Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 17684 OF 2023

Late Yallapa Narayan Sonavane …Petitioner
Versus
Deepak Vithal Rao & Ors …Respondents

Mr Aspi Chinoy, Senior Advocate, *with Aman Kacheria & Ibrahim Merchant, for the Petitioner.*
Mr Vincent D'Silva, *with Prabhat Dube, i/b Sujit Mane, for Respondent No.1.*
Mr Anoop Patil, *for Respondent No.3-AGRC.*
Mr Nikhil Sakhardande, Senior Advocate, *with Anmol Bartaria, for Respondent No.7.*

CORAM **G.S. Patel &**
Neela Gokhale, JJ.
DATED: **19th July 2023**

PC:-

1. This is yet another case where there is a developer in arrears of large amounts of money and yet claims entitlement to the highly profitable free sale component.

2. The challenge is to an order of 17th May 2023 by the Apex Grievance Redressal Committee ("**AGRC**"). We are prepared to hear all of Mr D'Silva's arguments in opposition but subject to his client establishing bona fides because the AGRC has reversed the order of the Chief Executive Officer ("**CEO**") under Section 13(2) of the SRA Act and allowed the developer represented by Mr D'Silva namely, the 1st Respondent, an individual and the sole proprietor of Accanoor Associates, to continue as a developer.

3. Mr Chinoy for the Petitioners states that no work has been done on site since the project was first begun in 2007. There are arrears of transit rent from 2017 (i.e., for the last six years) and as of 2019 these were in the amount of Rs.7.5 crores.

4. Leave aside the question of the 1st Respondent's technical and financial ability to do the construction. We do not see how the developer can expect to be allowed to continue as a developer and possibly deal in free sale entitlements without performing his obligations to rehabilitation viz., payment of transit rent and commencing construction of the rehab units. Failure to do so is a failure of consideration and is a breach of Letter of Intent ("**LoI**") conditions. On the face of it, this would justify in any abstract circumstance the determination of an errant developer and the cancellation of the LoI. If the developer insists that he is capable, ready, willing and agreeable to abide by the terms of the LoI then he must establish bona fides. Mr D'Silva insists that his client is sincere about this, but sincerity demands proof.

5. For that reason and that reason only, we will not hear Mr D'Silva on merits unless the developer has told us tomorrow morning what amount according to the developer is due as arrears of transit rent. Lest the developer be tempted to give us some utterly absurd figure, the developer must note that we are perfectly well aware of where the project is, how large it is and what current rates are in that area. The terms of the transit rent payable are also a matter of record as they are part of the LoI itself. We decline the request for two weeks to do this computation because we find it astonishing that after the matter was moved and then adjourned for an Affidavit in Reply, the developer still does not know how much he has to pay only as arrears of transit rent.

6. We also make it clear that it is not the mere communication of the amount but the actual deposit of that amount with the Slum Rehabilitation Authority ("**SRA**") that will be a condition precedent to the developer even being heard on merits.

7. List the matter first on board tomorrow, 20th July 2023.

(Neela Gokhale, J) **(G. S. Patel, J)**