

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

SUIT NO. 735 OF 2013

Haripriya Buildcom Pvt.Ltd.	...Plaintiff
Vs.	
Ramesh G. Timbadia & Ors.	...Defendants

Mr.Zain Mookhi I/b. Rahul J. Gada for Plaintiff.

CORAM : S.C. GUPTE, J.

DATE : 12 APRIL 2018

P.C. :

The present suit is filed by the Plaintiff for specific performance of a development agreement dated 27 December 2005 read with three individual agreements entered into by the Plaintiff with Defendant Nos.1 to 3 on 29 April 1994. Defendant No.4, a sole surviving partner of Super Metal Works, the owner of the suit property, which executed three agreements dated 29 April 1994 with Defendant Nos.1 to 3 together with an irrevocable power of attorney of the same date for development of the suit property. The development agreement can be said to contain an agreement to transfer the immovable property.

2 The suit property consists of a piece or parcel of land together with a structure standing thereon situate at Malad (North) and Malad (West) in Mumbai bearing Plot No.1, Survey No.504(part), Hissa No. 3(part), bearing City Survey No.1406/12 of Village Malad, Taluka Borivali, Mumbai Suburban District. The land admeasures 1721 sq.mtrs. In pursuance of agreements of 29 April 1994, Defendant Nos.1 to 3 entered into a development agreement dated 27 December 2005 with the Plaintiff. By this agreement, the Defendants granted development rights to

the Plaintiff at or for a consideration and on the terms and conditions mentioned in the development agreement. By a deed of confirmation dated 12 October 2006, the Defendants confirmed the validity of the development agreement. This deed of confirmation is registered with the Sub-Registrar of Assurances. By the development agreement read with the deed of confirmation, the Defendants agreed to allow the Plaintiff to develop the suit property. It is the Plaintiff's case that the entire consideration of the agreement has been duly paid by the Plaintiff to the Defendants. In addition to the consideration mentioned above, the Plaintiff has paid a sum of Rs.7.11 crores under consent terms between the parties in Suit No.719 of 1982 filed before this court. The initial payment of a sum of Rs.2.11 crores is reflected in the consent terms executed between the parties and filed before the court on 15 October 2012. Further payments have been made by the Plaintiff in pursuance of the consent terms. The Plaintiff has been put in possession of the suit property and has also developed the same by constructing a building thereon. It is the Plaintiff's case that the the Plaintiff has thus complied with, and has always been and even today is ready and willing to perform, its obligations under the development agreement dated 29 April 1994 between M/s. Super Metal Works, who is represented by Defendant No.4, and Defendant Nos.1 to 3. It is the Plaintiff's case that despite putting the Plaintiff in possession of the suit property and despite having received full consideration for the suit property, the Defendants have failed and neglected to comply with their obligations by conveying the suit property to the Plaintiff. The Plaintiff has, in the premises, prayed for a decree of specific performance.

3 The writ of summons in the present suit has been duly served on the Defendants. The Defendants have even entered appearance. The

Defendants, however, have failed to file any written statement. As a result, the suit has been transferred to the list of Undefended Suits and is presently posted for exparte decree.

4 Learned Counsel for the Plaintiff tenders a compilation of original documents along with affidavit of evidence of Bhagwandas M. Agrawal, Director of the Plaintiff (PW1), dated 22 March 2018. The affidavit of evidence is accepted as examination-in-chief of PW 1. Based on the oral evidence of PW 1, the original documents tendered by the Plaintiff are admitted in evidence and marked as **Exhibits P-1 to P-11** in the order in which they have been listed in the index to the compilation.

5 Based on the oral and documentary evidence tendered before the court, and noted as above, the Plaintiff has made out a case for a decree of specific performance. The existence and validity of the agreements referred to above is not a matter of dispute. The Plaintiff has proved its readiness and willingness to perform its obligations under the suit agreements . The Defendants have failed to comply with their obligations under the suit agreements. The Plaintiff has, accordingly, made out a case for specific performance.

6 There will be a decree accordingly against the Defendants in terms of prayer clause (a). In the event the Defendants fail to execute conveyance of the suit property in favour of the Plaintiff within a period of three months from today, the Prothonotary & Senior Master to appoint an officer of the court to execute such conveyance.

(S.C. GUPTE, J.)