2025 INSC 669

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

MISCELLANEOUS APPLICATION NO. 2426 OF 2018
IN
CIVIL APPEAL NO. 3294 OF 2018

JAWALA REAL ESTATE PVT LTD & ANR. ...APPELLANT(S)

VERSUS

HARESH ...RESPONDENT(S)

J U D G M E N T

VIKRAM NATH, J.

1. The appellant– Jawala Real Estate Pvt. Ltd., subsequently amalgamated with Macrotech Developers Ltd., had allotted a three-bed room apartment to the respondent-Haresh sometime in the year 2013. The apartment number allotted to the respondent was flat no. 6403, B Wing, building known as Lodha Allura (Alpha Tower) in their project known as "Lodha Codename Blue Moon" situated at Plot CS No. 464, Pandurang Budhkar Marg, Opp. Hard Rock Café, Worli, Mumbai-400025. The respondent, in 2013 itself, paid Rs. 92,50,744/- being the

advance amount out of the total sale consideration of Rs. 4,64,86,145/-, and had been requesting the appellant to provide relevant documents so that the registered agreement could be executed. The appellant, on the other hand, was giving written notices that the balance amount be paid failing which the allotment would be cancelled.

2. The appellant cancelled the allotment *vide* letter dated 28.06.2013. This resulted into the respondent filing a complaint before the National Consumer Disputes Redressal Commission[1]registered as CC No. 210 of 2013. During the pendency of the proceedings before the NCDRC, the appellant, despite having been granted time, did not file his written submissions and, as such, their right to file the written statement was forfeited on 19.11.2013. By the same order, the NCDRC also provided, as an *ad interim* measure that the appellant would not create any third-party rights with respect to the apartment in question i.e. apartment No. 6403. Despite the same, the appellant admits of having alienated the said apartment on 24.11.2014. Additionally, *vide* application dated 30.11.2015, the delay on part of the appellant herein in filing written statement was condoned conditionally on the payment of cost of Rs. 50,000/-. However, the appellant did not pay the said costs and

[1] NCDRC

resultantly, the right to file the written statement stood forfeited.

3. The NCDRC proceeded to allow the complaint, *vide* order dated 17.02.2016. The operative part of the aforesaid order is reproduced hereunder:

> "11. Keeping in view all these facts and circumstances, we hereby set aside the cancellation order of allotment dated 28.6.2013 in respect of the premises in dispute. We hereby direct the opposite parties to execute and register the agreement for sale and agreement in favour of the complainant in respect of said residential flat in conformity with the provisions of MOFA Act as per clause 6 quoted above, within 90 days from today and prepare the scheduled of payment as per the provisions of MOFA Act prescribed under Rule 5, Forum V of MOFA Rules 1964.
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> 12. It is made clear that opposite parties will charge interest @ 9% per annum from the due date till its realisation. Needful be done within 90 days from today otherwise it will carry penalty of Rs.125/- per day till needful is done. The complainant is present in person. He has come from Bombay and has suffered the agony and harassment for the last 3 years. Consequently, we award Rs.1 lakh against the opposite parties. The said amount be paid to the complainant within 90 days otherwise it will carry interest @ 9% per annum till its realisation."

4. As the appellant had already alienated the apartment in question despite the stay granted by the NCDRC, during

the execution proceedings, it applied for modification of the order dated 17.02.2016 to the extent that an identical flat/apartment just above the apartment in question, which would be on the next higher floor being apartment no. 6503, may be substituted in place of apartment no. 6403 in the order dated 17.02.2016. The NCDRC, *vide* order dated 16.12.2016, rejected the said application for modification. The NCDRC also made a sharp comment on the conduct of the appellant that the order of stay was passed in their presence and, as such, it was incomprehensible as to how they could have alienated the same by mistake as alleged. It observed that as a matter of fact, the appellant was in contempt and, therefore, no modification is required.

5. Aggrieved by the same, the appellant preferred the instant civil appeal before this Court.

6. This Court, by order dated 20.03.2018, was of the view that the application for modification ought to have been allowed by the NCDRC as no contempt petition had been filed and, accordingly, allowed the appeal and set aside the impugned order. This Court further directed that whatever amount was payable for the original apartment, the same would be payable for the alternate apartment offered, and consequently, stipulated a period of two weeks to execute the agreement between the parties

within two weeks as directed by the NCDRC in accordance with the Maharashtra Ownership of Flats Act, 1963[2].

7. The said order of this Court has still not been implemented in its letter and spirit. On behalf of the appellant, it has been contended that the appellant sent repeated letters of demand to the respondent to make the balance payment and get the agreement executed and registered, but the respondent did not pay any heed to these letters. On the other hand, according to the respondent, he had been repeatedly writing to the appellant to provide necessary clearances, the relevant maps and the carpet areas of both the apartments – the original as well as the alternate one offered, but he failed to receive any response from the appellant.

8. The appellant filed the instant Miscellaneous Application for appropriate directions to the respondent to comply with the order dated 20.03.2018 or, in the alternative, to allow the appellant to refund the entire amount paid by the respondent towards the booking of the original apartment along with interest as agreed in the application form. It is this application which has been heard on a number of occasions since 2018. The matter was also referred to mediation as well as Lok Adalat but it could not come to a close. Ultimately, this Court, *vide* order

[2] MOFA

dated 09.09.2024, after recording the respective contentions raised by the parties regarding the amounts due as per their respective cases, directed the respondent to come ready with the demand draft of the balance sale consideration. The Court also noted that the interest component, taxes, other society charges and other dues would be considered later on. Resultantly, in the order dated 30.09.2024, it was recorded that the respondent has placed a demand draft of Rs. 3,72,35,401/- being the balance sale consideration which was directed to be deposited with the Registry. The matter was adjourned to 08.11.2024 when the aforesaid amount was directed to be placed in a Fixed Deposit Receipt with any Nationalised Bank and the matter was adjourned to 26.11.2024. The parties were directed to file the details of the outstanding amount and the objections to the same.

9. The matter was taken up on 10.12.2024 and, after hearing the parties, this Court reserved the orders, granted time to file the written submissions and further directed that the amount lying in deposit with the registry to be handed over to the appellant. Additionally, it was directed that the appellant would handover peaceful and vacant possession of the apartment i.e. 6503 to the respondent within a week. The respondent, in the meantime, was restrained from making any structural

changes in the apartment, however, the interior work was permitted to be carried out. On 20.12.2024, on the request of the appellant, it was provided that the payment be released in favour of Macrotech Developers Ltd. as the appellant company had amalgamated with the said company. It appears that the registry had released the amount in favour of the appellant on 30.01.2025 and, subsequently, the appellant issued a communication to the respondent to take possession on 05.02.2025. The said document has been placed on record on 27.02.2025. A perusal of the possession letter clearly bears an endorsement by the respondent that he has taken possession, subject to order(s) of this Court.

10. The question which now remains for us to determine is the amount due and payable by the respondent to the appellant. We have carefully and thoroughly examined the respective claims of the appellant and the respondent in this regard as submitted by them in their written briefs. The appellant has claimed a total amount of Rs.4,96,52,565/-, the break-up of the said amount under major heads is as follows:

(i). Interest @ 9% per annum on consideration value as well as on other charges: Rs. 3,98,42,426/-

(ii). Other charges [including infrastructure charges, legal charges, utility connection & distribution

expenses, club membership charges, charges for formation and registration of society, Building Common Area Maintenance ("CAM") charges, additional BCAM charges, Federation CAM charges, Additional Federation CAM charges and property tax]: Rs. 65,67,208/-

(iii). Taxes on consideration value: Rs. 23,17,990/-

(iv). Delayed payment admin charges of 2%: Rs. 9,24,941/-

11. On the other hand, the respondent has admitted liability to pay the amount of Rs. 2,15,884/- towards the legal charges, utility connection & distribution charges and charges for formation of society. Further, the respondent has also agreed to pay an additional amount of Rs. 15,37,126/- towards infrastructure charges and club membership charges, if the Court so directs. With respect to the remaining amounts, the respondent has denied its liability placing strong reliance on Sections 4 and 6 of the MOFA.

12. Having considered the submissions, the following facts govern the quantification of amount which we are crystallising in order to put a quietus to this matter:

(i). The appellant has not provided the relevant documents asked by the respondent relating to the building map, carpet area, relevant NOCs right

from the beginning. Neither in any of the communications to the respondent nor in the submissions before us, the appellant has ever stated that it actually provided the documents required by the respondent.

(ii). The appellant, being well aware of the stay order dated 19.11.2013 passed by the NCDRC restraining it from creating any third-party rights, in gross violation of the same, proceeded to alienate the original allotted apartment no. 6403 on 24.11.2014 during the pendency of the proceedings before the NCDRC. This alienation has created further complication in the proceedings and has also caused considerable delay in the matter preventing it from attaining finality.

(iii). Even after the orders passed by this Court, the appellant has not come forward with the specific carpet area of the original allotted apartment and the alternate offered apartment i.e. 6403 and 6503.

(iv). The respondent undoubtedly could not enjoy the possession of the apartment but the fact also remains that the balance consideration of Rs. 3,72,35,401/- remained with the respondent.

Simultaneously, we cannot lose sight of the fact that during this period, the appellant has been maintaining the said apartment and paying the essential charges to respective bodies/ associations. As such, there needs to be some adjustment of equities between the parties.

13. We feel that there is no point in dealing with each and every issue raised by both the parties. However, in order to do complete justice between the parties, in the peculiar facts and circumstances of the case, we direct that the respondent shall pay the following amounts:

i) Admitted amount of Rs. 2,15,884/-

ii) Amount that the respondent is ready to pay on the direction of the Court – Rs. 15,37,126/-

iii) Taxes on consideration value – Rs. 23,17,990/-

iv) Amount of Rs. 1 crore over and above the above-mentioned amounts.

14. As such, the respondent is directed to pay the total amount of Rs. 1,40,71,000/- (Rupees One crore forty lakhs seventy-one thousand only) to the appellant within 8 weeks from the receipt of this order. The payment of above amount is being provided in lieu of clearance of all the outstanding dues of interest/taxes and other charges etc. upon the respondent up to 05.02.2025, i.e. the date on which possession has been handed over to the

respondent. We make it clear that whatever charges and dues may accrue with respect to the use and occupation of the apartment post the handover of possession, the respondent would be liable to pay such amounts in addition to the above-decided amount. The parties are further directed to get the agreement to sale/sale deed executed within two months after the aforesaid payment is made. The expenses for the stamp duty, registration etc. would be borne by the respondent in accordance with law. The restriction imposed, *vide* order dated 10.12.2024, regarding structural changes stands discharged.

15. The Miscellaneous Application No. 2426 of 2018 stands disposed of accordingly.

.....J.
(VIKRAM NATH)

.....J.
(PRASANNA B. VARALE)

NEW DELHI;
MAY 13, 2025