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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
GUARDIANSHIP PETITION NO. 21 OF 2017**

Dharmishtha Chirag Chauhan

...Petitioner

And

Diya Chirag Chauhan

...Minor

Ms Yashashree A Sutrale, *for the Petitioner.*

Rajiv Mohanlal Bhanushali, *purchaser, present.*

CORAM: G.S. PATEL, J

DATED: 2nd July 2018

PC:-

1. Heard Ms Sutrale for the Petitioner. The Petition, under Sections 29 and 31 of the Guardians and Wards Act 1890 and Section 8 of the Hindu Minority and Guardianship Act 1956, is brought by the mother and minor, Diya. The Petitioner's husband Chirag, under an agreement dated 24th November 2010 purchased a residential flat, then under construction, from one M/s DV Realtors. This was flat No. 501, 5th floor, of about 444 sq ft carpet area, in the building called Shree Shashwat, Building No. 16, Near Pleasant Park, Mira Road (East), Thane 401 107. The property is fully described in paragraph 2 of the Petition.

2. The aggregate purchase price of the flat was Rs. 30,04,280/-. This was to be paid in slabs. Chirag paid an amount of Rs. 1 lakh

prior to the execution of the agreement and then made further payments of Rs. 3,47,280/-. He applied to the Union Bank of India for a loan for the remaining amount of Rs. 25,57,000/-. This was sanctioned against a mortgage of the flat. Some further instalments were paid. Ms Sutrale states that from the balance that was due, Rs. 17,53,053/-, the Petitioner has herself paid an amount of Rs. 16 lakhs to the Union Bank of India. An amount of Rs. 1,53,000/- is as yet due.

3. Unfortunately, Chirag died on 3rd March 2017. He left no Will. He was survived by the Petitioner, his widow, and their minor daughter, Diya, who is today just about six years old. She was born on 6th June 2012.

4. The Petition seeks leave of this Court to sell the Petitioner's 50% undivided share, right, title and interest in the flat as also the minor's 50% share, right, title and interest in the flat. The Petitioner states that this is for the benefit of the minor and not contrary to her interest. It is also of legal necessity.

5. The Petitioner and the minor are not in Mumbai but are staying with Chirag's father and family in Gujarat.

6. The draft agreement for sale is ready. The agreement is with Rajiv Mohanlal Bhanushali and Shweta Sudhakar Shetty. Mr Bhanushali is present in Court. He confirms that he has consented to this transaction. The stated consideration is Rs. 57 lakhs. From the record, it appears that this is a fair market value and is not

undervaluation. A copy of the agreement for sale is taken on record and marked “X” for identification with today’s date.

7. I will accept the transaction and will permit the Petition as currently framed. There is no requirement to give special notice under Section 11 of the Guardians and Wards Act.

8. The Petitioner does not need to be appointed by this Court as the minor’s guardian. Being the birth mother, she is in law the natural guardian of the minor.

9. The Petition is made absolute in terms of prayer clause (a) and (b) and partly in terms of prayer clause (c).

10. Half or 50% of the net sale consideration will be deposited by the Mr Bhanushali with the Prothonotary and Senior Master of this court to be held in a fixed deposit at the best possible rate of interest until 5th August 2030. The account will be to the credit of this particular Petition and in particular for the benefit and to the credit of Diya Chirag Chauhan. The Petitioner agrees and undertakes to make this payment.

11. On and after 6th August 2030, Diya will be entitled to apply for withdrawal of the entire amount deposited with all accrued interest upto date. Payment will be made into an account held in Diya’s name by online transfer/RTGS or by an instrument made out in her name.

12. The Petition is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)