

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
SUIT (L) NO.530 OF 2017
WITH
NOTICE OF MOTION (L) NO.604 OF 2017**

The Santacruz West End Co-op. Hsg. Soc. Ltd.
And Ors. ... Plaintiffs
versus
K. Mordani Builders LLP and Ors. ... Defendants

Dr. Birendra Saraf with Mr. Karl Tamboly i/by Mr. Tushar Goradia, for Plaintiffs.
Mr. Mayur Khandeparkar with Mr. Nitesh Ranavat, Ms. Anjali Patel i/by M/s. Wadia
Ghandy and Co., for Defendant Nos.1 to 3.
Mr. D.D.Madon, Senior Advocate with Mr. Rompal Singh Kohli, Mr. Vikram Chavan,
Ms. Niharika Wardkar i/by M/s. C.K.Legal, for Defendant No.6.

CORAM: S.J. KATHAWALLA, J.

DATE: 14th FEBRUARY, 2018

P.C.:

1. Time to remove office objections is extended for a period of two weeks after the decision of the Taxing Master is received.
2. Upon hearing the learned Advocates for the parties, the following order is passed. The Advocates for the parties have on instructions informed the Court that no reasons be given in support of this order.
3. The Learned Advocate for the Plaintiffs and the Advocates for the Defendant Nos. 1 to 3 and 5 have tendered Consent Terms dated 10th February, 2018 and the same are also signed by the Defendant No. 4. They submit that the Consent

Terms be taken on record and the above Suit be decreed in terms of the Consent Terms. The Consent Terms are taken on record and marked 'X' for identification.

4. The Consent Terms are signed by the Advocate for the Plaintiffs and Advocates for Defendant Nos. 1 to 3 and 5 and Defendant No.4. The Consent Terms in Clause 6 provides that Defendant No. 1 and Defendant Nos. 2 to 3 in their capacity as the partners of the Defendant No. 1 shall comply with all requisitions / permissions / requirements for obtaining Occupation Certificate of the premises of the Plaintiff Nos. 2 to 8 and Defendant Nos. 4 and 5 in the new building and make an application for obtaining Occupation Certificate of the member's premises in the new building on or before 30th June 2018. The Defendant No. 6 is a member of the Plaintiff No. 1 society. The Defendant No. 1 has entered into Articles of Agreement dated 17th April, 2017 ("**the said Agreement**") in relation to the premises to be allotted to him in the new building being constructed on the suit property.

5. Slum Rehabilitation Authority ("**SRA**") shall scrutinize the application dated 19th April, 2017 for the sanction of the revised plans of the clubbed property being land bearing CTS Nos. 85,85/1 to 85/58 and 86 of Village Majas, Jogeshwari (East), Mumbai being undertaken by M/s. KOEL Developers pending under File No. SRA/DDTP706/KE/PL/AP and the application made / to be made for the sanction of the revised plan of the new building being constructed in respect of the Suit Property viz., Land bearing CTS No. G/610 admeasuring 745.16 square meters (the

Property Register Card mentions the area as 733.60 square meters) lying, being and situate at 15th Road, Santacruz (West), Mumbai 400 054 under File No. 743/SRA/DDTP/626/HW/ PL/AP as expeditiously as possible and preferably within a period of 30 days in accordance with law. Upon application being made by the Defendant No. 1 for the occupation certificate of the new building (either partly or wholly), SRA shall scrutinize the application as expeditiously as possible and preferably within a period of 30 days of the same being made, in accordance with law. The Prothonotary and Senior Master is directed to forthwith forward a copy of this order to the Slum Rehabilitation Authority for appropriate action.

6. The Defendant No.1 and Defendant Nos. 2 and 3 in their capacity as the partners of Defendant No.1 shall complete the construction of the new building on the suit property including the premises of the Defendant No.6 on or before 30th June 2018. The Defendant No. 1 and Defendant Nos. 2 and 3 in their capacity as the partners of Defendant No.1 shall endeavor to comply with all requisitions / permissions / requirements for obtaining Occupation Certificate and regular water connection of the member's premises in the new building and Defendant No. 1 and Defendant Nos.2 and 3 in their capacity as the partners of Defendant No.1 shall apply for and endeavour to obtain the complete Occupation Certificate of the entire building on or before 31st December, 2019.

7. Upon issuance of the occupation certificate of the premises of the Plaintiff

Nos. 2 to 8 and the Defendant Nos. 4 and 5 in the new building, the Defendant No. 1 shall handover the premises of Defendant No. 6 viz. Duplex Flat being the flats on the 12th and 13th floor i.e. at the 15 and 16th level of the new building totally admeasuring 2937.83 square feet carpet area (“**the said Flat**”) pursuant to the said Agreement to the Defendant No. 6 solely for the purpose of carrying out fit outs in the said Flat.

8. Defendant No.1 to 3 shall pay to Defendant No. 6 transit compensation / rent amounting to Rs. 51,42,500/- (Rupees Fifty One Lacs Forty Two Thousand Five Hundred only) for period upto 30th June, 2018 in the following manner:

- (a) An amount of Rs. Rs. 25,71,250/- (Rupees Twenty Five Lacs Seventy One Thousand Two Hundred Fifty only)/- shall be paid on or before 25th February, 2018;
- (b) An amount of Rs. Rs. 25,71,250/- (Rupees Twenty Five Lacs Seventy One Thousand Two Hundred Fifty only)/- shall be paid on or before 10th April, 2018;
- (c) After 30th June 2018, Defendant No.1 to 3 shall pay transit rent / compensation at the enhanced rate of Rs. 2,70,000/- (Rupees Two Lakhs and Seventy Thousand Only) per month to Defendant No. 6 till the date of obtaining the occupation certificate of the members premises in the new building (other than that of the Defendant No. 6) and till the said Flat is offered to the Defendant No. 6 for fit outs, as setout above. The Defendant Nos. 1 and the Defendant Nos. 2 to 3 in their capacity as the Partners of the Defendant No. 1 shall hand over

post dated cheques for the transit rent / compensation to the Advocate for the Defendant No. 6 on or before 15th February, 2018 for a period upto 31st December, 2018. In the event the said Flat is not offered to the Defendant No. 6 for fit outs, as setout above, on or before 31st December, 2018, the Defendant Nos. 1 and the Defendant Nos. 2 to 3 in their capacity as the Partners of the Defendant No. 1 shall continue to pay transit rent / compensation at the enhanced rate of Rs. 2,70,000/- (Rupees Two Lakhs and Seventy Thousand Only) per month to Defendant No. 6 till the date the said Flat is offered to the Defendant No. 6 for fit outs, as setout above. The said transit rent / compensation shall be due and payable on or before 10th of every calendar month.

- (d) Defendant No.1 to 3 shall endeavour to obtain the occupation certificate of the said Flat on or before 31st December, 2019.
- (e) The post dated cheques in respect of the payments mentioned in clause (a) and (b) above shall be handed over to Defendant No.6 on or before 15th February, 2018.

9. Defendant No.1 shall pay an amount of Rs. 1,50,000/- (Rupees One Lakh and Fifty Thousand Only) to the Defendant No.6 on or before 25th February, 2018 towards expenses incurred by Defendant No. 6 in connection with the above Suit.

10. Defendant No. 1 and Defendant Nos. 2 and 3 in their capacity as the partners of Defendant No. 1 shall provide amenities in the new building being constructed on the

said Property as specified in the Development Agreement dated 9th June 2011 and the Articles of Agreement dated 17th April, 2017.

11. Defendant No. 6 shall not carry out any structural additions or alterations or change in the layout of the said Flat from the sanctioned plans.

12. Plaintiff No.1 and its other members shall not be bound/concerned with or liable in connection with the arrangement as envisaged herein between Defendant No. 1 and Defendant No. 6 in any manner whatsoever.

13. On handing over possession of the flats to the members of Plaintiff No. 1 (except Defendant No. 6) after obtaining Occupation Certificate with respect to their premises the obligations and liabilities of Defendant No. 1 and Defendant Nos. 2 and 3 in their capacity as partners of the Defendant No. 1 under the Development Agreement dated 9th June 2011 shall stand complied with save and except amounts payable to the authorities under Development Agreement dated 9th June, 2011, if any.

14. Defendant No.1 and Defendant Nos. 2 and 3 in their capacity as the partners of Defendant No.1, their servants, agents and/or assigns shall not create any third party rights which would affect the new flats to be allotted to the members of Plaintiff No.1 including the premises of the Defendant No.6 i.e. the said Flats.

15. On handing over possession of the said Flat to the Defendant No. 6 and after obtaining the building Occupation Certificate thereof, the obligations and liabilities of Defendant No. 1 and Defendant Nos. 2 and 3 in their capacity as partners of the

Defendant No. 1 under the Agreement dated 17th April, 2017 and Development Agreement dated 9th June, 2011 (vis-a-vis Defendant No.6) shall stand complied with, save and except amounts payable to the authorities under the Development Agreement dated 9th June, 2011 and the Agreement dated 17th April, 2017, if any.

16. The undertakings recorded in the Consent Terms are accepted. The Suit is decreed in terms of the Consent Terms and the directions given herein. As no relief is sought against Defendant Nos. 4 to 6, the Suit is disposed of. The Notice of Motion (L) No.604 of 2017 filed in the captioned Suit also stands disposed of.

(S.J.KATHAWALLA, J.)