

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 826 OF 2016
IN
FIRST APPEAL NO. 628 OF 2016**

M/s. Manav Builders Pvt. Ltd.

... Applicant

vs.

Shriram Shinde & ors.

... Respondents

Mr. Vineet Naik i/by Omkar Kulkarni, Advocate for the applicant.
Mr. Y. E. Momin i/by Manisha B. Gawde, Advocate for respondent no.1.

Mr. S. P. Thorat, Advocate for respondents no.2 and 3.

Coram : Smt. R. P. SondurBaldota, J.

Date : 20th April, 2016.

P.C.

1. The applicant seeks by way of interim relief a direction to respondent no.1, the original plaintiff to hand over possession of Room no.20 in Building no.3, Balaram Street, Mumbai-4 to the applicant for the purpose of it's re-development and for a permanent injunction to restrain respondent no.1 from disposing off or parting with possession of Flat no.65 on the 6th Floor of Siddhesh Jyoti E-wing, Balaram Street, Grant Road, Mumbai-8.

2. Respondent no.1 filed a suit for injunction simplicitor to

restrain the appellant herein from dispossessing him from Room no.20 without following due process of law. According to him, Room no.20 admeasures 780 sq. ft. carpet area and he was entitled to a permanent alternate accommodation of the same area in the re-developed building, re-development of which took place under Section 33(7) of D. C. Rules. Undisputedly, respondent no.1 MHADA had issued a certificate that respondent no.1 was entitled to only 456.79 sq. ft. area in lieu of Room no.20. This certification by MHADA has not been challenged by respondent no.1 till date.

3. The trial Court had refused interim reliefs to respondent no.1. He had therefore preferred Appeal from Order No. 728 of 2011. That appeal was disposed off by the consent order dated 27th April, 2012 permanent alternate accommodation was agreed to be given to respondent no.1 in lieu of Room no.20. The appellant was agreed to be entitled to the permanent alternate accommodation of the area of 759 sq. ft. The appellant was directed to make Flat no.201 situated at 2nd Floor, Siddhesh Jyoti building available to respondent no.1 for the purpose of the occupation in which respondent no.1 was to shift within two weeks from the date of the order and simultaneously vacate Room no.20 in his occupation. It was further directed that the appellant to

transfer the said flat in the name of respondent no.1 free of cost by executing the necessary documents at the expense of the appellant. For taking care of the balance area of the entitlement of respondent no.1, the consent order directed that Flat no.65 on the 6th Floor of Siddhesh Jyoti building would be allotted to respondent no.1 on his payment of Rs.41,56,072/- to the appellant for the additional area on 306.33 sq. ft. There were further directions that respondent no.1 will not part with possession of Flat no.65, expeditious disposal of the suit etc. Later by the order dated 31st August, 2012 the correction as regards calculation of amount of the price of the area of 306.33 sq. ft. was carried out and respondent no.1 was directed to pay amount of Rs.44,79,731/-.

4. The appellant has put respondent no.1 in possession of the two flats in accordance with the consent order and he has paid the amount to the appellant. However, he has failed to hand over possession of old Room no.20 in compliance of the consent order. Mr. Momin, the learned advocate for respondent no.1 seeks to justify the action of respondent no.1 with a complaint that Flat no.65 is without any electricity connection and therefore respondent no.1 is unable to use the same for the purpose of residence.

5. Any complaint as regards supply of electricity to Flat

no.65 needs to be considered independently and handing over of possession of Room no.20 cannot be made conditional to the supply of electricity. Respondent no.1 was to in fact vacate Room no. 20 simultaneous with shifting to Flat no.201 in Siddhesh Jyoti building. In the circumstances, there can be no difficulty in allowing the civil application. Hence, civil application is allowed in terms of prayer clauses (a) and (b). Respondent no.1 shall hand over possession of Room no.20 on or before 10th June, 2016.

[Smt. R. P. SondurBaldota, J.]