

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO 333 OF 2017

1. Naresh Kumar Mohan Singh Maru)
Residing at A/502, 5th Floor, Eastern Court,)
Vile Parle (E), Mumbai – 400 057.)
2.Prashant N Chhajer)
Residing at Glen Eagle Building, 6th floor,)
N. S. Road No. 1 J. V. P. D. Scheme,)
Juhu, Vile Parle (W), Mumbai – 400 049.)
3.Kirti Shantilal Jain (H.U.F.))
through its Karta viz: Kirti Shantilal Jain)
Residing at 9, Neeta Building, 3rd Floor, 90,)
Marine Drive, Mumbai – 400 002.
).....Petitioners

Versus

1. Rahul Vilas Nahata)
Residing at Uttarayan Clue Building,)
Flat No. 402, 4th Floor, Ashok Nagar,)
Shivaji Nagar, Pune – 411 007.)
2.Rohan Vijay Nahata)
Residing at 311, B, Wing, Pride Silicon Plaza,)
Senapati Bapat Marg, Near Chatursingh)
Temple, Shivaji Nagar, Pune – 411016.)
And also
212/213, Yashodhan Building,)
Opp. CCI Club, Dinsha Vachha Road,)
Churchgate, Mumbai – 400 020.)

3.Ashwin Arun Adsul)
Residing at A - 701, Water Front Society,)
Kalyani Nagar, Next to Gold Gym,)
Pune - 411 006.)
4. Ratnamala Ratikant Galinde)
Residing at Flat No. 74A, Building, No. C-5)
Prince Town Housing Society,)
Kalyani Nagar, Pune - 411 006.)
5. Ashish Arun Adsul)
Residing at Flat No. 503, Salvador Fortiza,)
Kalyani Nagar, Pune - 411 006.)
6. M/s Skywards Ashtika Lifestyle)
A partnership firm, having its registered)
Office at 109, A Wing First Floor,)
Pride Silicon Plaza, Senapati Bapat Marg,)
Near Chatursingh Temple, Shivaji Nagar,)
Pune - 411 016.)
And also)
311, B, Wing, Pride Silicon Plaza, 3RD Floor,)
Senapati Bapat Marg, Near Chatursingh)
Temple, Shivaji Nagar, Pune - 411016.
)..Respondents

CONSENT TERMS

Coram : K. R. Shriram J.

Date : 5th October 2017

1. The Respondents agree and declare that they have not alienated, encumbered, dealt with, parted with possession of or created third party rights in any manner whatsoever in the Shops and Office units

as more particularly set out hereinbelow in the said project viz. Centropolis by Skywards Ashthika Lifestyle, situated at Survey No. 1559 to 1562, Final Plot no. 71, Village Bhamburda (Shivaji Nagar), Taluka Haveli, District Pune, (“the said project”) and undertake not to do so hereafter.

Shop/office No.	Floor	Built up/ Saleable Area of the Shop/Unit in Square Feet	Carpet Area of the Shop/Unit in Square Feet
Shop no. 3	Ground	560	373
Office102	1	426	294
Office 202	2	516	356
Office 203	2	442	305
Office205	2	1375	948
Office303	3	442	305
Office 404	4	418	288
Office503	5	442	305
Office504	5	418	288
	TOTAL	5039.00	3462.00

2. Simultaneously with the execution hereof, the Respondents have executed and handed over to the Petitioners allotment letters allotting and transferring the aforesaid shops and office units to the Petitioners. The said offices and shop are being allotted to the Petitioners in lieu of the Petitioners share and investment from 2012 onwards in the Respondent No. 6 firm. The Respondents further agree and undertake to discharge all loans and liabilities statutory, governmental or otherwise that may have been created or are outstanding in respect of the said shops and office units, so as to enable the Respondents to transfer a clear and marketable title of the said shops and office units to the Petitioners. The Respondents agree and undertake that the Petitioner shall not be liable to

bear any expenses of whatsoever nature, whether towards MSEB, clubhouse, infrastructure, water connection, Development charges, common amenities, formation of co-operative society or otherwise in respect of the aforesaid shops and units and the aforesaid shops and office units along with 5 car parking spaces will be allotted by the Respondents to the Petitioners without any extra cost. It is however agreed that it is not the liability of Respondents to pay Stamp duty and registration charges applicable on any agreement to be executed for allotment of the aforesaid shops and office units to the Petitioners or their nominees, including G.S.T. or any other Government charges applicable at that time.

3. The Respondents agree and undertake to take steps to renew and/or extend the joint development agreement entered into by the Respondent No. 6 firm with the owners of the said plot within 30 days from the date hereof. The Respondents further agree and undertake to obtain the IOD for the said project within 90 days from filing of these Consent Terms before Hon'ble High Court Bombay . The Respondents agree and undertake to obtain commencement certificate for the said project within 100 days from the date of filing of the present Consent Terms. The Respondents further agree and undertake to obtain occupation certificate for the project viz. Centropolis by Skywards Ashthika Lifestyle within the stipulated time as certified in the registration application to be made under RERA viz: within 21 month from the date of filing of the present

Consent Terms. Immediately, upon obtaining occupation certificate, the Respondents agree and undertake to put either the Petitioners or the purchasers of the shops/office units from the Petitioners in possession of the said shops and units as more particularly set out in para 1 hereinabove.

4. The Petitioners shall have a charge upon the said shops and units as mentioned in paragraph 1 hereinabove. The Respondents shall help to sell and dispose of the said shops and units described in paragraph 1 hereinabove for and on behalf of the Petitioners. The proceeds of the said sale of shops and units described in paragraph 1 hereinabove shall be collected by the Respondents in the name of the Petitioners alone and no part of such consideration shall be received directly or retained by the Respondents. The said shops and units to be sold by the Respondents in terms aforesaid, shall be sold at a price not less than Rs.40000/- (Rupees forty thousand) per square foot carpet area for the shops and Rs.18000/- (Rupees Eighteen thousand)per square foot carpet area for offices or at any lesser price mutually agreed in writing by the Parties. In the event any amount is realized over and above the aforesaid price, the same shall belong to the Petitioners alone. Upon realisation of the entire amount in respect of a particular shop/office unit, the Petitioners shall release their charge over the said shop/office unit. Upon the Petitioners releasing their charge over the respective shop/office unit, the Respondents shall be at liberty to enter into agreement, as specified

under Maharashtra Real Estate (Regulation And Development) Act, 2016 read with Maharashtra Rules 2017 and Maharashtra Regulations, 2017 (RERA) with the purchaser.

5. Respondents shall have right to alienate, encumber, deal with, part with possession of or create third party rights in all other shops/office units in the said project excluding the shops/office units allotted to the Petitioners under clauses 1 and 2 herein. Moreover if any purchaser wants to purchase the whole building, the Petitioners shall cooperate with the Respondents to facilitate the sale, provided that any shop/office unit is not sold by that time by the Petitioners.
6. Notwithstanding the obligation of the Respondents to assist in selling and disposing of the said shops and office units set out paragraph 1 hereinabove on behalf of the Petitioners, the Petitioners shall be entitled to sell and dispose of the said shops and office units on their own. In such event, the Petitioners alone shall be entitled to the proceeds thereof. Upon intimation by the Petitioners, the Respondents agree and undertake to enter into necessary agreements with the said purchasers of shops and office units directly from the Petitioners, as specified under the Maharashtra Real Estate (Regulation And Development) Act, 2016 read with Maharashtra Rules 2017 and Maharashtra Regulations, 2017 (RERA) as aforesaid. Respondents also agree to extend full co-operation and to sign all such documents and agreements and register the same in connection with the sale of the said shops/office units directly by the

Petitioners. Stamp duty and registration charges in respect of such agreements shall be borne by the Petitioners or their nominees.

7. In the event of the Respondents failing to comply with any of the obligations mentioned in para 3 hereinabove by the stipulated dates or failing to execute or register the agreements as set out in para 6 herein above the amount of Rs. 5,01,00,000/- (Rupees Five crores one lakh only) shall become immediately due and payable by the Respondents to the Petitioners together with interest at 18% per annum from the date of these Consent Terms till payment. In order to secure the amount of Rs. 5,01,00,000/- (Rupees Five crores one lakh only) which may become due and payable to the Petitioners on the Respondents defaulting in their obligation under this clause, the Respondents have handed over to the Petitioners post datedcheques for an amount of Rs. 5,01,00,000/- (Rupees Five Crores one lakh only) as under:

Chq. No.	Bank/Br	Date	Amount.	Favouring
051814	Axis Bank Ltd Prabhat Road, Pune	01-07-2019	1,67,00,000/-	Petitioner No. 1
051815	Axis Bank Ltd Prabhat Road, Pune	01-07-2019	1,67,00,000/-	Petitioner No. 2
051816	Axis Bank Ltd Prabhat Road, Pune	01-07-2019	1,67,00,000/-	Petitioner No. 3

The Petitioners shall be entitled to deposit the said cheques, without recourse to the Respondents, on the occurrence of any event of default as stipulated in para 3 or 6 hereinabove, but not otherwise. In the event of the Respondents complying with their obligations under para 3 or 6 hereinabove, the Petitioners shall return the said cheques to the Respondents.

8. It is further agreed between the parties that if the Respondents default in completing the project within 21 months from the date of these Consent Terms or delay the project, the Respondents shall be also liable for RERA penalties, procedures and prosecution as per the provision of the RERA act.
9. On and from execution hereof and subject to the terms hereof, the Petitioners shall be deemed to have retired from the said firm viz: Skyward Ashthika Life Style and shall not be liable to any third parties for any actions on the part of the remaining partners of the said firm. The Parties agree and undertake to execute necessary retirement deed and register the same with the concerned Registrar of Firms within seven days from the execution hereof. The Respondents shall not enter the name of the Petitioners as promoters in any application for registration of the project before the RERA authorities and Respondents alone shall be deemed to be promoters in respect of the project under RERA. The Respondents agree and undertake to apply for registration under RERA within 45 days from the date of filing of these Consent Terms.

10. Respondents shall be entitled to avail loan from any Bank for completing the said project without in any way charging, mortgaging or encumbering the shops/offices allotted to Petitioners as set out in para 1. Respondents agree and undertake to indemnify the Petitioners from any claims, loan/govt. liabilities etc. of any nature whatsoever that may be made by any third parties including shops/office units purchasers and creditors or any government, semi-government, local or statutory authorities in respect of any obligations to such flat shop/office unit purchasers or creditors against the firm of Skyward Ashthika Life Style or any of the partners of the firm and the Respondents alone will be liable to settle all such claims, demands, loans, govt.liabilities etc.It is further clarified that on execution of these Consent Terms, the Petitioners will be absolved of all liabilities present and future in connection with the partnership firm. Individual income tax liability shall be borne by the respective parties.
11. In the event, the Respondents 1 and 2 retire as partners of the partnership firm, the Respondents 1 and 2 shall be relieved of their obligations under these Consent Terms. It is clarified that in such event, the obligations of the Respondents 3 to 6 shall subsist and shall not stand diluted in any manner whatsoever.
12. Upon fulfillment of all obligations under these Consent Terms, parties shall have no claims against each other.

13. The parties shall bear their own costs of the present proceedings.

Petitioner No. 1	
Petitioner No. 2	
Petitioner No. 3	Advocate for the Petitioners
Respondent No. 1	
Respondent No. 2	
Respondent No. 3	
Respondent No. 4 through her Constituted Attorney Respondent No. 3 .	
Respondent No. 5	
Respondent No. 6	
	Advocate for Respondent 3 to 6

