

Nalawade

**BEFORE MAHARASHTRA REAL ESTATE APPELLATE TRIBUNAL
MUMBAI**

**MISC. APPLICATION NO. 80 OF 2024(Stay)
IN
APPEAL NO. AT006000000204904 OF 2024**

Mallika Ajay Ingale & 59 Ors.

... Appellants

-VS-

M/s. Peteresa Realtors & 3 Ors.

... Respondents

*Mr. Harshad Bhadbhade a/w. Mr. Anwar Landge, Advocate for Appellants.
Mr. Laxminarayan Shukla a/w. Mr. Suyog, Advocate for Respondent Nos.1
to 3.
None for Respondent No.4.*

CORAM : SHRI SHRIRAM. R. JAGTAP, MEMBER (J) &

DR. K. SHIVAJI, MEMBER (A)

DATE : 21st FEBRUARY, 2024

(THROUGH VIDEO CONFERENCE)

Heard learned counsel for parties.

2] By filing this praecipe and captioned Misc. Application No.80/2024, Appellants/applicants are seeking interim relief, for issuance of an order of injunction against Respondents/non-applicants from dealing with the property, which is the subject matter of this Appeal.

3] Perused.

4] Learned counsel for Applicants submits that by order dated 19.12.2023, Maharashtra Real Estate Regulatory Authority (in short MahaRERA) had passed an interim relief to maintain status quo by



Respondents/non-applicants with regard to the building in the said project registration number.

5] Applicants by filing the interim applications dated 11.12.2023 and 03.01.2023 have contended that in case of conflict between RERA and 'Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short SARFAESI Act), provision of RERA will prevail, Applicants are admittedly allottees of the said project and therefore, the interest of the Applicants need to be protected against any such auction proposed to be conducted at the behest of Respondent No.4 Bank of Baroda. However, the interim application filed by Applicants dated 11.12.2023 and 03.01.2024 were rejected by MahaRERA by referring and relying upon the judgment dated 14.02.2022 passed by the Hon'ble Supreme Court of India in Special Leave to Appeal (C) Nos. 1861 – 1871/2022.

6] MahaRERA, after hearing the learned counsel for Applicants and Non-applicant Nos.1 to 3, wherein Respondent No.4 had not appeared, passed an order dated 23.01.2024 and modified its earlier order dated 19.12.2023 and declined to consider the request of the Applicants of the prayer for injunction against the Respondent/Non-applicant No.4 Bank of Baroda and has rejected the interim application of the Applicants dated 11.12.2023 and 03.01.2024.

7] Learned counsel appearing for Appellants/Applicants by filing

the captioned praecipe and Misc. Application in No.80/2024 in the captioned Appeal, pressed for urgent interim relief by issuing injunction against Respondent No.4 Bank by submitting that Respondent No.4 Bank has already published a public e-auction notice of this project properties to be conducted within two days i.e. on 23.02.2024. Learned counsel for Applicants further pressed for the urgency for the grant of the injunction restraining Respondent No.4 bank from conduct of e-auction, failing which there will be irreparable harm and losses to the Applicants allottees of the said project.

8] Perusal of record *prima facie* reveals that Respondent No.4 bank is duly served and intimated in writing about the today's hearing date. Even after the receipt and service, Respondent No.4 has chosen not to appear.

9] Perusal of record further reveals that Respondent No.4 bank has published public notice for e-auction, even after the issuance of the status quo order dated 19.12.2023 by MahaRERA and has not appeared before MahaRERA.

10] Advocate Mr. Laxminarayan Shukla appearing for Respondent Nos.1, 2 and 3 Promoters upon instructions submits that all the registered and executed AFS/ flats allotted to these Applicants have not been mortgaged to the bank. He further submits that the relevant record of the promoter Respondent No.1 in this regard are also sealed and attached by

the Respondent No.4 Bank, as a result of which, he is unable to produce the relevant papers and relevant documents on record.

11] Perusal of record further reveals that Respondent No.4 Bank of Baroda has issued a public auction notice for e-auction to be conducted within two days i.e. on **23rd February 2024**.

12] Advocate Mr. Harshad Bhadbhade further submits upon instruction that out of 42 flats, that 30 flats have been booked by the Applicants prior to the date of mortgage and remaining 12 flats are after the date of mortgage deed (filed on page 54 of the appeal) but have not been mortgaged with the Respondent No.4 bank by Respondent No.1 Promoter.

13] Advocate Mr. Laxminarayan Shukla upon instruction further submits that as per Deed of Mortgage as on page 89 of the Appeal, it was executed on 17th June 2016.

14] Considering these facts, in view of the urgency as submitted by learned counsel for Appellants/Allottees for immediate relief to protect the interest of the Allottees, which is the core and central objectives of the legislation behind the Act of 2016 and rights accrued to the Allottees after the execution of the agreement for sale, wherein 30 flats are executed prior to the deed of mortgage and remaining 12 flats have not been mortgaged without to Respondent No.4 bank, rights accrued by virtue of agreements for sale will remain intact and unaffected more particularly

by virtue of the provisions under Section 11(4) (h), (being reproduced below for ready reference).

"Section 11(4)(h): -

The promoter shall –

..... (h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be."

17] Therefore, we are of the considered view that there is no impediment if the captioned praecipe along with Misc. Application No.80/2024 is partly allowed in the captioned appeal and grant the interim relief by restraining Respondent No.4, Bank of Baroda from taking any e-auction of the 42 flats, which have already been booked by the 60 Applicants herein above, until further order and we proceed to pass the order as follows.

ORDER

- a. Misc. Application No.80/2024 is partly allowed on above terms.
- b. Respondent No.4 Bank is directed and is restrained until further order from taking any e-auction steps with respect to the 42 flats already allotted to applicants.

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- c. Registry to issue notice along with copy of this order to Respondent No.4 Bank for appearance, returnable before the next date.
- d. As per provision of Section 44(4) of the Act, a copy of this order be sent to all the parties and also to MahaRERA.
- e. Captioned praecipe and Misc. Application No.80/2024 stands disposed of on above terms.
- f. No costs.

In APPEAL NO. AT006000000204904 OF 2024

Mr. Harshad Bhadbhade along with Mr. Anwar Landge, learned counsel for Appellants and Mr. Laxminarayan Shukla along with Mr. Suyog, learned counsel for Respondent Nos.1 to 3 joined the conference.

- 2] None for Respondent No.4.
- 3] Issue notice to Respondent No.4 bank, returnable before next date for appearance.
- 4] Stand over to 05th March 2024 for appearance of Respondent No.4 and for filing replies by Respondent Nos.1 to 3.


(DR. K. SHIVAJI)


(SHRIRAM R. JAGTAP, J.)