

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMPT PETITION (LODGING) NO. 4934 OF 2022
IN
INTERIM APPLICATION (LODGING) NO. 19494 OF 2021
IN
SUIT NO. 190 OF 2021**

New Rising Sun Co-operative Housing
Society Limited ... Petitioner/Applicant/Plaintiff
vs.
K. Bhatia Realtors and others ... Respondents/Defendants

Mr. Karan R. Dua, i/by. Bhandary & Bhandary for petitioner/applicant/plaintiff.

Mr. Kunal Bhanage, i/by. Akshay Pawar for respondent/defendant Nos.2 to 8.

Mr. Pradeep J. Thorat, i/by. Aditi S. Naikare for Mr. Mohammed Ali Wadia,
new partner of M/s. Omega Enterprises (original defendant No.2.)

CORAM : MANISH PITALE, J

DATE : 8th JUNE, 2023

P.C. :

. When this contempt petition is called out for hearing, the learned counsel appearing for the petitioner-Society is at pains to point out that the respondents/alleged contemnors have shown scant regard to the orders passed by this Court and that the orders of this Court have been repeatedly disobeyed, as a consequence of which, the members of the petitioner-Society are reduced to penury and they are facing difficult circumstances.

2. The respondents, under an agreement of redevelopment with the petitioner-Society, were supposed to construct a building and hand over apartments to the members of the petitioner-Society. As per the agreed schedule and in the interregnum, the respondents had agreed to pay transit rent to the members of the petitioner-Society. The timelines specified as per

the agreement, were not adhered to by respondent Nos.2 to 8, who came into picture, after the erstwhile developer i.e. respondent No.1 had handed over the project to them.

3. This Court took note of the delay in completion of the project, which had constrained the petitioner-Society to file the present suit and in the order dated 29.10.2021, recorded the statements made on behalf of respondent Nos.2 to 8. It was recorded as follows:

- “1. Mr Bhanage on instructions states that the construction in question will be completed within eight months. The Defendants will apply for part occupation certificate for the society members component up to the 9th floor within that time. He clarifies that the assurance is that an occupation certificate will be applied for not that it will be obtained within that time. As regards arrears of transit rent and present ongoing transit rent, after negotiations Mr Bhanage's clients have agreed to pay the entire amount in instalments within 12 months period. The society asks, not unreasonably, that the payment be made within eight months so that both the application for the occupation certificate and the payment for arrears and ongoing transit rent is completed on the same schedule. This is the only portion that needs to be resolved.
2. The statements made on behalf of the Defendants are accepted as undertakings to the Court.
3. It is my considered view that the approach of the society is unexceptionable and should be accepted. At best, it can be provided that the Defendants would have an additional allowance of not more than four weeks to pay any remaining balance. This has to be worked out. Accordingly, between the parties, formal Consent Terms remain. For this purpose, list the matter on 15th November 2021.
4. Previous orders, if any, to continue until next date.
5. All concerned will act on production of a digitally signed copy of this order.”

4. It is brought to the notice of this Court that the formal consent terms that remained to be executed, could never be executed and eventually, this Court, in its order date 22.11.2021, directed as follows:

“11. Insofar as the ongoing transit rent which is payable by Defendant No.2 to the Applicant/Plaintiff is concerned, Applicant/Plaintiff shall satisfy such payment by issuance of post dated cheques to the Applicant-Society till such time, Defendant No.2 completes construction of the said property and hands over possession of the respective premises to the members of the Applicant/Plaintiff with occupation certificate. Hence, the following order is passed:-

- (i). The Defendant No.2 shall pay the entire outstanding rent to the members of the Applicant/Plaintiff towards their temporary alternate accommodation for the period 1st July 2019 till today and which amount will be equally divided between the members of the Applicant/Plaintiff-Society as per the development agreement read with the first and second supplemental agreement, the said agreement and permanent alternate accommodation/individual agreements within a period of 9 months from today.
- (ii). The Defendant No.2 shall deposit post dated cheques as per clause 13 of the assignment agreement with the Applicant/Plaintiff-society for a period of 9 months or till such time that Defendant No.2 completes construction of the said property and hands over possession of the respective premises to the Applicant/Plaintiff-society with occupation certificate.
- (iii). The contentions of the parties are kept open to be raised by them during the proceedings in the above Suit.
- (iv). The Interim Application is disposed of in the above terms.”

5. Thereafter, there was further delay in completion of the project and in the meanwhile, transit rent was also not paid to the members of the petitioner-Society, as a consequence of which, this contempt petition was

filed. In two affidavits filed on behalf of respondent Nos.2 to 8 before this Court in the contempt petition, it was undertaken on behalf of the said respondents that the apartments would be ready by 31.03.2023. It is an admitted position that the said undertakings given to this Court, have also been breached. In fact, in order dated 20.01.2023, this Court recorded in great detail the chronology of events and after considering the statements made on behalf of the said respondents, observed as follows:

“22. I have considered the statement made by the Respondent Nos. 2 to 8/Contemnors on oath. In my view, there is a clear breach of the order dated 22nd November 2021 and no attempt has been made by the Respondent Nos. 2 to 8/Contemnors to satisfy this Court that the said order dated 22nd November 2021 will be complied with. The outstanding temporary rent continuous to remain unsatisfied inspite of ample opportunities given by this Court. The outstanding arrears of rent was to be paid within nine months from the order dated 22nd November 2021 and the postdated cheques were to be deposited for the period of nine months. These Respondents in the said Affidavit dated 19th November 2022 have admitted that they will not be in a position to comply with the said order dated 22nd November 2021 by clearing the total arrears of transit rent, as they will not be able to sustain further financial losses resulting therefrom making it impossible to complete the redevelopment project in the time frame envisaged. There is thus, an admitted breach and failure in compliance of the operative part of the said order dated 22nd November 2021. Further the construction of the rehab competent was upto the 9th floor and to be completed within eight months from the order dated 29th October 2021, as further directed in the said order dated 22nd November 2021 and which the Respondent No. 2 has committed a breach of. In fact what is now stated by the Respondent Nos. 2 to 8/Contemnors is that the rehab component upto the 7th floor would be completed prior to 31st March 2022. Thus, there is non compliance of the said order dated 22nd November 2021.

23. In view thereof, Contempt Petition is admitted and contempt notice is issued to Respondent Nos.2 to 8/Contemnors under the Contempt of Courts Act, 1971.”

6. The petition stood admitted and contempt notices were issued to respondent Nos.2 to 8. Thereafter, the petition was listed before this Court on 27.04.2023 and it was again noticed that respondent Nos.2 to 8/alleged contemnors have not abided by their statements and further chance was given to them to file reply affidavit to the contempt notice issued by this Court.

7. Today, when the petition is listed for hearing, it is an admitted position that the flats have not been completed and in terms of the agreement executed between the parties, as on today, i.e. till June, 2023, the amount towards arrears of transit rent is Rs.4,54,95,000/-. It is brought to the notice of this Court that some payments were made in the meanwhile. But, the aforesaid amount towards arrears has been calculated, after taking into account such payments.

8. This Court is of the opinion that respondent Nos.2 to 8 have not shown any regard to the directions given by this Court from time to time and the undertakings given on their behalf in the affidavits placed before this Court. Such conduct has to be dealt with in appropriate manner, particularly when the said respondents were put to notice under the Contempt of Courts Act, 1971. During the course of hearing, the learned counsel for respondent Nos.2 to 8 submitted that an effort could be made to pay the aforesaid outstanding amount of transit rent within a stipulated period of time and that the flats could be completed by December, 2023. Considering the conduct of respondent Nos.2 to 8, this Court is of the opinion that unless

specific directions are given and the consequences are specified, there is little hope of the respondents abiding by the statements given to this Court.

9. In this backdrop, the respondent Nos.2 to 8 are directed to pay the aforementioned outstanding amount towards arrears of transit rent to the members of the petitioner-Society i.e. amount of Rs.4,54,95,000/- by demand drafts/RTGS transfers on or before 15.07.2023. The members of the petitioner-Society are at liberty to communicate the details of their bank accounts within a week to the respondent No.2, to facilitate RTGS transfers.

10. Respondent Nos.2 to 8 shall pay the transit rent for July, 2023 on or before 07.07.2023. This Court is informed that the said amount payable to the members of the petitioner-Society comes to Rs.11,55,000/-. Respondent Nos.2 to 8 are further directed that they shall pay such amount towards transit rent every month from August, 2023, till handing over possession of the flats to the members of the petitioner-Society on or before 7th of every month.

11. Since this Court is of the opinion that compliance of the directions pertaining to the month of July, 2023 needs to be ensured, list the present petition for compliance and further consideration on 18.07.2023 at 02:30 p.m.

12. In the event, the aforementioned directions are not complied with, respondent Nos.3 to 8 are directed to remain personally present in this Court on the next date of listing.

(MANISH PITALE, J)