

Sale of unsold flat to 'complete project'

Exemplary judgement can help home-buyers of near-ready buildings

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In an order which could set a precedent for home buyers in near-ready buildings where the developer is dragging feet to finish the construction, the Bombay High Court has directed that proceeds from the sale of one of the unsold flats of a building be used to finish work.

In a recent order, Justice SJ Kathawalla directed that the Court Receiver sell flat no. 1302 on the 13th floor of New Kala Niketan building (a redevelopment project) in Bandra (West) by inviting bids through the auction process, and use the sale-money to finish construction. As per the case filed in High Court, the flat is valued at around Rs 6 crore, whereas the cost of incomplete work is just about Rs 1.5 crore.

Sobo resident Saif Khalil Memon, who had paid Rs 3 crore for a house on the 12th floor of the 15-storey building, had approached the court after the developer refused to complete work that involved installation of two elevators and electrical fittings. The developer had promised possession of flats in 2011. In a separate suit, original society members of the redeveloped building had sought similar relief.

In 2016, while hearing Memon's suit, represented by advocates Vivek Kantawala and Ajit Makhijani, Justice Kathawalla had barred the developer Siroya FM Constructions Pvt Ltd from selling the flat and had appointed a Court Receiver. Ever since, the developer kept seeking time from the court – initially to complete the work on his own, and later promising to deposit Rs 4 crore in court for the incomplete work – to avoid the flat from being sold. After countless extensions to the developer on both the counts, the court finally directed the Court Receiver to go ahead with the process of putting up the flat for auction.

The court has directed all the parties to hold a meeting and work out the modalities of sale, even as the Court Receiver has been directed to place all the bids,



New Kala Niketan building in Bandra (West) will invite bids to sell a flat on its 13th floor

along with the Demand Drafts received towards Earnest Money Deposit (EMD), on May 2 before the court.

The order gives a detailed account of the conduct of the developer after Memon filed the suit; it outlines “repeatedly not appearing before the Court, giving undertakings, promises and assurances to the Court and thereafter breaching the same and leaving the original members and the new flat purchasers totally helpless.”

The order notes that in an affidavit filed on December 23, 2016, the developer said that only the installation of electric meters was pending, which would take 30 days and thereafter 45 days for grant of Occupation Certificate. However, when the HC directed an architect to inspect the building and file a report, the architect reported to the HC that no progress had been made at all. The court may finalise further course of action on May 2.