

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

ANTICIPATORY BAIL APPLICATION NO. 2204 OF 2023

Jitesh Ghaverchand Jogani & Ors.

..Applicants

v/s.

The State of Maharashtra & Anr.

..Respondents

Mr. Vikram Sutaria a/w. Adv. Benny Joseph i/b. BJ Law Offices LLP.
for the Applicant.

Mr. S.V.Gavand, APP for the State.

Mr. Pravin Patel for the Respondent No.2.

**CORAM : ANUJA PRABHUDESSAI , J.
DATED : 7th AUGUST, 2023.**

P.C.

1. Learned Counsel for the Applicant seeks leave to implead the first informant as Respondent No.2. Leave granted. Cause title be amended forthwith.

2. Learned Counsel Mr. Patel waives service on behalf of Respondent No.2.

3. This is an application under Section 438 Cr.P.C. filed by the aforesaid Applicant apprehending his arrest in C.R.No.73 of 2023 registered with MRA Marg Police Station, Mumbai, for offences punishable under Section 409, 420 r/w. 34 of the Indian Penal Code.

4. Learned Counsel for the Applicant, and learned Counsel for the respondent No.2 state that the parties have resolved the dispute amicably. They have placed on record consent terms, signed by the

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Complainant and the Applicants, and the same are identified by the Advocates for the respective parties. The parties, who are present before the Court have admitted their signatures and confirmed the contents of the consent terms. The consent terms read thus:

*“THIS CONSENT TERMS is signed, executed and filed on this 7th day of August, 2023 at Mumbai BETWEEN **M/s. J. K. BUILDERS**, a registered Partnership Firm, through its Partners (1) MR GHEWARCHAND L JOGANI, (2)MR PRADEEP GHEWARCHAND JOGANI and (3) MR JITESH GHEWARCHAND JOGANI, having their principle place of business at 20, Rajabhadur Mansion, Ambalal Doshi Marg, Fort, Mumbai 400 023, having its Permanent Account No.AAFFJ025M, hereinafter referred to as **“Party of First Part”**, all Indians, adults (this expressions shall include its successor & assign) AND (1) **SHRI BHAVANISHANKAR S. JOSHI** and (2) **SMT. MANJU BHAVANISHANKAR JOSHI**, both adults, Indian, residing at Room No. 3, Ground Floor, 133, Dadiseth Agyari Lane, Mumbai 400 002, hereinafter referred to as the **“Party of Other Part”** (this expressions shall include their heirs, legal representatives administrator assign etc.).*

1. That the Party of the First Part is the Promoter / Builder in respect of their Project **“JOGANI HEIGHTS”** in which the Party of the First Part has agreed to sell the Flat No.1102 in the Building known as **“ATLANTIS RESIDENCY”** at C.S. No. 754 of Mazgaon Division, admeasuring 1961.65 square meters, situated at Rambhau Bhogale Marg, Ghodapdeo, Byculla, Mumbai 400 033.

2. That the Party of the First Part, the Developer/Promoter agreed to sell one Flat bearing No. 1102 on the 11th Floor, in their Building known as Atlantis Residency, admeasuring **60.39 square meters** (carpet area) along with one Car Parking Space at the Parking Level of the Building more particularly described as above:

3. That the Party of the Other Part agreed to purchase the above Flat and accordingly, they executed the Agreement for Sale for Rs.90 Lakhs (Rupees Ninety Lakhs) towards the full and final price dated 01.06.2016.

4. That the said Agreement is duly registered with Joint Sub-Registrar of Mumbai City under the Registration No.BBE-1/4634/2016 dated 12.07.2016.

5. That the Party of the First Part admit and accept the execution of the abovesaid Agreement and according to the said Agreement for Sale, the Party of the First Part was to give the possession of the abovesaid Flat on 31st December 2019 but the party of the first part has not given the possession of the said flat and therefore, the party of the first part do hereby agree and undertake to give the possession of the said flat with the clearance of CC and OC with all the necessary Certificates / Documents on or before 31st October 2024 with grace period of three month to the Party of the other part in the building as per the said agreement for sale .

6. That the Party of the First Part hereby agree and declare that the said Party of the Other Part have paid, the total

consideration of Rs. 90 Lakhs (Rupees Ninety Lakhs) towards the full and final consideration in respect of the purchase of said Flat and hereby the Party of the First Part admit and accept that nothing is required to be paid by the Party of the Other Part in respect of the said Flat to the Party of the First Part.

7. That the Party of the First Part hereby agree and declare that the said Party of the Other Part have paid, the total consideration of Rs. 90,00,000/- (Rupees Ninety Lakhs Only) in respect of the purchase of said Flat, leaving Service Tax, VAT and other amounts payable under the Agreement for Sale dated 1st June 2016 payable by the Party of the Other Part in respect of the said Flat to the Party of the First Part. It is pertinent to note that the cheque No.138285 for the sum of Rs.90,000/- (Rupees Ninety Thousand Only) dated 7th June 2016 and cheque No.138286 for the sum of Rs.2,78,100/-(Rupees Two Lakhs Seventy Eight Thousand One Hundred Only) dated 7th June 2016 both drawn on the Sahyadri Sahakari Bank Ltd., Chira Bazar, Mumbai, issued by the Party of the Other Part herein towards payment of Service Tax and VAT had been returned unpaid for the reasons “fund insufficient” and therefore, the Party of the Other Part is liable to pay the said Service Tax and VAT along with if any other bank charges to the Party of the First Part herein.

8. That the Party of the First Part hereby further agree, admit, undertake and declare that they will handover the possession of the abovesaid Flat No.1102 in the said Building i.e. Atlantis Residency at 11th Floor, admeasuring the area of 60.39 sq.mtrs carpet area in the said Project of the Party of the First Part named as Jogani Heights on or before 31st October 2024, with a

grace period of three months. That the Party of the First Part hereby undertakes to handover the unencumbered possession of the said Flat and there shall be no further extension of time in respect of such handing over the possession of the said flat.

9. *That the Party of the First Part hereby agree and undertake that they were supposed to handover the possession of the abovesaid Flat on or before 31st December 2019 but they could not do so and therefore, they also undertake to pay the liquidated damage charges of Rs. 71 Lakhs apart from the principal amount as per their letter dated 02nd September 2016. But now the party of the first part have agreed to hand over the possession of the said flat on or before 31st October 2024 and with grace period of three month, the Party of the First Part have agreed to pay the interest @ 10.5% per annum on the amount of Rs.1,61,00,000 {Rupees one crore sixty-one lakhs only} from 01.01.2020 to the date of execution of this Consent Terms and further undertake to pay the said interest @ 10.5 % p.a. till the handing over the possession of the said Flat.*

10. *That the said calculation of interest at the above rate comes to Rs. 60,57,625/- {Rupees sixty lakh fifty seven thousand six hundred and twenty five only} till the date of execution of this Consent Terms and further agree to pay further interest @ 10.5 % p.a. till the possession by the said party of the first part.*

11. *That the Party of the First Part hereby agree that the interest of Rs. 60,57,625/- {Rupees sixty lakh fifty seven thousand six hundred and twenty five only} shall be paid forthwith by the issuance of the postdated cheques as mentioned below and shall*

pay further amount of interest as per the understanding arrived between both the parties.

[1] Cheque No 672699 of Rs 16,90500/- of date 01/11/2023

[2] Cheque No 672701 of Rs 16,90500/- of date 01/11/2023

[3] Cheque No 672702 of Rs 16,90500/- of date 01/11/2023

[4] Cheque No 672700 of Rs 9,86,125/- of date 01/11/2023

all drawn on (State Bank of India, Diamond Garden Branch, Chembur, Mumbai), Any dishonor of the above cheques by the first party's Bank, the party of the other part shall become entitled to file appropriate proceeding before the Competent Court.

12. That the Party of the First Part hereby agree and undertake to pay the said interest in respect of this Consent Terms as agreed between the parties hereto, till the handing over the said flat with O.C &C.C by 31st October 2024 with the grace period of three months.

13. That the Party of the First Part hereby declare that their above Project of "Jogani Heights" and the subject Flat in the Atlantis Residency is governed by the provisions of the RERA Act, the Party of the First Part shall handover the said Flat with the CC and OC by 31st October 2024, with grace period of three month.

14. That the Party of the First Part hereby undertake to handover the possession of the abovesaid Flat on or before 31st October 2024 with the grace period of three months to the Party of the Other Part and in case of failure on the Party of the First Part in respect of giving possession of the said Flat then under

such circumstances, the Party of the First Part shall pay the interest @ 15% p.a. on the amount of Rs.1,61,00,000/- from the delayed period after 31st October 2024 plus grace period of three months .

15. That the Party of the First Part hereby undertake, in case of failure of giving the possession of the said Flat to the Party of the Other Part on the date stated hereinabove, then the Party of the Other Part shall become entitled to file all such cases, civil as well as criminal for getting the possession of the said Flat and interest thereof.

16. That the Party of the First Part hereby agreed and declare that due to this Consent Terms, the Party of the Other Part till the date of possession shall not take any corrosive steps by way of litigations etc. against the Party of the First Part.

17. That this Consent Terms shall be filed by both the parties in Anticipatory Bail Application No 2204/2023, before the Hon'ble High Court of Judicature at Bombay, and the parties have agreed to settle by way of this Consent Terms and therefore, the Party of the First Part and the Other Part hereby duly agree to abide by this Consent Terms and any failure on the part of the Party of the First Part, the Party of the Other Part shall become liable to take all the necessary legal action against the Party of First Part including civil and criminal & other proceedings.

18. That this Consent Terms has been filed by the parties as per the Agreement for Sale between the parties and accordingly, the Party of the other Part hereby undertakes to this Hon'ble Court to

withdraw the police complaint filed with MRA Marg police station and further to give consent to quash the FIR bearing C. R. No. 73 of 2022, and the party to other part further undertakes to do everything necessary, including consent to quash the FIR No. 73 of 2022 in a Petition under Section 482 of Cr.P.C filed by the Party of the First Part before the Hon'ble High Court of Judicature at Bombay upon realization of cheques as mentioned in clause 11 above or as soon as the payment of Rs. 60,57,625/- {Rupees sixty lakh fifty seven thousand six hundred and twenty five only} is paid by Party to First Part to Party to Other Part, whichever is earlier.

19. *The Party to Other Part shall claim interest for the delayed period i.e., from the date of realization of Rs. 60,57,625/- {Rupees Sixty Lakh fifty-seven thousand six hundred and twenty five only} and till the date of actual possession is received in view of clause 14 above and the Party to First Part agreed hereby to make the same at the time of giving possession of the flat to Party of Other Part. The Party of Other Part have all his rights open for receiving of said amount before taking possession of the flat from Party of First Part.*

20. *The Party of Other Part shall give consent letter to concerned police station to de-freeze the bank account being Account No.317901011012268 maintained with Union Bank of India, Fort Branch, Mumbai in the name of Kshama Builders and Developers Pvt. Ltd as soon as this consent terms is signed and submitted by the parties before the Hon'ble High Court.*

21. *Upon execution of this Consent Terms, the Party of the other Part hereby consent to this Hon'ble Court granting*

Anticipatory Bail to the Applicants in Anticipatory Bail Application No. 2204 of 2023 in terms of prayer clause (a) to the said application.”

5. Since the parties have agreed to settle the matter amicably, this is a fit case to exercise the discretion under Section 438 of Cr.P.C. Hence the application is allowed on the following terms and conditions:-

- (i) In the event of arrest of the Applicant in Crime No.73 of 2023 registered with MRA Marg Police Station, Mumbai, the Applicant be released on bail on furnishing bail bond of Rs.25,000/- (Rupees Twentyfive Thousand Only) with one or two sureties in the like amount;
- (ii) The Applicant shall keep the Investigating Officer informed of his current address and mobile/contact details, and/or change of residence or mobile/contact details from time to time.
- (iii) The Applicant shall not interfere with the Complainant and the other witnesses, or tamper with the evidence in any manner.

. **Application stands disposed of.**

(ANUJA PRABHUDESSAI, J.)