IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 1279 OF 2018
IN
SUIT (L) NO. 175 OF 2018

Housing Development & Infrastructure Limited … Applicant
(Orig. Deft. No. 3)

In the matter of

Ekta Everglade Homes Pvt. Ltd. … Plaintiff

Vs.

MHADA and others …Defendants

WITH
SUIT (L) NO.176 OF 2018

Kiyana Ventures LLP … Plaintiff
versus
Maharashtra Housing and Area Development
Authority and Ors. … Defendants

WITH
SUIT (L) NO.177 OF 2018

KBJ Developers Pvt Ltd. … Plaintiff
versus
Maharashtra Housing and Area Development
Authority and Ors. … Defendants

WITH
SUIT (L) NO.178 OF 2018

RNA NG Infrastructure and Development
Pvt. Ltd. … Plaintiff
versus
Maharashtra Housing and Area Development
Authority and Ors. … Defendants

WITH
SUIT (L) NO.248 OF 2018

Pinky Skyscrapers Real Estate LLP … Plaintiff
versus
Maharashtra Housing and Area Development

Authority and Ors. ... Defendants

WITH

SUIT (L) NO.263 OF 2018

First Infra Pvt. Ltd. ... Plaintiff

versus

Maharashtra Housing and Area Development Authority and Ors. ... Defendants

WITH

SUIT (L) NO.265 OF 2018

Bhoomi Shaswat Estate Pvt. Ltd. ... Plaintiff

versus

Maharashtra Housing and Area Development Authority and Ors. ... Defendants

WITH

SUIT (L) NO.326 OF 2018

Gold Finer Realty Investors Pvt. Ltd. ... Plaintiff

versus

Maharashtra Housing and Area Development Authority and Ors. ... Defendants

Mr. Nikhil Sakhardande with Mr. Farhan Dubhash I/by Mr. Devang Lakhotia, for Plaintiff in Suit (L) No.265 of 2018.

Mr. Vibhav Krishna I/by M/s. Juris Consillis, for Plaintiff in Suit (L) No.326 of 2018.

Mr. Devang Lakhotia, for Plaitniff in Suit (L) No.263 of 2018.

Mr. D.D.Madon, Sr. Advocate with Mr. Aditya Shiralkar I/by M/s. Devang Lakhotia, for Plaintiff in Suit (L) No.178 of 2018.

Mr. Tahir Prande, for Plaintiff in Suit (L) No.349 of 2018.

Mr. Pravin Samdani, Senior Advocate with Mr. Nimay Dave, Mr. Amogh Singh, Mr. Dhawal Mehta, Ms. Jasmine Sheth, Mr. Kaidokht Vasania I/by M/s. Wadia Ghandy and Co./, for Plaintiffs In Suit (L) No.177 of 2018.

Mr. Darius Khambhata, Senior Advocate with Mr. Aditya Mehta, Ms. Jasmine Sheth, Mr. Kaidokht Vasania, Mr. Abir Patel I/by M/s. Wadia Ghandy and Co., for Plaintiff in Suit (L) No.176 of 2018.

Mr. Virag Tulzapurkar, Senior Advocate with Ms. Sowmya Srikrishna, Mr. Dhawal Mehta, Ms. Jasmine Sheth, Mr. Abir Patel Mr. Kaidokht Vasania I/by M/s. Wadia Ghandy and Co./, for Plaintiffs In Suit (L) No.175 of 2018.

Mr. Soura Subha Ghosh with Mr. Samarth Chowdhary I/by M/s.

Hariani and Co., for Plaintiff in Suit (L) No.248 of 2018.
Mr. S.U.Kamdar, Senior Advocate I/by Ms. Sharmila Deshmukh, for Defendant No.1.
Mr. Kamran Shaikh, for Defendant No.2.
Mr. Aspi Chinoy, Senior Advocate with Mr. Shyam Mehta, Senior Advocate with Mr. Ashish Kamat, Mr. Subir Kumar, Mr. Sahil Ganghy, Mr. Sagar Shetty I/by Mr. Subir Kumar, for Defendant No.3 in the above Suits.
Mr. Simil Purohit with Mr. Farhan Khan, Mr. Manish Doshi I/by M/s. Vimadlal and Co., for Petitioner in CONP No.16 of 2018.
Mr. Vishwanath Patil I/by Mr. Sameer Khedekar, for Defendant No.4

CORAM: S.J. KATHAWALLA, J.

DATE: 6th AUGUST, 2018

JUDGMENT :-

1. The above Notice of Motion is filed by Housing Development and Infrastructure Limited ("HDIL") – Applicant (Original Defendant No.3). Guruashish Constructions Private Limited ("GACPL") is Defendant No.2 in the above Suit and is a wholly owned subsidiary of HDIL. By this Notice of Motion, HDIL is seeking a clarificatory order i.e. for confirmation of HDIL's action in transferring/alienating property bearing Survey No.263-A, CTS No.194 of Village Ghatkopar at Pant Nagar, Ghatkopar (E), Mumbai ("Ghatkopar Property") in favour of Adani Infrastructures and Developers Pvt. Ltd. ("AIDPL").

2. The brief facts leading to the filing of the above Notice of Motion, are as under :

2.1 By and under a Development Agreement dated 10th April, 2008, read with Deed of Confirmation and Modification dated 9th November, 2011 ("said Agreements"), GACPL/Defendant No.2 was granted development rights by Maharashtra Housing and Area Development Authority ("MHADA") i.e. Defendant No. 1 and Goregaon Siddharth Nagar Sahakari Griha Nirman Sanstha Limited (Defendant No.4), with respect to land admeasuring 47.8 acres situate and lying at Siddharth Nagar, Goregaon (West), Tal. Borivli, District Mumbai Suburban ("larger land") on the terms and conditions more specifically provided therein, including that GACPL was required to provide certain area for rehabilitation of tenants and/or members of Defendant No. 4 (rehab component) as well as area duly constructed admeasuring 1,11,488.38 sq. mtrs,. (built up area) to MHADA (MHADA component).

2.2 Pursuant to its agreement with MHADA, GACPL (Defendant No.2) had sold and assigned specified parts of its free sale development rights, inter alia, to the Plaintiff in the above Suit (L) No. 175 of 2018 and also to the Plaintiffs in Suit No. 348 of 2017, Suit (L) Nos. 176 of 2018, 177 of 2018 and 178 of 2018. The first Suit which was filed against GACPL was by some of the flat purchasers of another portion of the larger land (being Meadows Project) being developed by GACPL. The Plaintiff/s had moved this Court in Suit No. 348 of 2017 seeking reliefs as more particularly prayed therein (Meadows Suit). In the said Meadows Suit, an interim order dated 20th March, 2017 (Meadow's Order) came to be passed by this Court, wherein various statements, undertakings and representations of the Director of GACPL and Mr. Sarang Wadhawan, Managing Director of HDIL were accepted by this Court on behalf of GACPL and HDIL, including to fulfil all the obligations towards MHADA with respect to the larger land as set out therein.

2.3 On the alleged failure of GACPL to comply with its obligation to complete the construction of the MHADA and rehab component, MHADA issued a termination notice dated 12th January, 2018.

2.4 Immediately after the purported termination by MHADA, the above Suit was filed by the Plaintiff and simultaneously Suit (L) Nos. 176, 177 and 178 of 2018 were filed by the Plaintiffs therein impugning the termination notice dated 12th January, 2018, issued by MHADA to GACPL.

2.5 By an Additional Affidavit dated 3rd April, 2018 filed by HDIL in the captioned Suit, HDIL, with a view to demonstrate its bonafides to this Court, submitted a proposal to complete the MHADA and rehab component ("said proposal"). Admittedly, HDIL made the said proposal notwithstanding that an application for initiating Corporate Insolvency Resolution Process against GACPL had already been admitted by the National Company Law Tribunal, ("NCLT"), Mumbai

Bench vide its Order dated 24th July, 2017.

2.6 This Court in the above Suit passed an Order dated 24th April, 2018, which reads thus :

> *"HDIL shall file an affidavit setting out its immovable properties/assets (enumbered and unencumbered) and a copy of the same shall be handed over to the Advocates for the parties on or before 26th April, 2018.* ***The said assets shall not be disposed of by HDIL except in the usual course of business…."*****.**

2.7 M/s. Agnel Developers ("Agnel") is a Partnership/Proprietory concern of HDIL- Defendant No.3. Pursuant to a Development Agreement/LOC, Agnel Developers completed its rehab construction/obligation and is accordingly entitled to free sale FSI of 14511 sq. mtrs. on 9000 sq. mtrs. of land. HDIL had taken a loan facility from the Jammu & Kashmir Bank ("J & K Bank") and had mortgaged this free sale rights as security to J & K Bank. J & K Bank had recalled this loan and initiated proceedings before the NCLT claiming a sum of Rs. 461 crores from HDIL. J & K Bank has however indicated its willingness to consider a One Time Settlement (OTS) of Rs. 330 crores. HDIL therefore decided to induct AIDPL as a Partner in Agnel Developers against receipt of a consideration of Rs. 291 crores which would be paid directly to J & K Bank. AIDPL/HDIL gave public notice of the proposed transaction. The Plaintiff herein i.e.

Ekta Everglade Homes Pvt. Ltd., had responded to the public notice and objected to the transaction by contending that the same was not in the usual course of business, and was accordingly prohibited by the restraint Order dated 24th April, 2018 passed by this Court. AIDPL had accordingly declined to proceed with the transaction, without the Court's approval/clarification that the transaction was not restrained.

2.8 It is under these circumstances that HDIL has filed the above Notice of Motion principally seeking by prayer clause (a) therein, a clarification that the Order dated 24th April, 2018, does not prohibit HDIL from entering into the transaction (induction of AIDPL as a Partner) qua the free sale component/development rights in the property at Pant Nagar, Ghatkopar (East). HDIL has, by prayer clause (c) thereof, also sought a clarification that any future transaction with any prospective purchaser for any of its properties for the purpose of repayment of its corporate debt at arms length and at market value, is in the usual course of its business and not affected by the restraint order.

3. Mr. Aspi Chinoy, learned Senior Advocate appearing for HDIL, submitted as follows :

3.1 That the Development Agreement dated 26th October, 2004, had been executed between seven Economically Weaker Section

(EWS) Societies and Agnel under which Agnel Developers was to construct rehab components for the existing occupiers under DCR 33 (5) at the Ghatkopar Property, and was entitled to use and consume the balance FSI of whatsoever nature and sell the balance constructed free sale area without any let or hindrance. Agnel was then a Partnership Firm and the Development Agreement stipulated that it would cover & include "the present and future Partner or Partners for the time being". After exit of other partners, HDIL is presently the Sole Proprietor of Agnel.

3.2 That Agnel has completed the construction of the rehab components and has secured the OC for the same from MHADA. Agnel is accordingly entitled to develop 14,511.03 sq. mtrs. of FSI to be consumed on the free sale land area approximately admeasuring 9000 sq. Mtrs., and would also be entitled to seek additional FSI from MHADA against payment of premium etc.

3.3 That the said development rights in respect of the free sale areas/FSI have been mortgaged by AIDPL/HDIL to the J & K Bank. The J & K Bank has initiated proceedings against HDIL in the NCLT, Mumbai Bench, claiming a sum of Rs. 461 crores. J & K Bank is however, willing to consider an OTS which requires immediate payment of Rs. 300 crores. To make payment to J & K Bank, HDIL proposes to transfer its said development rights to AIDPL (by inducting as a 99 per cent Partner in AIDPL) for a consideration of Rs. 291 crores which will be paid directly by AIDPL to J & K Bank which, as stated above, holds the mortgage over the said development rights. HDIL undertakes to pay the balance amount to J & K Bank. The said price is the best price that HDIL has managed to get for the said sale. To establish its bona fides, HDIL has repeatedly offered to transfer the same to the Plaintiffs or any other party if they are willing to immediately pay a substantial increased price of at least 5/10 crores.

3.4 That the said transaction is bona fide and is in the usual course of business and for the purpose of paying the claims/debt of J & K Bank which in fact holds the mortgage over the development rights, and has instituted proceedings against HDIL before the NCLT, Mumbai Bench. If the transaction does not go through, HDIL will have to meet the increased full liability of 461 crores and risk proceedings being admitted against it in the NCLT.

3.5 The Notice of Motion taken out by HDIL, be therefore allowed.

4. Mr. Kamdar, learned Senior Advocate appearing for MHADA, has made the following submissions:

4.1 That the reliance sought in the above Notice of Motion are in breach of the contractual arrangement contained in the Lease Deed and the Development Agreement executed in respect of the subject plot.

4.2 That HDIL has no right to mortgage the subject land, or to enter into a transaction in respect of the subject land.

4.3 That GACPL without fulfilling its obligations to hand over constructed rehab portion and the MHADA component, illegally sold the subject land to third parties (the Plaintiffs herein) and has misappropriated a huge amount of Rs. 1100 crores . The said GACPL has thereafter conveniently submitted itself to the insolvency proceedings initiated by Union Bank and is enjoying the moratorium thereby stalling its liabilities.

4.4 That J & K Bank has now initiated insolvency proceedings against HDIL. To prevent the insolvency of HDIL, HDIL has made the present application to enable it to generate funds for repayment of the loan taken from J & K Bank. However, HDIL, who seeks to benefit from preventing insolvency proceedings, failed to take any pro-active steps in respect of its subsidiary GACPL, when the latter was facing insolvency proceedings. The undertaking given to this Court by HDIL and reiterated in the Affidavit filed by it, has not been complied with. In view of such conduct of HDIL, HDIL is not entitled to any relief. The Order dated 24th April, 2018, prevents HDIL from disposing of its assets except in the usual course of business.

5. The submissions made by the learned Senior Advocates

appearing for the Plaintiffs in Suit (L) No. 175 of 2018, Suit (L) No. 176 of 2018, Suit (L) No. 177 of 2018 and Suit (L) No. 178 of 2018 are more or less the same, and the same are summarised hereunder:

5.1 That the said J & K Bank has not filed proceedings for enforcement of its mortgage over the Ghatkopar property. Therefore, HDIL may very well pay the outstanding loan to the Bank out of its other sources and need not sell the development rights to the Ghatkopar property for the same.

5.2 That HDIL has claimed in paragraph 15 of its Rejoinder Affidavit dated 12th June, 2018, that HDIL has sufficient assets to fulfil its obligations with respect to the development of the MHADA and rehab components. This being the position, there is no need to dispose of the Ghatkopar property.

5.3 That the security by way of personal guarantees of the Directors of HDIL has been created in favour of J & K Bank. The Directors of HDIL therefore ought to take the responsibility and pay the outstanding loan amount to the said Bank. The proposed sale of development rights of the said property is nothing but an attempt to protect and insulate the Directors of HDIL.

5.4 That GACPL ought to have completed the development of the MHADA component and the rehab component under the tripartite Agreement dated 10th April, 2008, read with Deed of Confirmation and Modification dated 9th November,2011. However, it failed to do so and vide Order dated 24th July, 2017, passed by NCLT, Mumbai Bench, an order of moratorium has been passed in respect of GACPL and Interim Resolution Professional in respect thereto is also appointed; in view thereof HDIL has taken up the responsibility of completion of development of the MHADA component and the rehab component. This is evident from the Affidavit filed by HDIL dated 3rd April, 2018, wherein it has put a proposal to complete the development of the MHADA component and the rehab component; that HDIL has also given an undertaking to this Court in the aforesaid terms in the Meadows Suit, which undertaking has been recorded by its Order dated 20th March, 2017.

5.5 That it is for these reasons that HDIL has been directed by Orders dated 14th March, 2018 and 4th April, 2018, to file details of HDIL's fixed assets, as well as in a sealed cover also provide the details of the assets of the HDIL's Directors, with a direction to HDIL not to dispose of its assets except in the ordinary course of business. The intention was to ensure that HDIL does not dissipate its assets and thus is not in a position to fulfil the construction obligation so intended to be undertaken.

5.6 That HDIL cannot be allowed to fritter away its assets, as substantial assets will be required to be available to ensure flow of funds and completion of the aforesaid obligations.

5.7 That assuming that the said property is required to be sold and it is in the interest of all concerned viz. the Bank, the Plaintiffs, HDIL and MHADA, the said property be sold at the best possible price.

5.8 That the property cannot be permitted to be sold to AIDPL, since HDIL has failed to establish the basis of the purchase price fixed at Rs. 291 crores.

5.9 That the best possible price can only be obtained by public auction of the said property and not by private sale.

5.10 That prayer clauses (a) and (b) should be rejected and prayer clause (c) is too wide and general to be allowed.

5.11 That copies of the affidavits of disclosure have not been provided to any parties to the proceedings but is kept in a sealed cover. If HDIL's assurance of having sufficient assets turns out to be false, then the Plaintiffs will be required to seek further reliefs from this Court as well as adopt appropriate proceedings to safeguard its interest.

5.12 That it is HDIL's intention to alienate all its assets.

5.13 That if the Court is inclined to permit the transaction to go through, the Court should direct HDIL as well as its Directors in charge, who stood guarantors in the loan transaction with the said Bank, to undertake and furnish adequate unencumbered security at least to the extent of Rs. 291 crores, for the purpose of funding the performance of their undertakings in respect of the Siddharth Nagar Project.

5.14 That the Ghatkopar property was to be developed under a MHADA lay out and it could never be in the ordinary course of business to sell undeveloped portion of MHADA property to repay the debt purportedly secured. The sale of rehab component by HDIL to AIDPL is being made with a view to clear outstanding debts owed by HDIL to J & K Bank and such a transaction can never be said to be in the usual course of business.

6. I have considered the submissions advanced by the learned Senior Advocates appearing on behalf of HDIL, MHADA and the Plaintiffs in the above Suits.

7. Admittedly, by and under a Development Agreement dated 10th April, 2008, read with Deed of Confirmation and Modification dated 9th November, 2011, GACPL-Defendant No.2, was granted development rights by MHADA i.e. Defendant No. 1 and Defendant No. 4 with respect to land admeasuring 47.8 acres, situate and lying at Siddharth Nagar, Goregaon (West) i.e. larger land, on terms and conditions provided therein. Under the said Agreement, GACPL

was required to provide certain area for rehabilitation of tenants and/or members (rehab component) as well as MHADA component. Thereafter by and under various Development Agreements, GACPL granted development rights to several developers in respect of various portions of land on the larger property to develop the free sale component. Suit No. 348 of 2017 was filed by some of the flat purchasers (Meadows Suit) and in an interim Order dated 20th March, 2017 passed by this Court in the said Meadows Suit, various statements, undertakings and representations of Directors of GACPL and Mr. Sarang Wadhawan, and Vice-Chairman and Managing Director of HDIL were accepted by this Court. However, soon thereafter an application was filed before the NCLT, Mumbai Bench against GACPL, which was admitted by an Order dated 24th July, 2017, and an order of moratorium was passed. GACPL failed to comply with the terms and conditions as agreed with MHADA. On failure of GACPL to comply with its obligation to complete the construction of MHADA and the rehab component, MHADA issued a termination notice dated 12th January, 2018. According to MHADA, the Agreements executed between GACPL and the Plaintiffs in the above Suits are illegal.

8. The Plaintiffs filed the above Suits before this Court impugning the termination notice dated 12th January, 2018. At the ad-interim

stage, the Senior Advocates appearing for the Plaintiffs in the above Suits submitted that MHADA cannot terminate the Agreement with GACPL since the same will cause grave harm, loss and damage to the Plaintiffs and MHADA. It was submitted on behalf of MHADA, that GACPL was not entitled in law to enter into any such Agreements with the Plaintiffs and the termination notice was valid. However, the Plaintiffs in the above Suits as well as MHADA agreed, that in view of the undertakings given by Shri Wadhawan in the Meadows Suit, HDIL, which is a holding Company of GACPL, is responsible for the misdeeds of GACPL.

9. Before hearing the parties and the Advocates at length, this Court, therefore, directed HDIL to disclose its assets and thereafter also passed an ad-interim order that the said assets shall not be disposed of by HDIL, except in the usual course of business.

10. The circumstances in which the present application is made by HDIL is already set out hereinabove and need not be repeated. It is an admitted fact that the Ghatkopar property is owned by Agnel/HDIL. It is also an admitted fact that the said Ghatkopar property is in no way concerned with the Siddharth Nagar, Goregaon (W) property, and consequently is not the subject matter of Meadows Suit or any of the above Suits filed by the Plaintiffs. The contention of the Plaintiffs is only restricted to the fact that HDIL

has given certain undertakings to complete the Siddharth Nagar, Goregaon (W) project and therefore HDIL was restrained by this Court from disposing of its assets, except in normal course of business and that HDIL is now disposing of the Ghatkopar property, which disposal is not in the normal course of business, and because of such sale, HDIL will not be able to comply with the undertakings given to the Court with regard to development of the Siddharth Nagar, Goregaon (W) property.

11. HDIL is in the business of dealing in and developing immovable properties and is presently involved in numerous projects, and for its projects has taken loans and facilities from diverse Banks, and has mortgaged such properties to such Banks. The buying and selling of properties, FSI development rights, flats/units built on the same, including for the purpose of paying of its loans to the Banks would therefore in my view, amount to disposal of property in the usual course of business. The transaction between Angel and AIDPL is accordingly not affected by the restraint order.

12. HDIL has taken a loan facility from J & K Bank and has mortgaged the free sale rights as security to J & K Bank. J & K Bank has recalled its loan and initiated proceedings before the NCLT claiming a sum of Rs. 461 crores from HDIL. As submitted by HDIL, J

& K Bank has however indicated its willingness to consider an OTS of Rs. 330 crores. In these circumstances, HDIL proposes to induct AIDPL as a Partner in Agnel against receipt of a consideration of Rs. 291 crores, which will be paid directly to J & K Bank. In view thereof, restraining HDIL from completing this deal will not assist any of the parties, since J & K Bank shall later insist on receiving its entire claim of Rs. 461 crores from HDIL (instead of the present OTS offer of Rs.330 Crores) and upon the NCLT, Mumbai Bench, admitting the Petition filed by J & K Bank again a moratorium may follow, which will affect all the projects of HDIL and may in fact give an opportunity to HDIL to wriggle out of its undertakings given qua the Siddharth Nagar, Goregaon (W) Property, including the Meadows property.

13. In view of the fact that the Ghatkopar property is indeed mortgaged to J & K Bank and HDIL is desirous of redeeming the mortgage by clearing the outstandings of the Bank by sale of the mortgaged security, the submission on the part of the Plaintiffs in the above Suit that the HDIL is trying to fritter away its assets or is attempting to sell the encumbered assets with a view to wriggle out of its undertaking given to the Court, cannot be accepted.

14. As regards the submission made on behalf of MHADA and by some of the Plaintiffs in the above Suit, that HDIL had no right to

mortgage its Ghatkopar property, the development rights on the Ghatkopar property, or that the same amounts to transfer of property which belongs to MHADA, cannot be decided in the present proceedings and MHADA shall be at liberty to take out its independent proceedings seeking orders on its own merits.

15. The submission that full particulars qua the Ghatkopar property are not made available by HDIL, in my view, cannot be accepted since the same is made available in the Public Notice dated 8th May, 2018, the Affidavit in Support of the Notice of Motion and the Additional Affidavit, as well as the Affidavit in Rejoinder filed by HDIL, providing copy of LOI, occupation certificate and the FSI available.

16. As regards the submission on behalf of the Plaintiff that J & K Bank has not initiated any SARFAESI proceedings in respect of its mortgage of the free sale rights, Mr. Chinoy is correct in his submission that if J & K Bank is forced to initiate SARFAESI proceedings, HDIL would be exposed to a far larger claim of Rs. 461 crores.

17. The Plaintiffs have also contended that since J & K Bank's debt is guaranteed by HDIL's Promoters, they should be required to make payment to the Bank. I am of the view that as the loan funds have been given by the Bank and used by Agnel/HDIL, and as

Agnel/DHIL's property is mortgaged to J & K Bank and is available to meet the Bank's claim/OTS offer, this Court cannot hold that the principal borrower should not satisfy the debt of J & K Bank, but it is the guarantors who should do so.

18. As regards the contention that HDIL has not established that the price of Rs. 291 crores is the fair value/price, the learned Senior Advocate appearing for HDIL has in the last several weeks repeatedly submitted that HDIL is willing to accept any offer by the Plaintiffs **(all of whom are Developers)** or any offer that they may procure, for a substantially higher amount (i.e. at least Rs. 5 crores or more), subject to immediate payment. However, the Plaintiffs have till date, not offered a higher amount or procured a higher offer or have not even indicated the approximate value of the Ghatkopar property. When this Court enquired from the Advocates appearing for the Plaintiffs, that if upon their insistence this Court directs HDIL to sell the Ghatkopar property by public auction and fails to get an offer of at least 291 crores, whether the Plaintiffs would compensate the difference. None of the Plaintiffs have responded in the affirmative. So much for their claim that the price of Rs. 291 crores is not a fair value/price.

19. The Plaintiffs have also contended that that the disclosure of assets by HDIL is in a sealed cover and copies of the same have not

been given to them, and that ultimately they may not be able to honour the same, and complete the Siddharth Nagar, Goregaon (W) project. In my view, apart from the fact that the Pant Nagar/Ghatkopar free sale property in question is mortgaged to J & K Bank and is in any case not available for meeting any other obligations, the Plaintiffs in the above Suits are always at liberty to move this Court seeking copies of the assets disclosed by HDIL and submitted to this Court in a sealed cover and are also at liberty to claim further reliefs, if it is established that the assets of HDIL are not adequate for them to comply with the undertakings given to the Court, if so required. Needless to add that, any such application made will be decided by this Court on its own merit.

20. In the circumstances, the following Order is passed:

(a) HDIL is allowed to sell its Ghatkopar property mortgaged in favour of J & K Bank to AIDPL for a sum of Rs. 291 crores which amount will be paid directly to the J & K Bank;

(b) Undertaking of HDIL to pay the balance amount payable to J & K Bank is accepted.

(c) In the event of HDIL being desirous of disposing of any of its other assets in future, they shall do so with the permission of the Court, which permission may be granted/rejected, after hearing the parties.

(d) MHADA as well as the other Plaintiffs shall be at liberty to take out appropriate proceedings qua their submissions set out in paragraph 14 above, which proceedings if taken out, shall be decided on its own merits.

(e) The Plaintiffs as well as MHADA shall be at liberty to move this Court to obtain copies of the list of assets disclosed by HDIL and its Directors which are presently in a sealed cover, and for further ad-interim reliefs which application/s if taken out, will be decided on its own merit/s.

The Notice of Motion is accordingly disposed of.

(S.J. KATHAWALLA, J.)