

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

BAIL APPLICATION NO. 3842 OF 2022

Vikas Ghanshyam Tripathi

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr.Ramesh Tripathi a/w Mr.Prashant Trivedi, Ms.Kshitija Chalke, Mr.Shubham Mishra and Mr.Sagar Nikambe i/b. Ramesh Tripathi and Associates – Advocate for Applicant.

Mr.H.J.Dedhia – APP for Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 27TH JUNE 2023

P. C. :

1. Heard learned Advocate for the Applicant and learned APP. The Investigating Officer is present.

2. The FIR is filed by one Vinod Shridhar Desai with Waliv Police Station on 23rd September, 2019 against in all 8 Accused persons and out of them, present Applicant is Accused No.1. His contention is that he got knowledge that developer by name M/s. Kritika Builders and Developers has undertaken a project and flat bookings is underway. The First-Informant is desirous of purchasing a flat at Vasai. The representatives of the company arranged for the site visit

and the First-Informant has booked a flat and paid certain amount in cash and by cheque too. He has paid Rs.5,31,500/-. He was not given possession. Apart from him, there are also other flat purchasers. On enquiry, he came to know that M/s. Kritika Builders and Developers is not going to complete the project and hence, they were desirous of cancelling the bookings.

3. Later on, he came to know that M/s. Kritika Builders and Developers, Prabhav Builders and Developers (of which the present Applicant is one of the partners), M/s. Avadh Construction and other few individuals are involved in this project. For not getting possession and after realizing that he is cheated, his complaint is registered vide offence under Sections 420 read with 34 of Indian Penal Code, 1860 [“IPC”], under Sections 3, 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 [“MPID Act”] and under Sections 3, 4 of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 [“MOFA Act”].

4. After completion of investigation, charge-sheet is filed against the present Applicant and others. It is claimed that the partnership firm of the present Applicant has already handed over the project to

Avadh Construction.

5. My attention is invited to an affidavit in reply and more specifically to Para No.5(g) of Page No.696. It says that an amount of Rs.30,28,787/- have come to the share of the Prabhav Builders and Developers. A copy of chart is also annexed to their affidavit.

6. Furthermore, the partnership deed dated 21st March, 2015 in between partners of Prabhav Builders and Developers is annexed to the affidavit. Apart from present Applicant, there are two other partners and Para No.8 says about the share in profit amongst these partners and present Applicant is entitled to get share in profit and loss to the extent of 34%.

7. It is contended that the present Applicant is noway concerned with the completion of the building and today, he has filed an affidavit of the wife of the present Applicant. The liability as per his share comes to Rs.10,95,950/- and Para No.5 says about deposit in installments.

8. Learned APP submitted that the flat purchasers / investors belongs to lower middle class and they have been cheated by not handing over possession and misappropriating the amount. It is submitted that let the Applicant be directed to handover the

possession of respective flats to the investors.

9. Charge-sheet is already filed and the amount coming to the share of the Firm of the Applicant as per the affidavit is Rs.30,28,787/-. When the Applicant through his wife has shown readiness to deposit the amount as per his share, I think, it can be accepted.

10. In a criminal offence, one cannot go into the issue whether the developers can be directed to handover the possession. It will be the subject matter of another litigation. But, an undertaking can be accepted. Charge-sheet is already filed. One does not know when the trial will take place. However, prayer for depositing an amount by way of installments cannot be accepted. If the Applicant will deposit entire amount in one stroke, the undertaking can be accepted.

11. In view of that, following order is passed :-

O R D E R

- (A) Application is allowed.
- (B) Applicant Vikas Ghanshyam Tripathi be released on bail in connection with C.R.No.977 of 2019 registered with Waliv Police Station for the offences punishable under Sections 420 read with 34 of IPC, Sections 3, 4 of MPID Act and under Sections 3, 4 of MOFA Act on furnishing personal bond and surety bond of Rs.25,000/- subject to following conditions :

- (i) To deposit an amount of Rs.10,09,950/- before the Court of Additional Sessions Judge – Vasai within a period of two weeks from today.
- (ii) Applicant be released on bail only after depositing of the said amount.
- (iii) The Court of Additional Sessions Judge – Vasai is at liberty to take appropriate decision about disbursal of this amount after hearing concerned parties including the present Applicant.

12. These are my *prima facie* observations. Let the learned trial Court need not be influenced by them.

13. Application is disposed of in the aforesaid terms.

14. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]