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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL SUIT NO. 307 OF 2016
WITH
NOTICE OF MOTION NO. 2 OF 2017**

M/s. Metro Associates & Another ...Plaintiffs
Versus
Gomes Apartments Cooperative Housing Society ...Defendants
Limited & Another

Mr. Dilip Rai, *i/b Mr. Ajay Rao, for the Plaintiffs.*
Mr. Yogendra M. Kanchan, *for Defendant No. 1.*
Mr. R. Shah, *i/b Lex Conseiller, for Defendant No. 2.*

CORAM: G.S. PATEL, J
DATED: 10th January 2017

PC:-

1. The 1st Defendant is the Society which has appointed the Plaintiffs as the Developer. All other members except the 2nd Defendant have agreed to the development. They have all vacated. The entire redevelopment is held up because of the approach and attitude of the 2nd Defendant and her family members.
2. I have heard the grievances and objections being raised. They are entirely without substance. The 2nd Defendant claims that there

are violations of the Government Directive dated 3rd January 2009 issued under Section 79(A) of the Maharashtra Cooperative Societies Act. This submission can have no possible merit. In any case, I have considered this in a more full-fledged manner in *Maya Developers v Neelam R Thakkar & Ors.*¹

3. The other grievance made is that in the original allotment, the 2nd Defendant was promised Flat No. 804 on the 8th floor; then Flat No. 604 on the 6th floor and is now being given only Flat No. 104 on the 1st floor. There is no dispute that all these apartments are of 633 square feet in lieu of the 505 square feet area presently occupied by the 2nd Defendant. The Plaintiffs agree that there was an allotment of Flat No. 604 on the 6th floor but that was on the basis that the 2nd Defendant had expressed a desire to purchase an adjacent unit so as to get slightly larger area and this was possible only on the 6th floor. The 2nd Defendant now does not want to purchase that additional area. It is not for the 2nd Defendant now to raise these demands. The allotment of Flat No. 104 has been made by the Society. It is not possible to accept that one single solitary member can hold up the redevelopment project in this fashion. All other benefits as are available to all other members including for transit accommodation or compensation in lieu thereof from the date of handing over possession till the date of possession of the flat in the redeveloped building, corpus amount etc. will be exactly applicable to the 2nd Defendant as well.

1 Notice of Motion (L) No.834 of 2015 in Suit No. 435 of 2015 decided on 13th July 2016. I held *inter alia* that substantial compliance with the provisions of this directive is sufficient.

4. The Constituted Attorney of the 2nd Defendant, who is her son, as also her husband are both present in Court. On instructions from both of them, a statement is made that the 2nd Defendant and all her family members will vacate Flat No. A2 on the ground floor of Gomes Apartments no later than by 5.00 p.m. on 27th January 2017. The Court Receiver, High Court, Mumbai will depute his representative to visit the site to ensure that peaceful possession is taken and handed over to the Society. On or before 1st February 2017, the Society will hand over possession of this sole remaining residential unit to the Plaintiffs.

5. This order is passed by consent and in the presence of the Constituted Attorney of the 2nd Defendant, as also her husband.

6. In view of this, the Suit is allowed to be withdrawn. Liberty to the Plaintiffs to apply.

7. Refund of court fee, if any, in accordance with the Rules.

8. The Notice of Motion is infructuous and is disposed of accordingly.

9. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)