

SoBo man stalls sale of flats in Bandra building

Unable to move into his apartment for lack of occupation certificate, Saif Khalil Memon gets injunction order from HC against builder

Sunil Baghel
@timesgroup.com

TWEET @baghelsMIRROR

In a unique way to hold a builder accountable for abandoning a project and leaving the flat buyers in a lurch, one such buyer has obtained an injunction order on the further sale of flats by the builder.

The case pertains to a 15-storey redeveloped building in Bandra (W), named Kala Niketan, and the developer in question is Siroya FM Constructions, partly owned by Fatesh Mirchandani, who was in the news recently for launching a brewery called The Pump Room-Beer Factory in Andheri.

Hearing a suit filed by Colaba resident Saif Khalil Memon, Justice SJ Kathawalla of the Bombay High Court directed the developer to not sell a particular flat in the building, which is said to have a market value of about Rs 6 crore.

The suit says that the building is in a 'near-ready' condition, except for operationalising elevators and ancillary work, which is likely to cost the developer a little over Rs 1 crore. The suit, filed through lawyers Vivek Kantawala and Ajit Makhijani, says that Memon has paid more than Rs 3 crore in February 2010 for an apartment in Kala Niketan, and the developer had promised to complete the building and also hand over the occupation certificate in 2011.

While the developer did hand over the possession of the flat in 2011, the building is still inhabitable because of absence of elevators and other work, therefore not getting the occupation certificate.

The suit said that developer had mortgaged the 13th-floor flat to a nationalised bank for Rs 3.25 crore, but it can still be sold through an auction, the bank can be paid the mortgage amount, and the balance be used to complete the remaining work so that all buyers can start living in the building.

This point has been used by Mirchandani in his reply to the HC, saying that the possession was handed over in 2011 itself, while admitting that he has not been able to finish other work and obtain the occupation certificate. His affidavit has sought nine more months to complete the work.

The affidavit also informs the court about a winding up petition fil-



The 15-storey redeveloped Kala Niketan (above) is near-ready, but not habitable as certain internal work like the lift is yet to be made operational

ed by the elevator company, Thyssen Krupp, which has been admitted by the HC. The petition filed by the elevator company pertains to dues of Rs 22 lakh. The petition was filed in February last year, where the developer promised to pay the dues within a certain time frame, but was able to pay only Rs 5 lakh, after which the HC admitted the petition in October 2015.

Memon's suit makes allegation against the original society - before redevelopment - for conniving with the developer. The suit says that the builder had given a bank guarantee of Rs 2.40 crore to the society, which was valid for 29 months after entering into redevelopment agreement with the society.

The suit alleges that society let the bank guarantee lapse, and did not encash it, despite the building not being handed over to the flat owners for

more than three years beyond deadline. The allegations have been denied by the society.

The society too has filed a separate suit, requesting the court to ratify the revocation its agreement with the developer, and hand over the property to the society for finishing the pending work. The society's suit has various letters from the developer throughout 2014 and 2015, pleading financial constraints and assuring payment of due and completion of work, which haven't been met.

Memon has opposed the society's suit, saying that the society did not take any steps despite being aware of the legal procedures undertaken by him, and just days after the court granted an injunction order in his favour, they revoked the development agreement. The court has fixed both the cases for hearing on January 5.

ASHISH RAJE