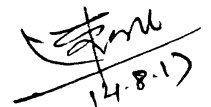


ORDER BELOW EXHIBIT - 1.

- 1) Complainant has filed present complaint under Section 13 of the Maharashtra Ownership of Flat Act. (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1962 for the offences punishable under Section 7, 10 and 11. Hereinafter, for the sake of brevity the Act is referred as MOFA.
- 2) Complainant has adduced evidence before framing charge in support of his allegations against the accused. He has examined himself at Ex. 38, C.W. No. 2 Shamshersingh Desasing Sandur at Ex. 134, C.W. 3 Yogendra Babulal Sonawane at Ex. 146. In addition to oral evidence he has filed various documents which he has obtained by taking recourse of the provisions of Right to Information Act coupled with Copy of Agreement executed by the accused in favour of Shri. Pathare from whom he has purchased the Flat at Ex. 49 etc. He has also, filed Copies of Agreement and Index-II of other Flat holders to show sell of car parking by the accused.
- 3) Heard Advocate Shri. C. D. Dharne for the complainant and Advocate Shri. Nandu Phadke for the accused on the point of framing charge.
- 4) The complainant has come with case of various breaches on the part of the accused under the provisions of MOFA. He is owners of Flat No. 20 situated in Building No. C-6 contained in Hermes Heritage Phase-II Housing Complex. He has purchased the said tenement from Shri. Vilas Suryakant Phatare vide No Objection Certificate Letter dated 23/10/2003 issued by accused no. 1 and 2.


14.8.17

5) In short, the complainant has come with case that, accused have got the Building Plan revised or changed in violation to the statutory provisions and without their consent in the year 2005. That, accused have illegally sold the open space around the buildings by way of restricted Car parking of individual member. Accused have not provided the Amenities of Club House and Swimming Pool despite has recovered charges from its users. The same are constructed in the reserved open space shown in the sanction plan by Pune Municipal Corporation. That, accused have not registered the Society or Company or executed the final conveyance of the land of the Housing Project to its Flat holders. Therefore, accused have committed breach under Section 7 of MOFA by alteration of plans without consent of Flat holders. Accused have committed breach by not taking steps for formation of Co-operative Society or Company despite selling flats to more than 1500 flat holders or by failing to convey the title in favour of the Society.

6) It is not in dispute that, complainant is a holder of Flat in a Housing Project constructed and developed by the accused no. 1 and 2 in the name of Hermes Heritage Phase-II Housing Complex. His entry in the Housing Complex is legal and with due consent of accused. On the date of filing of complaint the society was not registered by the accused. The complainant has purchased the flat tenement in the said Housing Complex in the year 2003. The co-operative society came to be registered in the month of July, 2008. It is also not in dispute that, the accused have not conveyed the title of the property of the said Housing Complex in favour of any co-operative society registered under the provisions of Co-operative Societies Act.


14-8-17

7) Now at this stage, question remains for consideration that what court should take note of the material placed on record by the complainant to substantiate his averments against the accused resulting into an act of an offence to be tried. If the oral evidence of complainant is taken into consideration, it prima facie substantiates his contentions in regards alleged breaches made by the accused. The evidence of C.W.No.2 prima facie shows that, he has taken photographs of the said Housing Complex showing various scene of various buildings, car parkings, gas cylinder room etc. The evidence of C.W.No.3 prima facie throws light as to the collections of documents by the complainant from the Pune Municipal Corporation under the provisions of Right to Information Act on 16/10/2006. That is sufficient to draw an inference that, accused have not provided the copies of sanctioned plan or revised plans to him in the year 2006 when the construction was going on or the Housing Project was incomplete in all respect.

8) The Ld. Counsel for the accused vehemently submitted that, the complainant is not a direct purchaser of the flat from the accused. He has purchased the flat from Mr. Pathare. There is an agreement in between Mr. Pathare and the promoter of the said Housing Project. The Terms and Conditions of the Agreement of Mr. Pathare are binding upon complainant. The Agreement has a term which empowers the builder, promoter to alter, revise the building plans time to time. A false case is lodged for getting a reserved covered parking free of cost. There is no prima facie case of sufficient material to frame charge against the accused and accordingly, prayed for discharge of the accused.


17-8-17

9) Having heard the Ld. Advocate for the accused on the point of terms of agreement executed by the accused with Mr. Pathare, one thing is very clear that, the complainant steps into shoes of Mr. Pathare from whom he has purchased the flat with consent of the accused. Therefore, he has accrued a legal right interest in the said housing project. His complaint against the accused is for protection of his interest in the said flat. So far as, applicability of the Terms and Conditions of the Agreement executed in between promoter and Mr. Pathare is concerned, that is part of a trial to be decided by giving opportunity to lead evidence. Furthermore, even though there appears a consent of purchaser of flat permitting the promoter to make alterations, submit revised plans without touching to the constructed or built up area of the tenement, that can not have an overriding effect on the statutory provisions of MOFA. The purchaser's right can not be curtailed or restricted to the extent of only four boundary walls of his tenements. It certainly includes his way of ingress and egress with right to enjoy allied amenities of the Housing Project. Therefore, the submission becomes premature and irrelevant at this stage. As well as the same does not stand to reason as a legal submission.

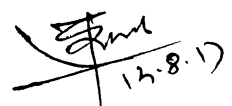
10) It is well settled law that, court has to see whether there are prima facie grounds and related material on record substantiating the allegations made against the accused. In the case in hand, there is sufficient material on record coupled with oral evidence of the complainant to draw a prima facie inference as to fact that accused have got the Building Plan revised in violation to the statutory provisions and without their consent in the year 2005.


15.8.12

11) That, accused have illegally sold the open space around the buildings by way of restricted car parking of individual member. The documentary evidence pertaining to Agreements of other flat holders who purchased the individual car parking from the accused is sufficient to make out the case of the complainant. Accused have not provided the Amenities of Club House and Swimming Pool despite has recovered charges from its users within time or there is reason to believe that, accused have recovered the charges of Swimming Pool and Club House facility prior to conveyance of the title. So also, there is sufficient material on record to show that, the same are constructed in the reserved open space shown in the sanctioned building plan.

12) There is sufficient material on record to show that, accused have not registered the society within stipulated period. That, the accused have not executed the final conveyance of the land of the society to the body of members of the co-operative society. Appointment of administrator, issuing rough draft etc. is part of evidence and to be dealt with trial. The act of accused in regards non registration of society, non conveyance of title is prima facie sufficient to held trial against them for the breach of Section 7, 10 and 11 of MOFA.

13) Therefore, there is prima facie grounds and sufficient supporting material to show that, accused have committed breach under Section 7 of MOFA by alteration of plans without consent of flat holders. Accused have committed breach by not taking steps for formation of co-operative society or company despite selling flats to more than 1500 flat holders resulting into an offence under Section 10 of MOFA. That by



12.8.17

failing to convey the title in favour of the society accused have committed breach of Section 11. There is prima facie strong grounds to frame charge against the accused for the contravention of Section 7, 10 and 11 punishable under Section 13 (1) and 13 (3) of MOFA. Hence, I pass the following order.

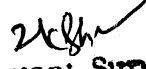
ORDER

1. Charge be framed against both accused under Section 7, 10 and 11 punishable under Section 13 (1) and 13 (3) of the Maharashtra Ownership of Flat Act.
2. The accused to remain present for answering the charges against them on next date.
3. Order dictated and pronounce in open Court.

Date :- 14/08/2017
Pune.


(MAHESH P. SARAF)
JUDICIAL MAGISTRATE FIRST CLASS,
(M.V.) COURT, PUNE.

• TRUE COPY •


Assistant Superintendent
M.F.C. Court No 5 Pune