

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1080 OF 2019

IN

SUIT NO. 147 OF 2017

Leroy Marcellus Misquitta

...Applicant/
Defendant No.8

In the matter between

Lourdes Veronica Baptista

...Plaintiff

Versus

M/s. Crescent Builders and Developers and Ors.

...Defendants

Mr. Shyam Kapadia a/w Ms. Arya Bile and Mr. Vivek Sharma i/by Solomon & Co. for the Applicant/Defendant No. 8.

Mr. Rohaan Cama a/w Mr. Shanay Shah i/by Ms. Dione Baptista for the Plaintiff.

Mr. Mutahhar Khan i/by Shrayas Vyas for the Defendant Nos. 1 and 2.

Mr. Yash Tiwari i/by K.P. Tiwari & Co for the Respondents No. 3 to 5.

Mr. A.J. Almeida for the Defendant No. 7.

Mr. Himanshu B. Takke, AGP for the Defendant No. 9-State of Maharashtra.

Ms. Yamuna Parekh for the Defendant No. 10-MCGM.

Mr. S. Shamim i/by S. Shamim for the Defendant Nos. 11 and 12.

Mrs. Rekha Rane, 2nd Asstt. to C.R. present.

CORAM : R.I. CHAGLA J

DATE : 26 September 2022

ORDER :

1. Heard learned Counsel for the parties.

2. By this Notice of Motion, the Applicant/Defendant No. 8 is seeking direction to the Defendant Nos. 1 and 2 to handover possession of Flat No. 402 admeasuring 668 sq.ft. usable carpet area along with a car parking space in the building “Crescent Exotica” situated at Marol, Andheri (East), Mumbai – 400 059 as per the allotment letter dated 20th March 2015 and in view of the order dated 4th August 2017 passed by the Single Judge of this Court in Notice of Motion No. 851 of 2017 and for direction to execute all necessary documents for transfer of the said flat No. 402 to the Applicant.

3. Further relief is sought for direction against Defendant Nos. 1 and 2 to pay rent for the period mentioned therein in respect of the said Flat No. 402 which Defendant No. 8 claims to be entitled to.

4. Learned Counsel appearing for the Defendant Nos. 1 and 2 states that the Defendant Nos. 1 and 2 shall submit to the orders of this Court particularly, taking note of the direction in the said order dated 4th August 2017 passed by the Single Judge of this Court.

5. Mr. Cama, learned Counsel for the Plaintiff has opposed any relief being granted in the Notice of Motion and has referred to the order dated 15th April 2019 passed by the Single Judge of this Court, wherein his submissions have been recorded that the Defendant No. 8 is an absconder who has been complicit in playing fraud on the Plaintiff and that non bailable warrant is pending against the Defendant No. 8. He has submitted that in the additional Affidavit for which leave has been granted by this Court in the Notice of Motion No. 722 of 2018, these facts will be highlighted and that subject to the hearing of the Plaintiff, no relief be granted in the Interim Application.

6. Having considered these submissions, it would be appropriate to hear the parties prior to considering any relief to be granted in Notice of Motion No. 1080 of 2019. Accordingly, Notice of Motion No. 1080 of 2019 shall be placed on 19th October 2022, high

on board.

7. Defendant No. 8 is permitted to file additional Affidavit in Reply to the additional Affidavit of the Plaintiff permitted to be filed by separate order passed today in Notice of Motion No. 722 of 2018 within a period of one week from the filing of the additional Affidavit of the Plaintiff.

[R.I. CHAGLA J.]