

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.6574 OF 2024

Naveen Saraff

.....Petitioner

Vs.

The State of Maharashtra & Anr.

.....Respondents

Dr. Uday Warunjikar with Mr. Dattaram Bile, i/b. Ms. Sonali R. Chavan, for the Petitioner.

Mrs. P. P. Shinde, APP, for Respondents-State.

CORAM : REVATI MOHITE DERE &

DR. NEELA GOKHALE, JJ.

DATE : 4th February 2025.

P.C.:-

1) By this Petition, the Petitioner essentially seeks a direction to the Respondent No.3-Senior Inspector of Police, N. M. Joshi Marg Police Station, Lower Parel (E), Mumbai to register an FIR on the basis of the Petitioner's complaint dated 5th June 2023.

2) Dr. Warunjikar, learned counsel for the Petitioner submits that having regard to the peculiar facts, the Police ought to have invoked the provisions of the Maharashtra Protection of Interest of Depositors (MPID) Act, 1999 as well as Sections 406 and 409 of the Indian Penal Code.

3) Learned APP has filed an affidavit of Shri Vikas Survase, Assistant Police Inspector, N. M. Joshi Marg Police Station, Mumbai dated 9th September 2024.

4) Perused the Petition. It appears that as the Petitioner and his wife were in search of a property i.e. residential unit to be purchased by them and their relatives in Mumbai city, as and by way of investments, they learnt through their relative, Aditya Saraf, about the project of “M/s. Tattva and Mittal Life Spaces Private Ltd.”, by name “Bombay-XI”. It is the Petitioner’s case that after discussing, they decided to invest in the said project. Pursuant thereto, allotment letters were issued to the Petitioner and others. One of such allotment letter is at Page 44 of the Petition. The said letter is an allotment letter of a flat on a particular floor in the Real Estate Project known as “Bombay XI”. It is not in dispute that the Petitioner had filed a complaint before the Maharashtra Real Estate Regulatory Authority (‘MahaRERA’), Mumbai and had sought a direction to the developers to execute sale agreement in his favour and also other ancillary reliefs were sought. The MahaRERA allowed the said complaint and directed the complainant therein to pay stamp duty amount for execution of the

agreement for sale within 15 days and directed the promoter to execute the registered agreement for sale within a period of further 30 days from the date of payment of the stamp duty.

5) At this stage, Dr. Warunjikar states that the said order passed by the MahaRERA cannot be executed since the developer/promoter had sold the flats in question to third party and in fact, even his registration with MahaRERA has been cancelled.

6) Be that as it may, during the pendency of the aforesaid Petition, the Police registered an FIR on the basis of Petitioner's complaint dated 5th June 2023 for the alleged offences punishable under Sections 420, 465, 467, 468, 471 of the Indian Penal Code and provision of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA) Act.

7) From the affidavit filed by Mr. Vikas Survase, API attached to N.M. Joshi Marg Police Station, Mumbai, it appears that the investigation does not reveal any offence punishable under the MPID Act and therefore, the said provisions are not invoked. Although in the

affidavit, reasons for not invoking Sections 406 and 409 of the IPC are given, learned APP fairly states that if during the course of investigation, the said sections are made out, the Police will incorporate the same in the charge-sheet. Learned APP further states that investigation will be conducted fairly, impartially and will be taken to its logical end expeditiously. Considering that the FIR is registered on 27th April 2024, we expect the Police to complete the investigation and file charge-sheet expeditiously. Learned APP at this stage states that the charge-sheet will be filed within eight weeks from today. Statement accepted.

8) In view of the aforesaid, nothing survives for further consideration in the Petition.

9) Petition stands disposed of.

(DR. NEELA GOKHALE, J.)

(REVATI MOHITE DERE, J.)

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