

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

FIRST APPEAL NO.854 OF 2019

Mr. Anand K. Mehta As Karta And Anr. ...Appellants
V/s.
Anamika Real Estates Pvt. Ltd. And Ors. ...Respondents

**WITH
CIVIL APPLICATION (CAF) NO.1544 OF 2019
IN
FIRST APPEAL NO.854 OF 2019**

Mr. Amogh Singh i/by Mr. Dharendra P. Singh for Appellants.
Mr. Mahesh V. Rajpopat for Respondent No.1.

CORAM : AMIT BORKAR, J.
DATE : JANUARY 30, 2023

P.C.:

1. The appellants are original plaintiffs in whose favour developer had executed unregistered agreement to sale in 1999. Prior to filing of suit, Plaintiffs paid substantial consideration towards earnest amount. Developer sold suit flat in favour of defendant nos.2 and 3. Trial court dismissed the suit broadly on the ground that the document in question is compulsorily registrable document and has not been registered within the time prescribed under Section 25 of the Registration Act, 1908. Finding of *bonafide* purchaser for value without notice has been recorded in favour of defendant nos.2 and 3.

2. According to the appellants, having paid more than 90% of the amount of consideration, nothing remains to be performed on his part to satisfy his readiness and willingness. Since, the document does not create new right, title or interest, it is not compulsorily registerable. The necessary requirements to record finding of *bonafide* purchaser for value without notice have not been fulfilled.

3. According to defendant nos.2 and 3, all necessary requirements to fulfill entitlement of defendant nos.2 and 3 to hold them *bonafide* purchaser value without notice have been fulfilled, therefore, the trial court rightly protected conveyance in favour of defendant nos.2 and 3.

4. According to the respondents, despite issuance of three (3) notices, plaintiff failed to pay the amount demanded with the result agreement of sale and allotment was terminated.

5. Learned advocate for the appellants disputes the position and states that the amount has been paid by the plaintiff, though not within the time prescribed in the notice and the developer has no unilateral right to cancel the agreement having accepted the amount of consideration.

6. Prima-facie, it appears that the document in question filed by the appellants is not compulsorily registerable. Prima-facie, plaintiff having paid more than 90% of the sale consideration requirements of Section 16(c) of the Specific Relief Act, 1963, have been fulfilled. Therefore, the appellants have made out, prima-facie, case for continuation of ad-interim relief

granted by this court by order dated 26th June 2019.

7. For the reasons stated above, civil application is allowed in terms of prayer clause (b1).

8. Leave to amend in civil application.

9. Amendment to be carried out forthwith.

10. Considering the facts and circumstances of the appeal, list the first appeal on the final hearing board in the week commencing from **13th March 2023**.

(AMIT BORKAR, J.)