court for release of the passports. If such applications are moved, the same be

considered by the trial Court on its own merits and in accordance with law.

6. The Anticipatory Bail Applications and Interim Applications are disposed of.

(M.S.KARNIK, J.)