
DEVELOPERS SHALL BE HELD ACCOUNTABLE FOR DEFAULT IN PAYMENT OF TRANSIT COMPENSATION: BOMBAY HIGH COURT

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ABSTRACT

The Bombay High Court bench was hearing a petition concerning the payment of the transit compensation which according to the petitioners, the builders had defaulted on. The said petition was filed by the residents of a composite redevelopment project in South Mumbai who had vacated their old premises 7 (seven) years ago and were aggrieved and distressed at the builder's failure and/or default in paying the transit compensation to them. The bench upholding the importance of the timely payment of transit compensation to the residents/tenants in the matters of redevelopment and further observing that the builders had failed to comply with their obligation pertaining to the same, terminated the NOC given to the builder and accordingly authorized the Maharashtra Housing and Area Development Authority (for short, "MHADA") to issue a formal letter of cancellation.

1. INTRODUCTION

A division bench of Justice G.S. Patel and Justice Neela Gokhale was hearing a petition pertaining to the builder's default in payment of transit compensation to the residents during the course of redevelopment.

2. FACTS OF THE CASE

The bench was hearing a petition² concerning the payment of the transit compensation which

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according to the petitioners, the builder's had defaulted on. The said petition was filed by the residents of a composite redevelopment project in South Mumbai who had vacated their old premises 7 (seven) years ago and were aggrieved and traumatized at the builder's failure and/or default in paying the transit compensation to them.

3. OBSERVATION OF THE HON'BLE BOMBAY HIGH COURT

The Bombay High Court in its order dated 7th August, 2023 observed and stated the following:

"We will not sit by and allow residents of this city to be treated as a necessary evil, an irritant or a nuisance in developers' pursuit of profits or their worship of Mammon. The rights of genuine and eligible residents are primary. The developers' rights are distinctly secondary and will remain subordinated to the rights of such residents."

"To put it even more bluntly. Every developer will now realise that if there is a default in meeting its obligations to residents, societies and tenants, we will not even direct MHADA to cancel the No Objection Certificate ("NOC"). We will terminate that NOC ourselves. Far too many of our citizens are being subjected to this day in and day out. It is time that this Court said enough is enough.

If the amount of Rs 3.50 crores is not brought to Court by Friday, 11th August 2023, we will direct MHADA to immediately cancel the NOC of the only Developer it has on record namely Parekh Constructions."

4. ORDER OF THE HON'BLE BOMBAY HIGH COURT

The bench in its final order dated 11th August 2023 stated that the developers had failed and/or neglected to stand by their commitments under the No Objection Certificate (for short, "NOC") and placing reliance upon the same it terminated the NOC given to the builder and accordingly authorized the Maharashtra Housing and Area Development Authority (for short, "MHADA") to issue a formal letter of cancellation. It also directed the

² Writ Petition (L) No. 20423 of 2023 – Sushila Gordhandas Parikh vs The State of Maharashtra & Ors

builders to remove themselves entirely from the project site along with stating that “*this includes all personnel, security guards, equipment, machinery etc.*” It also further instructed MHADA to ensure that they were completely off the site before the Independence Day.

The bench also directed the MHADA to go ahead with the appointment of another developer following the due process of law along with certifying the actual amount due by the builders, which as per the order of the bench would be payable by the builders within a period of 30 (thirty) days from the date of the MHADA’s order.

The bench lastly noted that the issue in the other writ petitions filed was similar and therefore it disposed of the same.

5. ANALYSIS OF THE ORDER

The said order unravels the dark and bitter reality of the redevelopment process of old and dilapidated buildings undertaken across the city of Mumbai. It demands urgent attention and emphasizes upon the need to take necessary and immediate steps and/or measures to curb the occurrence of such incidents in the future by taking stringent action against the defaulting builders/developers together with supporting the residents/tenants to combat the implications of such default. It projects that the builders/developers cannot turn a blind eye towards the discharge of any of their obligations/duties with respect to the Agreements entered into by them for undertaking the redevelopment, including timely payment of transit compensation to the residents/tenants, in order to further enable them to procure temporary transit accommodation during the period of construction of the proposed new building. It further portrays that the residents/tenants cannot be exploited and left unprotected at the mercy of the builders/developers during the course of the redevelopment process. It unfolds the loopholes embedded in the redevelopment process and calls for the requirement of framing adequate laws and/or policies for the purpose of streamlining the same.

The situation is alarming and therefore it is vital to regulate the attitude and functioning of the builders/developers during the tenure of the redevelopment undertaken by them along with further ensuring that the same does not give rise to any kind of a failure or contravention on their part, of the terms and conditions incorporated in the Agreements entered into by them. Timely payment of the transit compensation is one of the important obligations that the builders/developers are expected to comply with and the failure and/or non-compliance of

which, would leave the residents/ tenants completely stranded having nowhere to go and inflict social injustice upon them by subjecting them to hardship and suffer mental agony coupled with creating a situation where fear and distress is induced among the residents/tenants who are then eventually compelled to lose their faith and confidence in the redevelopment process undertaken by the builders/developers, in its entirety. It would be unfair and unethical to jeopardize the rights of the residents/tenants who have dreamt of residing in their new homes post the successful completion of the redevelopment of their respective buildings, by placing them in a dilemma due to the default or breach on the part of the builders/developers with respect to the performance of their obligations. The said order has been passed in the better interest of the residents/tenants of the buildings/societies going for redevelopment, as it clearly establishes that they cannot be made to face the music of the default or failure of the builders/developers to comply with their responsibility of paying the transit compensation during the period of redevelopment.

6. IMPLICATIONS OF THE ORDER

The said order will help to ensure that the builders/developers do not hinder the terms and conditions incorporated in the Agreements entered into by them for redevelopment purposes, pertaining to the compliance/discharge of their obligation of paying transit compensation to the residents/tenants during the process of redevelopment, by communicating that tolerance shall not be shown towards the builders/developers failing and/or avoiding to discharge their obligations.

The said order shall also make the residents/ tenants gain confidence in the judicial system as it has projected that in matters of redevelopment, the developers' rights hold a secondary position and shall always remain subordinate to the rights of the genuine residents/tenants accompanied with clearly portraying that the rights of the eligible residents/tenants are of utmost concern and the same shall not take a back seat or be compromised at any juncture.