

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1286 OF 2024

P Mohan Kumar & Ors. .. Petitioners
Versus
Ramesh G. Kohli & Ors. .. Respondents

WITH
WRIT PETITION NO. 8054 OF 2023

Harish Chander Passi & Ors. .. Petitioners
Versus
Ramesh G. Kohli & Ors. .. Respondents

WITH
WRIT PETITION NO. 8057 OF 2023

Tejas Rane & Anr. .. Petitioners
Versus
Ramesh G. Kohli & Ors. .. Respondents

WITH
WRIT PETITION NO. 8056 OF 2023

Krishna Gopal Sharama & Anr. .. Petitioners
Versus
Ramesh G. Kohli & Ors. .. Respondents

WITH
WRIT PETITION NO. 8058 OF 2023

Zoher Inyat Bhopalwala .. Petitioner
Versus
Ramesh G. Kohli & Ors. .. Respondents

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• Ms. Kranti S.S. Anand for Petitioners
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 07, 2024

P. C.:

1. Heard Ms. Anand, learned Advocate for Petitioners.
2. This is a bunch of five Writ Petitions with identical facts. Hence, this common order is passed. Petitioners in all five Writ Petitions admittedly have a registered agreement in their favour executed with Defendant No. 1 Developer. Ms. Anand would submit that under the registered agreements, entire consideration stands paid by all Petitioners save and except in the case of P. Mohan Kumar who is the Petitioner in WP/1286/2024 who has paid 90% of the consideration. Agreements are that purchase agreements in a building called Pearl Residency.
3. The order impugned is dated 23.11.2022 passed in Application filed below Exh. 99 in Special Civil Suit No. 647/2012. Identical orders have been passed. It is submitted that Defendant No. 1 Developer granted fit out possession to the Petitioners in all Writ Petitions. Today the status of the building is that occupation certificate has been obtained not by the Developer but by Defendant No. 2 who is the original land owner. There was a development agreement between Defendant Nos. 1 and 2. It is submitted by Petitioners that after development / construction of the building was almost

completed, but before obtaining occupation certificate, the developer abandoned the project and Defendant No. 2 took over the project. It is seen that Defendant No. 2 has thereafter sold the flats belonging to the Petitioners in all five Writ Petitions to Defendant No. 3 in the suit proceedings who are the new purchasers. It is interesting to note that Defendant No. 3 in all suit proceedings have purchased the flats by executing agreement on Rs. 100/- stamp paper with the Defendant No. 2.

4. These are extremely shocking and startling facts rather an element of fraud is clearly involved on the part of Defendant Nos. 2 and 3. Learned Advocate for Petitioners would submit that pursuant to Defendant No. 1 abandoning the project, Defendant No. 2 not only took over the project and completed it but while doing so changed the entire identity of the flat numbers as also the name of the project from “Pearl Residency” to “Paru Sadan”. *Prima facie* when this fact came to light, Petitioners who otherwise were at the mercy of the system made an Application below Exh. 99 seeking amendment of the suit plaint. Schedule of amendment is at page Nos. 52-56 of the Writ Petition. It is a very sorry state that for the past 10 years that the suit has remained pending in the Trial Court. I have perused the amendment sought for by the Plaintiffs. The said amendment ought to have been allowed in the facts of the present case rather in a very convoluted

manner it has been partly allowed. Considering the timeline in the present case as also the fact that the Petitioners have suffered, I am inclined to pass strict orders. I am informed that the suit at the stage of framing of issues and is not moving forward at all.

5. In view of the above, issue notice to the Respondents made returnable on 21.02.2024. Humdast permitted. In addition to Court's notice, Petitioners are directed to serve copy of the Petitions along with copy of this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate affidavit of service with tangible proof thereof on or before the next date. After receiving the notice, all Respondents to file affidavit-in-reply on or before the next date, if so desired with an advance copy to the Advocate for Petitioners.

6. Respondents are directed to remain present either themselves or through their Advocate on the next adjourned date. It is made clear that if Respondents remain absent despite service on the next adjourned date, these Writ Petitions shall be heard and disposed of at the stage of admission in the absence of Respondents.

7. Stand over to **21st February, 2024 at 2:30 p.m.**