

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 586 OF 2024

Hazel Vincent Fernandes

.. Petitioner

Versus

T. Bhimjyani Realty Pvt Ltd & Ors.

.. Respondents

-
- Mr. Prakash G. Lad for Petitioner
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CORAM : MILIND N. JADHAV, J.

DATE : OCTOBER 21, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Perused the praecipe dated 21.10.2024.
3. Heard Mr. Lad, learned Advocate for Petitioner.
4. Present Contempt Petition is directed against Respondent No. 1 Company and its Directors who are arrayed as contemnors. It is the case of Petitioner that initially flat was booked by her from Respondent No. 1 by admittedly making payment of Rs. 81 Lacs. Thereafter since possession of that flat was not given, Petitioner sought return of her monies. In the proceedings before RERA, Respondent No. 1 suggested that by making a further payment of Rs. 51 lacs, it would give possession of a new flat to Petitioner. In that regard in 2023 after making further payment of Rs 51 lacs and the agreement in respect of the new flat being registered, undoubtedly on that basis the new flat

would be a fresh allotment which would be completely unencumbered, when Petitioner went to take possession of the new flat, she realized that the said flat was already attached by ICICI Bank on account of default by the earlier allottee of the said flat by Respondent No. 1. This fact is extremely serious. When Respondent No. 1 Company offered the new flat to Petitioner, it ought to have disclosed that earlier it was earlier allotted to the previous purchaser and unencumbered and it ought to have produced all such relevant documents of the new flat with disclosure. It was its bounden duty to ensure that the new flat allotted to Petitioner was unencumbered before making the statement before RERA in 2023 and inducing the Petitioner into paying additional 51 lacs to buy the same. The conduct of Respondent No. 1 as noted above and seen by the various orders passed is clearly malafide. It smacks of a clear fraud. In that view of the matter, issue notice to Respondents. Humdast permitted.

5. In addition to Court's notice, Petitioner is directed to serve copy of the Contempt Petition 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.

6. After due service, Respondents are directed to file affidavit in reply on or before the next date.

7. Stand over to 25th November, 2024.

Amberkar

[MILIND N. JADHAV, J.]

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