

Arjun Gehani ... Plaintiff
versus
Aakankssha Infrastructure and Ors. ... Defendants

Mr. Warerkar i/by M/s. Warerkar and Warerkar, for Plaintiff.
Mr. P.G.Karande, for Defendants.

CORAM: S.J. KATHAWALLA, J.

DATE: 26th APRIL, 2018

P.C.:

1. Heard the learned Advocates for the parties and by consent, the following order is passed :

(i) The Plaintiff and the Defendants (hereinafter collectively referred to as “Parties”) have agreed to amicably resolve and settle their disputes specifically with regards to the repayment of Rs.1,07,80,000/- (Rupees One Crore Seven Lacs Eighty Thousand only), paid by the Plaintiff to the Defendant for purchasing a residential Flat in the building to be constructed by the defendants at Final Plot No.9, T.P.S. No. IV, Dadar (West), City Survey No.1594 at Mahim division at Shivaji Park, Dadar, Mumbai 400 028.

(ii) That the Defendants jointly and severally undertake to pay to the Plaintiff a sum of Rs. 1,62,43,688/- (Rupees One Crore Sixty Two Lakhs Forty Three Thousand Six Hundred and Eighty Eight only) together with interest @ 18% p.a. from

the date of the suit till realisation and a Decree on admission in terms of prayer Clause (a) of above Suit is accordingly passed.

(iii) The Plaintiff undertakes that upon the Defendants paying the Principal Sum of Rs.1,07,80,000/- (Rupees One Crore Seven Lacs Eighty Thousand only) to the Plaintiff within a period of 4 (Four) Months from 26th April 2018 i.e. on or before 25th August 2018 the decree shall be marked as fully satisfied.

(iv) Upon passing of this order, the letter addressed by the Plaintiff through his Advocate to the Thakoor House Premises Cooperative Society Limited informing the Society of the undertaking given by the Defendants to this Court shall stand modified/revoked to a limited extent of the Defendants undertaking not to sell, alienate, encumber the said office premises and the Defendants shall be entitled to sell the said office premises only to pay to the Plaintiff an amount of Rs. 1,07,00,000/- (Rupees One Crore Seven Lakhs only) in terms of clause (iii) above.

(v) By Order dated 19th March 2013, the Defendant No.2 had on behalf of the Defendants undertaken to this Court not to sell, alienate, encumber, part with possession and / or create any third party rights in respect of the residential Property being flat No. 151 – B, admeasuring 986.11 square feet (Carpet area) with attached terrace of 465 square feet situated on the 15th Floor, in Purushottam Towers CHS., Off. Gokhale Road (South), Dadar (West), Mumbai – 400 028 (“*the Residential Property*”) and the Defendants share in the Office premises bearing No. 703

admeasuring about 1400 Square feet (Carpet) area situated on 7th floor of Antariksh building. Thakoor House Premises C.S. Ltd., Makwana Road, Off M.V. Road, Marol Junction, P.O. Box 7408, Andheri (East), Mumbai 400 059 (“**the Andheri property**”). The Defendants have represented to the Plaintiffs that for making the payments as mentioned in clause (iii) hereinabove, they will have to sell the said Andheri property. . Hence, it is mutually decided between the Parties that the Defendants undertaking recorded in the Order dated 19th March 2013 be relaxed/modified only to the extent of the said Andheri Property and that the Defendants be permitted to sell their entire share in the said Andheri property within a period of 4 (four) months from 26th April, 2018 to raise the necessary funds for making payments to the Plaintiff. The Defendants also agree that the Undertaking dated 19th March 2013 given to this Court is relaxed/modified only for the said Andheri Property and the Order dated 19th March 2013 shall remain in force in respect of the said Residential Property mentioned in the said Order.

(vi) Defendants undertake that failure on the part of the Defendants to sell and or dispose of their share in the said Andheri Property for any reason whatsoever will not be used as a ground by the Defendants to justify the delay if any in making payment of the said Principal Sum of Rs.1,07,80,000/- (Rupees One Crores Seven Lacs Eighty Thousand only) as mentioned in clause (iii) hereinabove and or to seek an extension for making the said payment to the Plaintiff

(vii) Parties have agreed that upon payment and actual realisation of the principal sum of Rs. 1,07,80,000/- by the Defendants to the Plaintiff in accordance with clause (iii) above, the undertaking given by the Defendants through the Defendant No.2 as recorded in the order dated 19/03/2013 of this Court namely not to sell, alienate, encumber, part with possession and/or create any third party rights in respect of their residential property at 151/B, Purushottam Towers, CHS Ltd. Dadar, Mumbai 400 028 shall stand revoked and the letter addressed by the earlier Advocates of the Plaintiff to Purushottam Towers, Cooperative Housing Society Ltd., shall stand withdrawn/cancelled.

(viii) Defendants undertake that if they fail to pay the said Principal Sum of Rs.1,07,80,000/- (Rupees One Crores Seven Lacs Eighty Thousand only) to the Plaintiffs within a period of 4 (four) months from 26th April 2018 Viz. on or before 25th August 2018, for any reason whatsoever the entire decretal amount as mentioned in Paragraph No. 2 hereinabove shall become due and payable and the Plaintiffs shall be entitled to execute the Decree for the entire amount due as per clause (ii) hereinabove. Defendants also undertake not to seek any extension for payment beyond the period of four months on any ground whatsoever.

(ix) Pending the full and final payment and actual realisation of decretal dues as mentioned in clause (ii) above, Defendant No. 2 undertakes not to sell, alienate, encumber, part with possession and/or create any third party rights in respect

of the said residential property being flat No. 151 – B, admeasuring 986.11 square feet (Carpet area) with attached terrace of 465 square feet (Carpet area) situated on the 15th Floor, in Purushottam Towers CHS., Off. Gokhale Road (South), Dadar (West), Mumbai – 400 028

(x) Defendant No. 2 also declares and undertakes that he is the sole owner of the said Residential Property being Flat No. 151-B, Purushottam Towers Cooperative Housing Society Limited, Off. Gokhale Road (South), Dadar, Mumbai – 400 028 and that the said Residential Property is free from any encumbrances.

(xi) The undertakings recorded herein are accepted.

(xii) The Suit is accordingly disposed off.

(S.J.KATHAWALLA, J.)