



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
ARBITRATION PETITION NO.559 OF 2017

Mulund Raviraj Co-op. Housing Soc. Ltd.	...	Petitioner
versus		
Rupji Constructions and Anr.	...	Respondents

Mr. S.B.Prabhavalkar i/by Mr. Anushk Sabnis, for Petitioner.
Mr. Anwar Landge i/by Mr. Harshad Bhadbhade, for Respondents.
Mr. U.S.Upadhyay, AGP, present for Suptd. Of Taloja prison.
Mr. S.R.Gosavi, Head Constable, Navi Mumbai present.
Mr. Shirsat, IO, EOW present.
Mr. Madhukar Rupji and Mr. Tejal Madhukar Rupji present.

CORAM: S.J. KATHAWALLA, J.

DATE: 14th DECEMBER, 2017

P.C.:

1. The Petitioner - Mulund Raviraj Cooperative Housing Society Limited. (Petitioner Society) has filed the above Arbitration Petition seeking protective reliefs under Section 9 of the Arbitration and Conciliation Act, 1996 (the Act) against M/s. Rupji Constructions (builders), whose partners are Madhukar Meghshyam Rupji and his son Tejal Madhukar Rupji. According to the Petitioner Society, it has 37 members, who were residing with their families in their ownership flats. On 2nd May, 2013 an agreement was executed by and between the Petitioner Society and the builders, under which the builders promised to construct and provide permanent accommodation to 37 members of the Petitioner Society on ownership basis of larger areas, within a



period of 24 months plus six months grace period from the date of issuance of commencement certificate which is issued on 22nd September, 2016. In return, the Petitioner Society granted permission to the builders to construct additional flats (free sale flats) and sell it on ownership basis at market value.

2. According to the Petitioner, in March 2015 and according to the builder, in May 2015, the building of the Petitioner Society was demolished and all the 37 families had shifted to temporary accommodation, for which the builder had promised to pay them monthly compensation. The developer created third party rights in respect of nine free sale category flats and collected Rupees Three Crores eighty three lacs from the flat purchasers. The Builders failed to provide the bank guarantee, the corpus amount, the transportation charges to the Petitioner Society and its members, leaving no option for the Petitioner Society but to agree that the same will be provided after the fourth slab is constructed. However, except for carrying out the work upto the plinth level, the developer has not proceeded further. The Builders have not paid the property tax of Rupees thirty nine lacs and the Municipal Corporation shall soon auction the property of the Petitioner Society to recover the same. The Builders also stopped payment of monthly compensation in lieu of temporary alternate accommodation virtually bringing all the 37 members, who are senior citizens, along with their family members, on the streets. The Builders have not only cheated the 37 members of the Petitioner Society and their family members by stopping the



construction activity at plinth level itself and depriving them of the promises made in the development Agreement, but have snatched away the existing roofs over their heads and who in their old age are running from pillar to post seeking justice.

3. The Builders have undertaken several projects and have in all their projects cheated the original occupants of the flats and the flat purchasers under the free sale category, rendering them roofless because of which several complaints have been filed against them with the police authorities. The Builders (father and son) were therefore arrested for cheating the original members / flat purchasers of 'Aakash Rupji' Project at Ghatkopar and 'Rupji Memories' project at Parel and later released on bail.

4. Some of the flat purchasers/members of the Society of the subject project have filed a complaint at Navghar Police Station, Mulund. Pursuant thereto, Tejal Rupji, partner of Respondent No.1 has been arrested and is once again detained in the Taloja prison. The members of the Society have now taken out the above Arbitration Petition under Section 9 of the Act seeking protective orders. Madhukar Rupji was therefore asked to appear before this Court on 13th December, 2017. When this Court sought particulars of the Suit project from Madhukar Rupji, he informed the Court that he is not in a position to give any particulars since his son was attending the work pertaining to the Suit project. In view thereof, the Superintendent of Prison, Taloja was directed to produce Mr. Tejal Rupji before this Court today.

5. Mr. Tejal Rupji is today present in Court. He initially informed the Court



that he has carried out work only upto the plinth level on the plot of land owned by the Petitioner Society; he has purchased some TDR, paid compensation to the members of the Petitioner Society towards temporary alternate accommodation, paid stamp duty etc. and has exhausted the sum of Rs.3.83 Crores received from the nine flat purchasers; he hardly has any money in the bank accounts and except for the flats where he is residing, he has no assets. In view of certain questions put to the Builders (father as well as son) by the Court, it is revealed that they have three cars viz. Mercedes Benz, Toyota Fortuner and Maruti Swift; even today, the father has come to the Court by car ; the household expenses are borne from the bank deposits and by sale of shares of different companies; Tejal Rupji has ownership rights to the extent of 90% to 95% in a property located at Taikalwadi Road, Shivji Park, Dadar, Mumbai; Tejal Rupji and his wife are the owners of a flat at Hindu Colony, Dadar (E); his wife has taken forcible possession of the said flat and the matter is subjudiced ; that both the father and son are filing income tax returns; Tejal Rupji has also submitted that if he is released from prison, he can bring Rupees 10 Crores within a period of 8 weeks by selling his flats at Matunga to a buyer who is the client of Advocate Tamhane.

6. From the aforestated facts, it is clear that the 37 members of the Petitioner Society along with their family members have been cheated by the Builders. As stated earlier, the Builders have after making false promises, taken possession of the flats which were in occupation of the members of the Petitioner Society and after



demolishing the building not only stopped paying them monthly compensation in lieu of temporary alternate accommodation but have also not carried out construction beyond the plinth level. He has failed to pay the Corporation an approximate sum of Rupees Thirty Nine Lakhs and the Corporation shall very soon, put up the plot of land owned by the Petitioner Society for sale by public auction to recover their dues. The Builders have therefore snatched the existing roof over the heads of 37 families and have virtually brought them on the streets. They are now conveniently attempting to contend that they do not have any money, though they are leading a luxurious life by moving around in branded vehicles like Mercedes Benz, Toyota Fortuner and Maruti Swift. It is clear that Tejal Rupji only to seek release from jail, has made an offer offer to sell his flats and get 10 Crores only if he is released from jail. Since he has already identified a buyer, his father too can finalise the deal in his absence.

7. In the above circumstances, in order to pass effective protective orders in the above Petition, the following order needs to be passed at this stage :

(i) Both the partners of Respondent No. 1 Firm i.e. Madhukar Meghshyam Rupji and Tejal Madhukar Rupji are directed to file their respective Affidavits setting out the following :

a. All the immovable and movable properties/assets, standing in the name of Respondent No. 1 firm and in their personal names and in the names of their immediate family members in the last five years. It is clarified that they shall in their



Affidavits also set out the immovable and movable properties/assets, which are disposed off in the last five years.

b. Particulars of all the bank accounts along with the bank statements of the last five years standing in the names of (i) Respondent No. 1 firm (ii) in their personal names (single or joint) and (iii) in the names of their immediate family members.

c. The shares held by them and their immediate family members in the last five years in Companies and partnerships.

d. The development / redevelopment projects undertaken by them, in the last ten years.

e. The income tax returns filed by them and the members of their immediate family in the last five years.

f. Particulars of the Development Agreements executed by them in the last ten years, the amounts collected by them from the Flat Purchasers and the status of such projects.

ii. Since the EOW has already investigated the complaints qua the other projects of Respondent No. 1 Firm and since it would therefore be convenient for them to carry out investigation qua the present project, the complaint filed with Navghar Police Station, Mulund, Mumbai shall be transferred to the EOW (Housing), Mumbai for investigation.

iii. The owner of the office premises i.e. Jyoti Charitable Trust, having



office at C-36, Shreeram Industrial Estate, 3rd Floor, G.D.Ambedkar Marg, Wadala, (W) Mumbai - 400 031 shall allow the EOW Mumbai to remove the papers lying in the office of Respondent No. 1 Firm; the EOW will allow the Advocates for the Builders to take photocopies of the same to enable them to file the Affidavits as directed.

iv. Since Tejal Rupji will have to file his Affidavit after going through all the papers, the Superintendent of Prison, Arthur Road, Mumbai shall accommodate Tejal M. Rupji in the Arthur Road Prison instead of the Taloja Prison and shall allow his Advocates to meet him in prison between 4.00 p.m. to 6.00 p.m. on any day until his Affidavit is finalized and filed before this Court.

v. The EOW, Mumbai shall submit its investigation report to this Court on 05-01-2018.

vi. The Respondent No.1 and its partners are restrained by an order and injunction of this Court from selling, alienating, encumbering, parting with possession and/or creating any third party rights in respect of any of their immovable and movable properties including the shareholding in any Company or in respect of any plots / flats in the development / redevelopment projects undertaken by them. They shall also not withdraw from any bank accounts any amounts except for payment of statutory dues until 21st December, 2017, without seeking prior permission of this Court.

vii. The learned Advocate for the Defendants states that he shall file the



Affidavits as directed by this Court on 21st December, 2017 at 3.00 p.m.

v. Stand over to 21st December, 2017 at 3.00 p.m.

(S.J.KATHAWALLA, J.)