Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1685 OF 2017

IN

SUIT NO. 830 OF 2010

Neelkanth Mansions & Infrastructure Pvt Ltd & Ors …Plaintiffs

Versus

Neelkanth Realtors Pvt Ltd & Ors …Defendants

Mr JP Sen, Senior Advocate*, with Gautam Ankhad, C Rashmikant, Murtuza Federal & Anuja Abhyankan, i/b M/s. Federal & Rashmikant, for the Plaintiffs/Applicants.*

Mr BD Deshmukh*, i/b Vidhi Partners, for Defendant No. 1.*

Mr Jitendra G Shukla*, for Respondent No. 2 (in NMS only)*

CORAM: G.S. PATEL, J

DATED: 15th January 2018

PC:-

1. This is a Notice of Motion by the Plaintiffs in a suit that was disposed of by consent terms. Respondent No. 1 is the original 1st Defendant. Respondent No. 2 is the original 9th Defendant. Respondent No. 3 is the 26th Defendant and is a partnership firm of which Respondents Nos. 1, 2 and the 1st Plaintiff are all equally partners. The suit was disposed of by consent terms dated 2nd/18th July 2011. This was by way of Minutes of Order. Copies are annexed as Annexure "A" to the Affidavit in Support. The Consent Terms were evidently comprehensive and had several annexures.

2. Briefly, the dispute pertains to a development of a large tract of land of nearly 94,000 sq mtrs at Kurla and Kirol villages. There was a development agreement dated 24th June 2005 with one Vidyavihar Containers Ltd (**"VCL"**). The development project was called Neelkanth Kingdom Project. It was agreed to be developed in two or more phases. Phase I consists of a development of seven residential towers with approximately 7,00,000 built up area on a portion of that property. The consent order required the completion of Phase I. The position today is that while the residential portion of Phase I is complete and flat purchasers have been put in possession for furniture and fit-outs, other common facilities and amenities such as a club house, swimming pool, health club, multi purpose hall and other facilities are yet to be completed. The Consent Terms contemplated that in Phase II, each of the three partners would be entitled to develop earmarked or defined portions. It was, however, agreed, and this is also not in dispute, that the development of Phase II could begin only after financial obligations for Phase I were met.

3. The Plaintiffs' grievance is that Respondents Nos. 1 and 2, the other partners with Plaintiff No. 1 in Respondent No. 3 (Defendant No. 26), have not met their financial obligations for completion of Phase I. This has materially and adversely affect the Plaintiffs in the development of their earmarked portion in Phase II.

4. What the Plaintiffs, therefore, seek is an order of the Court permitting them in the first instance to make the entirety of the necessary financial provision for completion of Phase I so that they may proceed with the development of their earmarked portion of Phase II. In other words, they will assume initially the financial obligations of Respondents Nos. 1 and 2 for completion of Phase I works, but this will necessarily have to be recouped by the Plaintiffs from Respondents Nos. 1 and 2 and this recoupment will have to be a condition precedent to Respondents Nos. 1 and 2 commencing work of their respective allotted portions of Phase II.

5. Respondents Nos. 1 and 2 have both filed returns. Leaving aside all other arguments, the essential averment is to be found in paragraph 11(f) at page 213 of the Affidavit in Reply of the 2nd Defendant where there is an admission that some works remained in Phase I. This is repeated in the other Respondent's Affidavit in Reply. Both Respondents Nos 1 and 2 have expressed their readiness and willingness to fulfil their obligations. However, there is evidently some problem with their cash flows.

6. Without, therefore, getting into controversy about who is responsible, something that will only further delay the project and benefit nobody, a broad consensus has emerged in the manner indicated earlier. Specific directions are required and, therefore, these directions are issued:

(a) The Plaintiffs, Respondents Nos. 1 and 2 for themselves and all three on behalf of Respondent No. 3

reaffirm the Consent Terms and Consent Order of 2nd/18th July 2011 and agree that these are to be implemented except in the manner indicated below for Phase I;

(b) The 1st Plaintiff shall, in the name of Respondent no. 3 (Defendant No. 26) complete the remaining works of Phase I of the Neelkanth Kingdom Project in accordance with the sanctioned and certified plans annexed as Exhibit "G" to Exhibit "G7" and Exhibit "H" to Exhibit "H2" to the Consent Terms.

(c) The estimated project completion time is eight months, although, given that delays are inherent in such works, I expect that this period may require to be extended. Parties agree to a reasonable extension if necessary.

(d) The Plaintiffs estimate that the cost of the remaining works is approximately Rs 8.5 crores. Again, I will have to make allowance for a little extra and will take this to be a figure not exceeding Rs 12 crores. These costs are, however, subject to certification by the Project Management Consultants, Mahimtura Consultants Pvt Ltd (**"MCPL"**) appointed under the Consent Terms.

(e) There is an amount of Rs 24,06,752/- unpaid as MPCL's fees till date. Mr Sen on behalf of the

Plaintiffs state that these fees will be paid by the Plaintiffs for and on behalf of themselves and Respondents Nos. 1 and 2 in equal shares. These will also be included as part of the costs of Phase I completion. Further fees of MCPL will also be treated in the same manner.

(f) All balance works shall be certified by MCPL in their capacity as Project Management Consultants.

(g) The Plaintiffs shall file an affidavit setting out the certified expenses made by them every three months until completion of Phase I.

(h) Respondents Nos. 1 and 2 are required to reimburse their 1/3rd share each of these certified expenses within 45 days of communication of the certification to their Advocates. There is an interest clause in the Consent Terms itself which provides interest at 24% per annum compounded monthly, and this is payable on any delay. Mr Sen in fairness agrees, however, for the purposes of this Notice of Motion that the rate of simple interest may be fixed at 15% per annum payable on all delayed payments.

7. It is clarified that Respondents Nos. 1 and 2 shall not be entitled to commence development on any part of Phase II that comes to their share or allotment unless all the amounts due are paid to the Plaintiffs or the Plaintiffs agree in writing to Respondents Nos. 1 and 2 commencing development of their respective portions of Phase II.

8. Plaintiff No. 1 will be permitted to operate the accounts of Defendant No. 26, being Bank Account No. 01182320001735 with HDFC Bank and Bank Account No. 002605002860 with ICICI Bank for the purpose of completion of Phase I works as certified by the PMC, and for payment of statutory dues, taxes and wages or salaries of employees or workmen. The quarterly returns to be filed by the Plaintiffs will include details of all items of expenditure.

9. Until the Project Management Consultants certifies completion of the balance works of Phase I, the Branch Managers of HCFC and ICICI Bank will permit the operation of those accounts acting on an authenticated copy of this order.

10. Finally, liberty to all parties to apply should the need arise.

11. The Notice of Motion is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)