

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2159 OF 2021

Arun Parshuram Veer

.. Petitioner

Versus

State of Maharashtra & Ors.

.. Respondents

-
- Mr. Nilesh Gala i/by Law Square for the Petitioner
 - Mr. P.G. Sawant, AGP for Respondent Nos. 1 to 3 - State
 - Mr. Ashutosh M. Kulkarni a/w Mr. Akshay Kulkarni for Respondent No. 4
 - Mr. Makarand V. Raut a/w Mr. Manoj Nikam for Respondent Nos. 5 to 7
-

**CORAM : S.J. KATHAWALLA &
MILIND N. JADHAV, JJ.**

DATE : JULY 3, 2021.

P.C.:

Heard Mr. Nilesh Gala, learned counsel for the Petitioner and
Mr. Makarand Raut, learned counsel for Respondent Nos. 5 to 7.

2. Petitioner, a retired pensioner, has filed the present petition for
the following reliefs:-

- (a) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order under Article 226 of the Constitution of India ordering and directing Respondent Nos. 2 and 3, acting on behalf of the Respondent No. 2, to forthwith take appropriate, prompt and expeditious steps in exercise of their powers of attachment and sale of the assets belonging to the Respondent Nos. 5, 6 and 7 set out in

Exh-L hereto under MLRC for the recovery of arrears due to the Petitioner under the Recovery Warrant No. MAHARERA/LA/RW/831/2018 dated 25th September, 2018;

- (b) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order under Article 226 of the Constitution of India directing Respondent No. 2, if so required by the malafide contumacious and egregious conduct of Respondent Nos. 6 and 7, to exercise its powers of arrest and / or detention, either by itself or through Respondent No. 3 and expeditiously take appropriate steps to arrest and / or detain Respondent No. 5's partners, including Respondent Nos. 6 and 7 as per the provisions of the MLRC;
- (c) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, direction or order under Article 226 of the Constitution of India directing Respondent No. 2 and 3 acting on behalf of Respondent No. 2 to report compliance of the steps taken by them in exercise of their powers under the MLRC in respect of Recovery Warrant No. MAHARERA/LA/RW/831/2018 dated 25th September, 2018;
- (d) That pending the hearing and final disposal of the present petition, this Hon'ble Court be pleased to order and direction, directing Respondent Nos. 2 and 3, acting on behalf of Respondent No. 2, to exercise their powers of attachment and sale of the assets belonging to the Respondent Nos. 5, 6 and 7 set out in Exh-L hereto under MLRC for the recovery of arrears due to the Petitioner under the Recovery Warrant No. MAHARERA/LA/RW/831/2018 dated 25th September, 2018;
- (e) That pending the hearing and final disposal of the present petition, this Hon'ble Court be pleased to direct the Respondent No. 5's partners including Respondent Nos. 6 & 7 to disclose, on oath by filing an Affidavit in time-bound period disclosing all their movable and immovable unencumbered assets and upon disclosing the said assets, same can be attached and sold to realize the amount due and payable to the Petitioner under the Recovery Warrant;
- (f) That pending the hearing and final disposal of the present petition, this Hon'ble Court be pleased to restrain Respondent Nos. 5, 6 and 7 (acting through Respondent No. 5) from dealing with and / or alienating and / or transferring and / or creating third party rights in / or relating to any of its movable and immovable properties as set out in Exh-L hereto."

3. Briefly stated, Petitioner, by registered Agreement for Sale dated 17.04.2013 purchased a residential flat bearing No. 504, 'C' Wing on

the 5th floor in the building known as Gaurav-Woods, Phase-II admeasuring about 753 sq.ft. carpet area from Respondent No. 5 - Ravi Development LLP, a partnership firm for a total consideration of Rs. 62,77,310.00 (hereinafter referred to as the "**said flat**"). Respondent Nos. 6 and 7 are the partners of Respondent No. 5 firm. Possession of the said flat was to be given to the Petitioner on or before 31.05.2015. Petitioner paid an amount of Rs. 61,58,136/- from time to time to Respondent No. 5 towards the purchase price of the said flat. However, the building in which the flat was situated could not be completed due to various irregularities on the part of Respondent Nos. 5 to 7.

3.1. Petitioner filed a statutory complaint with Respondent No. 4 Maharashtra Real Estate Regulatory Authority (for short '**RERA**') seeking withdrawal from the project and refund of monies paid along with interest in the alternative. By order dated 23.05.2018, Respondent No. 4, *inter alia*, directed Respondent No. 5 to refund the amount collected from the Petitioner along with interest @ 10.05% p.a. from the respective dates of receipt as also refund an amount of Rs. 3,76,800.00 and Rs. 20,000/- paid by the Petitioner towards stamp duty and cost of the Complaint.

3.2. Petitioner approached Respondent Nos. 5 to 7 for seeking compliance of the above order. However, the said Respondents neglected the same. Petitioner filed Execution Application wherein Respondent No. 4

issued Recovery Warrant under Section 40(1) of the RERA Act against Respondent Nos. 5 to 7 which was forwarded to Respondent No. 2 - Collector, Thane District for enforcement and execution.

3.3. In the meanwhile, Respondent No. 5 challenged the order dated 23.05.2018 by filing an Appeal before the Appellate Authority. By order dated 19.09.2019, the said Appeal came to be dismissed.

3.4. Petitioner thereafter approached Respondent Nos. 2 to 4 for seeking execution of the order dated 23.05.2018 resulting in no action.

3.5. Petitioner apprehended that Respondent Nos. 5 to 7 were attempting to avoid and delay the execution of the Recovery Warrant and in the meanwhile were disposing of their assets in order to circumvent the due process of law.

3.6. In 2021, Respondent Nos. 5 to 7 approached the Petitioner for settlement and entered into a Memorandum of Understanding dated 20.03.2021 requesting the Petitioner to accept an amount of Rs. 1,08,39,309.00 towards full and final settlement to be paid by Respondent Nos. 5 to 7 in 12 equal monthly installments on the 25th day of every month;

however Respondent Nos. 5 to 7 committed default in payment of the first installment itself which was due on 25.03.2021 and breached the undertaking and promise given in the Memorandum of Understanding. Respondent Nos. 5 to 7 have not paid a single Rupee to the Petitioner despite them having agreed to pay to the Petitioner approximately Rs. 40 Lacs on or before 25th June, 2021.

3.7. Petitioner, being aggrieved by the laxity on the part of the Statutory Authorities in execution and enforcement of the Recovery Warrant, has approached this Court by the present petition. Petitioner states that as on 30.04.2021, an amount of Rs. 1,16,00,000.00 is due and payable by Respondent Nos 5 to 7 to the Petitioner under the order dated 23.05.2018.

4. We have heard the learned counsel appearing for the Petitioner and learned counsel appearing for Respondent Nos. 5 to 7.

5. On perusal of the order dated 06.11.2020 passed in Writ Petition (L) No. 4804 of 2020 dated (annexed as **Exh.'K'** to the petition) and further order dated 18.05.2021 passed in the same case which is placed before us, we find that Respondent Nos. 5 to 7 have repeatedly brazenly breached the orders passed by this Court as well as undertakings given to this Court. Paragraph 2 of order dated 18.05.2021 reads thus:-

"2. However, we are at pains to record that the parties as in this case

Respondent Nos. 4 to 7, have repeatedly brazenly breached the undertakings given to the Courts, and have finally complied with the same only at the last minute, i.e when the matter reaches the Court knowing full well that there is no other way forward except to face the orders of the Court under the Contempt of Courts Act, 1971."

6. Today, learned counsel for Respondent Nos. 5 to 7 has once again reiterated that Respondent Nos. 5 to 7 do not have any funds and they shall be in a position to pay only a sum of Rs. 10 Lacs only on 25.08.2021.

7. In view of the above conduct of Respondent Nos. 5 to 7, we direct Respondent Nos. 5 to 7 to give a complete disclosure of their movable and immovable, encumbered and unencumbered assets and properties on oath by filing an affidavit before the next date. We further direct Respondent Nos. 5 to 7 to also produce statements of their bank accounts i.e. personal accounts, as well as the accounts operated by the firm/s and/or companies in which they are partners and/or directors; particulars of their standard of living, as indicated through their electricity bills, their credit card statement/s and the income tax returns that they have filed in the last three years. We are therefore, adjourning the matter to enable the Advocate for Respondent Nos. 5 to 7 to satisfy us that they do not have any funds whatsoever, in other words, they will have to establish that they are virtually paupers not having funds in their bank accounts and their standard of living also bears out the same.

8. We are passing this order since Respondent Nos. 5 to 7 have repeatedly not only taken several flat purchasers for a ride, by taking their hard earned monies and not providing them their flats on time, nor returning their hard earned monies, but have also repeatedly taken the Courts for a ride by giving solemn undertaking/s in order to avoid any adverse orders being passed against them, knowing fully well that they have no intention to honour the undertaking/s given by them to the Court. They are also well aware that assignments keep changing from time to time and they can therefore, endeavour to convince the next Judge taking up the said assignment to grant them further extension of time to make payment, which order would once again be breached with impunity.

9. In view of the above directions, we adjourn the matter to 22nd July, 2021 for compliance.

[MILIND N. JADHAV, J.]

[S. J. KATHAWALLA, J.]