

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1345 OF 2016
IN
FIRST APPEAL STAMP NO.34145 OF 2015**

**M/s. United Builders and ors. : Applicants.
Versus
Parshuram Aloovaity A Bhandari and ors. : Respondents.**

**ALONG WITH
CIVIL APPLICATION NO.2738 OF 2016
IN
FIRST APPEAL NO.1087 OF 2016**

**Supreme Universal Builders and Developers & ors. : Applicants.
Versus
Prashuram Allovaity @ Bhandari and ors. : Respondents.**

**Mr. R D Soni a/w Mr. A R Shaikh for the Applicants in Civil Application
No.1345 of 2016.
Mr. Aniruddha Joshi a/w Mr. Prathamesh Kamat a/w Mr. Nivit Srivastava
i/by Maniar Srivastava Associates for the Applicants in Civil Application
No.2738 of 2016.
Mr. V Y Sanglikar a/w Mr. K N Kandekar for the Respondent No.1 in both
the Civil Applications.**

**CORAM : R. M. SAVANT, J.
DATE : 30th June 2016**

P.C.

1 The above Civil Applications have been filed in the above First Appeals which have been filed by two sets of Defendants i.e. the original Defendant Nos.1 to 3 and the original Defendant Nos.4 to 9. The said First Appeals challenge the same decree dated 09/10/2015. The above First Appeals are admitted today. The Defendant Nos.4 to 9 claim through the Defendant Nos.1 to 3. However, it is their contention that there is no privity of contract

between them and the Plaintiff. In so far as the Defendant Nos.1 to 3 are concerned, it is their case that the Plaintiff has relinquished his right under the contract (Exhibit 21) of which specific performance was sought, the said relinquishment is by virtue of the writing dated 12/01/1995, and that the payment has also been received by the Plaintiff. In so far as the Defendant Nos.1 to 3 are concerned, the said case has not been accepted by the Trial Court which has resulted in the decree being passed against the said Defendant Nos.1 to 3. In so far as the Defendant Nos. 4 to 9 are concerned i.e. the Appellants in First Appeal No.1087 of 2016, the Trial Court has passed the decree against them in view of the fact that they claim through the Defendant Nos. 1 to 3 and have developed the plot of land in question on which the building, in which the Plaintiff was to get the suit flat, has been constructed by them. The Trial Court has observed that they have stepped into the shoes of the Defendant Nos.1 to 3 and therefore are bound to comply with the liabilities of their vendors i.e. the Defendant Nos. 1 to 3. Hence in so far as the decree is concerned, the same has been passed against all the Defendants i.e. two sets of Defendants i.e. the Defendant Nos.1 to 3 and the Defendant Nos. 4 to 9. Since an alternative has been provided by the decree to the Defendants in the matter of paying the value of the flat on the basis of the value as prevailing in the year 1995 to 2000, there is no warrant to stay the decree. If the Defendants are not in a position to provide a flat in the building in question or nearby vicinity, then they are to comply with the alternative as mentioned in the operative part

of the decree. If the Defendants are ready to provide a flat to the Plaintiff, an affidavit to the said effect, mentioning the details of the flat to be filed in this Court within eight weeks. In the event the Defendants are not in a position to provide a flat then the Defendants to deposit the amount in terms of Clause (c) of the operative part of the decree in this Court within eight weeks from date. In the event, either of the two happening i.e. the affidavit being filed or amount being deposited, there would be interim stay of the decree passed by the Trial Court. Both the above Civil Applications to accordingly stand disposed of.

[R.M.SAVANT, J]