

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

**CIVIL APPLICATION NO.805 OF 2017
IN
APPEAL FROM ORDER NO.718 OF 2014**

Money Magnum Constructions ... Applicant

IN THE MATTER OF:

K. Devendra & anr. ... Appellants

Vs.

Terraform Magnum Ltd. & Ors. ... Respondents

Mr.Karl Tamboly with Ms.Swapna Roopavate and Ms.Flora Jain i/b
T.A. Goradia for the Applicant in CAA/805/2017

Mr.Tushar Gujjar i/b Solicis Lex for original appellant in
AO/718/2014

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: SEPTEMBER 18, 2017**

P.C. :

1. This application is moved by the applicant for amendment of the order passed by this Court on 3.12.2014. The learned Counsel for the respondents is present.

2. The learned Counsel for the applicant submits that in the operative portion of the order dated 3.12.2014 passed by this Court, the defendants/respondents i.e., the Developer, were directed to keep 8 flats vacant in Tower A, admeasuring 450 sq.ft.

each and not to part with the possession, create any third party right, title or interest in those 8 flats.

3. The learned Counsel for the original defendant submits that the appellants in Appeal from Order No.718 of 2014 had entered into a compromise with the original defendants and they have accepted the amount against waiving off their claim in the flats which is in Suit No.708 of 2013. He submits that the total area of the suit flats which was booked by the 5 appellants or the original plaintiffs in different suits was 3288 sq.ft. carpet area and as per the order, the total carpet area of the 8 flats which was kept to be reserved was 3600 sq.ft. The learned Counsel submits that as the plaintiffs in Special Civil Suit No.708 of 2013 relinquished their rights against a flat admeasuring 744 sq.ft., the said area if reduced from carpet area of 3288 sq.ft, remains 2544 sq.ft carpet area. The area of the six flats (450 sq.ft. each) which was directed to be reserved, thus, comes to 2700 sq.ft. Hence, the area of the flats which was booked by four other plaintiffs and the respondents is more than the booked flats. The learned Counsel, therefore, seeks that the order passed by this Court in respect of 8 flats be modified. Thus, the original respondents in all the Appeals from

Order and the original defendants be allowed to reserve and keep only 6 flats instead of 8 flats and injunction in respect of 2 flats out of 8 flats be vacated.

4. The learned Counsel for the respondents herein i.e., the original appellants/plaintiffs in Special Civil Suit No.707 of 2013, 709 of 2013, 710 of 2013 and 711 of 2013 submits that the details of the six flats, which are reserved, are not furnished till today. In response, the learned Counsel for the applicants tenders an affidavit in reply in the Court today. The same is taken on record and marked 'exhibit 1'. The said affidavit in reply discloses in para 6 the numbers of the 8 flats.

5. Heard. The applicants are allowed to dispose of flats at serial No.1 and serial No.8 in para 6 of the affidavit in reply i.e., flat Nos.402 and 3006 respectively admeasuring 450 sq.ft. each. In respect of any other further such orders seeking modification as to the flat numbers, sale of flats or reservation of a particular flat, or any other claim that may be made in future by either of the parties, such claims shall be made before the trial Court and the trial Court hereafter shall settle all those claims. All rights and contentions of both the parties on which the 6 flats are to be reserved, are kept

open, if at all some other choice is made by either of the parties besides para 6 of the affidavit in reply.

6. Civil Application is disposed of accordingly.

MRIDULA BHATKAR, J.)