

Mgf Developments Ltd & Anr vs State Of Nct Of Delhi & Anr on 21 December, 2021

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(CRL) 2540/2021 & CRL.M.A. 20496/2021

MGF DEVELOPMENTS LTD & ANR

Through:

Mr. Vikas Pahwa, Sr. Adv

Mr. Tanveer Mir, Mr. Yud

Singh, Mr. PrabhavRalli,

Khan and Mr. Akhil Sacha

Advocates.

versus

STATE OF NCT OF DELHI & ANR

..... Responden

Through: Mr. Avi Singh, ASC with Mr. Karan

Bhalla, Advocate

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

% 21.12.2021 Exemption allowed subject to just exceptions.

The application stands disposed of.

W.P.(CRL) 2540/2021

1. The instant writ petition has been filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure praying for quashing of the FIR bearing no. 173/2021 dated 12 th November, 2021 under Section 406/420/120B of Indian Penal Code, 1860 (hereinafter, "IPC"), PS EOW, Mandir Marg, New Delhi.

2. Mr. Vikas Pahwa, learned senior counsel appearing on behalf of the Petitioner submitted that the contents of the FIR on the face of it, even if taken to be true, fail to disclose commission of any cognizable offences, much less an offence of cheating or criminal breach of trust. There is admittedly no „entrustment of property since the entire transaction is arising out of a contractual relationship, whereby the Respondent No. 2 had agreed to pay money to Petitioner No. 1. In turn, Petitioner No. 1 would construct and handover the possession of flat to Respondent No.2. In such a situation, case of contractual breach could not have been converted into a case of criminal breach of trust for the simple reason that the money was paid as consideration for the flat sold and it was in no way an entrustment of property. Based on this, it is submitted that the quintessential requirement for the

offence of criminal breach of trust punishable under Section 406 of IPC being that of entrustment of property, is not made out in the present case against the petitioners.

3. Learned Senior Counsel further submitted that Petitioner No.2 while acting as the Chief Financial Officer on behalf of the Petitioner Company has proposed to hand over the possession of the constructed flats to Respondent No.2 on several occasions. It is also submitted that there is a dispute resolution clause i.e. Clause 41 in the contract entered into between the parties. The said clause has already been invoked by the Respondent No.2 and the petition for appointment of arbitrator is pending before this Hon ble High Court.

4. Learned Senior Counsel has also drawn the attention of the Court towards paragraph 18 of the reply to the notice dated 29th October, 2021 sent by the Respondent No.2. The said reply has been annexed as Annexure P-20 to the petition. Relying upon the said reply, it is submitted that the Respondent No.2 has already agreed to settle the disputes through arbitration as agreed in the contract between the parties.

5. Further, it is submitted that the entire dispute between the parties is of civil nature and none of the grievance of the Respondent No.2 gives rise to criminal liability. It is submitted that the entire dispute can be adjudicated by the Consumer Forum or in the arbitration proceedings, the process of which has already been invoked before the High Court. Learned Senior Counsel further submitted that entire criminal proceedings initiated by the Respondent No.2 are nothing but a gross misuse of law and the same needs to be quashed in view of the aforementioned submissions.

6. Per contra, Mr. Avi Singh, learned Standing Counsel appearing on behalf of the Respondent No.1 submitted that based on the complaint, Respondent No.1 conducted a preliminary enquiry. In the said enquiry, it was found that the Petitioners failed to hand over the concerned flat, which had to be handed over in the year 2010. It is strenuously argued that the allegations levelled in the complaint are very serious in nature, which requires detailed investigation. Thus, the court shall refrain from invoking its inherent powers at such preliminary stage of investigation for quashing the FIR. Thus, it is submitted that the entire grounds raised in the petition are frivolous and thus, needs to be dismissed at the threshold.

7. Heard the counsels for the parties and perused the record.

8. I have perused the FIR as well as the letter dated 11th November 2021 written on behalf of the Petitioner/Company, which is annexed as Annexure P-19 to the petition. Vide said letter, it was informed to the Investigating Officer, Economic Offences Wing that the arbitration clause has been invoked between the parties and a notice in this regard has already been sent to the Complainant vide letter dated 29th October, 2021. Therefore, arbitration proceedings have already commenced for the adjudication of the said dispute. I have also perused the allegations made in the FIR and the agreement between the parties which is appended as Annexure P-3 to the petition.

9. Taking into consideration, the aforesaid facts and the contentions made by the parties, this court is inclined to issue notice to Respondent No.2 on filing of PF within a week, returnable on 1st

February, 2022.

10. In the meanwhile, no coercive action shall be taken qua the Petitioner No.2, if he is cooperating with the EOW.

CHANDRA DHARI SINGH, J DECEMBER 21, 2021 Pallavi