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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 1882 OF 2024

IN
SUIT NO. 125 of 2024

S.B.I. Employees Raag Vihar Co-operative
Housing Society Ltd & Anr.

...Applicants

In the matter between

S.B.I. Employees Raag Vihar Co-operative
Housing Society Ltd & Anr.

...Plaintiffs

Vs.

Khush Housing Finance Pvt. Ltd. & Anr.

...Defendants

Mr. Anil Singh, Senior Advocate a/w Rohit Yadav, Abhishek Mishra, Sumit Pandey, Krutisha Pandey, Ruchita Verma and Aadarsh Vyas i/by Bhavin Bhatia for the Plaintiffs.

Mr. Pradeep Sancheti, Senior Advocate a/w B. K. Barve, Ajit Salunke, Sandeep Barve Santosh Wagh and Pallavi Bali i/by B. K. Barve & Co. for Defendant No.1.

CORAM : ARIF S. DOCTOR, J.

DATE : 16th JULY, 2024

P.C.:-

1. This matter was taken up urgently at the request of the Learned Senior Counsel, Mr. Singh since the apprehension of Mr. Singh was that the 2nd Plaintiff who is the new developer appointed for redevelopment of the 1st Plaintiff-Society would being hampered in undertaking further construction of

the Society in question by Defendant No.2 who is the developer with whom the Development Agreement has admittedly been terminated. It is also not a disputed position that the building in question is today incomplete.

2. After hearing Mr. Singh at some time and Learned Senior Counsel Mr. Sancheti who appears on behalf of Defendant No.1, who today has admittedly taken steps under the provisions of the SARFAESI Act for realisation of what he claims is the security offered to Defendant No.1 under the Development Agreement which was originally entered into with the 2nd Defendant.

3. Mr. Sancheti submits that in terms of prayer clause (a) of the Interim Application, the same is today infructuous since Defendant No.1 has already taken steps for realisation of the security in the sense that the auction sale is completed and the possession is also taken. He, however, clarifies that insofar as apprehension of the Plaintiffs that further construction of the building in question would in any manner be interfered with or hampered, he makes a statement to the Court that Defendant No.1 shall not in any manner hamper or obstruct Plaintiff No.2 from carrying on further construction insofar as the 9 flats which he claims endure to the benefit of Defendant No.1. He makes a statement that until the disposal of the present Interim Application, no third party rights shall be created in respect of those 9 flats. This needless to state would equally apply to the Plaintiffs since it is entitlement of these 9 flats which is really now in question.

4. Mr. Singh however disputes the fact that Defendant No.1 is in possession of these 9 flats because he submits that the construction of the flats which Defendant No.1 claims to be in possession have not started and/or are incomplete.

5. Be that as it may. I find for the present purpose this order would suffice. The entitlement to the 9 flats shall be considered when the Interim Application is taken up for final hearing and disposal.

6. Needless to state that all the rights and contention of the Defendants including to the maintainability of the present Suit are kept expressly open.

7. Stand over to 13th August, 2024.

(ARIF S. DOCTOR, J.)