

MHMM170031552025



**IN THE COURT OF JUDICIAL MAGISTRATE, FIRST CLASS,
67th COURT, BORIVALI, MUMBAI**

C.C. NO. 39/SW/2025

ORDER BELOW EXH.1

Heard complainant and Ld. Advocate for him. Perused the report filed by the police dtd. 13.09.2025. Initially police was directed to submit the submission report under section 175(3) of BNSS, 2023. As per the submission report the complaint found to be civil in nature in view of the transaction that had been taken place between the accused and the complainant.

2. In rebuttal the complainant objected to the said report. According to the complainant, earlier complaint of the complainant was inquired by the same police station and it was found that the accused prima facie committed offence of cheating and criminal breach of trust. The report in this regard was put up before the Sr. police officials by the Inquiry Officer. However, later on the conclusion drawn by the Inquiry Officer was rejected and the complaint of the complainant was reported to be civil in nature. Exh. M the inquiry report dtd. 05/06/2024, likewise the reference of Sr. PI, police station Dindoshi dtd. 10/08/2024 also supports the report of Inquiry Officer dtd. 05/06/2024. However, later on the complaint of the complainant was disposed off by advising complainant by the same Inquiry Officer as it being complaint of civil nature to claim relief in civil court. Thereafter, the complainant went in the Hon'ble

High Court in view of the contradictory stand in the process of complaint by the Inquiry Officer. However, the Hon'ble Bombay High Court disposed off the claim of complainant by reserving his right to approach the subordinate court. Accordingly, the present complaint filed with prayer for direction under section 175(3) of BNSS, 2023 against accused for the offence of cheating and forgery.

3. In the case in hand from the report filed by the police itself, it is prima facie transparent that accused are builder and developers and the complainant is the beneficiary. Admittedly the complainant beneficiary was evacuated of the premises under the promise by the accused builder that he would be provided with flat premises in newly constructed building. Further, prima facie it appears that the complainant occupant handed over the possession of the premises under the hope that he would be given the premises as agreed in the initial agreement dtd. 12/04/2019 entered into between the complainant and accused. Further it transpires that after the possession of the premises in which complainant was found to be occupant handed over to the accused builder and developers, they erected the building and completed the construction somewhere in the year 2021-22. It is further revealed that the accused builder rehabilitated more than 1300 slum dwellers on the area which was subjected to SRA scheme and where the complainant and other members were occupant. However, later on complainant has not been given possession of the developed premises as agreed till date by the accused. Further, it appears from the record and report that accused has been avoiding since last 2 to 3 years, to deliver the possession of premises as agreed to the complainant by putting various conditions of withdrawal and settlement of cases.

4. It is to be noted here that the initial agreement and the agreement subsequent there to entered for completion of building on the place where admittedly complainant was occupant. The projected building could not have been completed if the complainant was not caused to vacate the premises occupied. So the foundation of agreement was to pursue the complainant to vacate the premises in order to complete the construction of building. Thus, on the basis of this root cause of the agreement, the complainant was admittedly assured and promised by the accused that he would be given some suitable premises as agreed and mentioned in written agreement in the new constructed building. However, later on, some collateral conditions were started to be putting on complainant for delivery of possession of agreed premises by the accused. Thus, in such circumstances prima facie fraudulent intention of the accused appears to be existed in view of the existed relationship between the complainant and accused in which the complainant is seen to be beneficiary at the place subordinate to the place held by the accused as dominating to him. Further at this stage it cannot be ignored the antecedent of the accused against whom several FIR's of cheating and criminal breach of trust were registered by the number of occupants prior to the claim in question, who were vacated under the SRA scheme. Taking the disadvantage of the position, accused are fraudulently and deliberately sweating the complainant from being put in possession of the agreed premises.

5. Likewise, it also cannot be overlooked that Inquiry Officer initially arrived at the conclusion that offence of cheating and criminal breach of trust had been made out against accused in inquiry upon the complaint of the complainant. However, later on, it is surprising that the said report turned totally adverse to the opinion

recorded earlier by the same Inquiry Officer. Thus, in such circumstances prima facie sufficient material is on record to show that the accused fraudulently caused complainant to vacate the premises under the pretext that he would be given premises in developed property i.e. building no. 9-B and thereafter being in dominating position started to avoid delivery of possession of the premises as agreed to the complainant on some unidentified causes and collateral conditions. This is nothing but fraudulent violation of trust of the complainant on which he had vacated the premises believing that he would be given the premises as agreed by accused ultimately it results in cheating. In result, I proceed to pass the following order:-

ORDER

- i. Police Station Dindoshi to register the First Information Report u/s. 175(3) of BNSS, 2023 against accused for an offence punishable under sections 406 and 420 r/w. 34 of IPC (section 316(2) and 318(4) r/w. 3(5) of BNS, 2023) and investigate and submit the final report.
- ii. The complaint be send to the Police Station Dindoshi.

- Sd/-

(A. D. Ghuge)

Judicial Magistrate (First Class),
67th Court, Borivali, Mumbai.

Date : 26.09.2025.

PPK