

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.14779 OF 2022
WITH
INTERIM APPLICATION NO.10349 OF 2022
IN
APPEAL FROM ORDER (STAMP) NO.14779 OF 2022
WITH
INTERIM APPLICATION NO.9922 OF 2022
IN
APPEAL FROM ORDER (STAMP) NO.14779 OF 2022

Kishor Chunilal Patel & Anr.

....APPELLANTS

VS

M/s. Heena High Tech Developers
& Ors.

....RESPONDENTS

...
Mr. Kunal Damle i/b Mr. Janardhan P. Singh for the
Appellants/Applicants/Plaintiffs.

Mr. Laxminarayan Shukla i/b M/s. Legal Vision for Respondent No.4-
Society.

...
CORAM: SANDEEP V. MARNE, J.
DATE : SEPTEMBER 08, 2023.

P.C.:

1 The Appellants/Plaintiffs challenge the order dated 22 April 2022 passed by the City Civil Court dismissing the Notice of Motion No.311 of 2022 filed for seeking temporary injunction.

2 The Appellants/Plaintiffs have filed S.C. Suit No.167 of 2022 *inter alia* for a declaration that the Agreement for Sale dated 14 June 2018

executed by them with the Respondent No.1/Developer is still valid subsisting and in force and binding on all the Respondents/Defendants including the Society qua flat No.801. The Appellants/Plaintiffs have apparently executed Agreement for Sale dated 14 June 2018 with the Respondent/ Developer for purchase of flat No.801. Flat No.801 is one of the 19 flats which were supposed to be sold in the sale component of the building. The remaining flats were to be given to the members of the Respondent No.4/Shriji Apartment Co-operative Housing Society Limited. It appears that the Respondent/Developer could not complete the project. In a suit filed between the Society and the Developer, Consent Terms were filed under which the Developer has made an exit from the project on various terms and conditions and the Society decided to develop the project by itself. Now the Appellants/Plaintiffs want the Respondent/Society to honour the Agreement for Sale dated 14 June 2018. During pendency of the suit the Appellants/Plaintiffs filed temporary injunction application against the Respondent No.4/Society to restrain it from dispossessing or creating third party rights in respect of flat no. 801. The City Civil Court has proceeded to reject the Notice of Motion.

3 Mr. Damle, the learned Counsel appearing for the Appellants/Plaintiffs would contend that the Appellants/Plaintiffs are willing to pay the consideration amount reflected in the Agreement whereas the Respondent/Society is demanding additional amounts from the Appellants/Plaintiffs in pursuance of the Consent Terms, to which the

Appellants/Plaintiffs are not signatories. He would further submit that under the Consent Terms, the Respondent/Society has stepped into the shoes of Developer by agreeing that they would sign the necessary documents and submit necessary undertakings before the Maharashtra Real Estate Regulatory Authority (**MahaRERA**). He would submit that once the Respondent/Society has stepped into the shoes of Developer, all obligations of the earlier Developer would be squarely binding on the Respondent/Society. He would submit that the City Civil Court has erroneously rejected the Notice of Motion by relying on the judgment in ***Viadehi Akash Bahujan Private Limited vs. New D.N. Nagar CHS***, (2015) 3 ABR 270 without appreciating the fact that in the present case it is now the Respondent/Society who is acting in capacity as a developer.

4 *Per contra*, Mr. Shukla, the learned Counsel appearing for the Respondent No.4/Society would contend that out of the 19 flat purchasers who had entered into Agreement for Sale with the Respondent/Developer in sale component of the building, 15 flat purchasers have agreed to bear the additional amounts and have signed the Consent Terms. He would further submit that for construction of the building, the Respondent/Society has spent and will have to spend additional amounts and therefore the flat purchasers must contribute to such additional expenditure. That the other 15 flat purchasers have agreed to bear amount at the rate of Rs.7,000/- per square feet of RERA carpet area towards additional consideration amount. That the Appellants/Plaintiffs and three other purchasers have not agreed to bear

the said additional consideration amount. He would invite my attention to clause 3(h) of the Consent Terms under which the Developer has taken the responsibility of settling disputes with the four flat purchasers including the Appellants/Plaintiffs. That therefore the remedy of the Appellants/Plaintiffs is to sue the Developer. He would pray for dismissal of the Appeal.

6 After having considered the submissions of the learned Counsels appearing for the parties, it is seen that the Appellants/Plaintiffs have deposited only 10% of the total consideration of Rs.75,00,000/- for purchase of flat No.801. Beyond alleged payment of 10% amount, there is no further payment by the Appellants/Plaintiffs. Though the Respondent/Society is disputing even that payment by contending that the Appellants/Plaintiffs are the Developer's Architect who have apparently paid some amount to the Developer even before execution of the Development Agreement, I need not go into that issue at this juncture. For the purposes of deciding the Notice of Motion, what would be relevant are the contents of paragraph 3(h) of the Consent Terms which read thus:

"h. In view of the fact that the said 4 flat Purchasers are not willing to join the settlement and considering the interest of the project and all the overall settlement as agreed by and between the Plaintiff, Defendant No.1, 3 & 4 and Defendant Nos.5 to 22, Defendant No.1, 3 & 4 hereby agree, declare, confirm and undertake that they shall at their own cost, charges and expenses deal with and settle with the said four flat Purchasers."

7 Thus the Developer has clearly undertaken to deal with the disputes with the four flat purchasers including the Appellants/Plaintiffs.

8 The City Civil Court has rightly placed reliance on the judgment of this Court in *Vaidehi Akash Housing Private Limited* (supra) in which it is held that the third party flat purchasers claiming through Developer cannot seek specific performance of their restrictive Agreements against the Society. Mr. Damle's submission that the Society has stepped into the shoes of the Developer by relying on clause 3(h) of the Consent Terms does not cut any ice, in view of the fact that the Developer has specifically undertaken to satisfy the claims of the four flat purchasers including the Appellants/Plaintiffs who have refused to sign the Consent Terms. Therefore, it is difficult to hold that qua the said flat purchasers, the Respondent No.4/Society has stepped into the shoes of Developer. The Developers' obligations qua said flat purchasers continue to operate even after filing of the Consent Terms.

9 In that view of the matter, it is difficult to hold that any prima facie case was made out by the Appellants/Plaintiffs for grant temporary injunction. The Appeal is devoid of merits and is dismissed without any order as to costs.

10 In view of the disposal of the Appeal, both the Interim Applications stand disposed of accordingly.

(SANDEEP V. MARNE, J.)