

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**COMMERCIAL NOTICE OF MOTION NO.2320 OF 2018
IN
COMMERCIAL SUIT NO.1377 OF 2018**

Namo Realty and Infra LLP Applicant/Plaintiff

Vs.

Premji Nenshi Dedhia and Ors. Defendants

Mr. Naushad Engineer a/w. Mr. Bhavin Gada, Mr. Kalpesh Mehta, Ms. Urvi Tana and Ms. Prachi Badani i/b. Pravin Mehta and Mithi and Company for applicant/plaintiff.

Mr. Bhavik Mehta and Mr. Sgar Turakhia, partners of plaintiff present.

Mr. P.M. Shah a/w. Ms. Meetal Savla i/b. P.M. Shah for defendant nos.1, 1A, 1B, 1C, 1D and 2.

Mr. Karl Tamboly a/w. Ms. Kausar Banatwala, Ms. Gauri Sakhardande i/b. Mr. Tushar A. Goradia for defendant no.3.

Mr. Premji N. Dedhia, defendant no.1 present.

Mr. Girish Dedhia, defendant no.1A present.

Ms. Pooja G. Dedhia, defendant no.1C present.

Mr. Ramesh K. Chheda, constituted attorney of defendant no.2 present.

CORAM : K.R.SHRIRAM, J.

DATE : 13th MARCH 2019

P.C.:

1 At the outset, chamber summons no.333 of 2019, though not listed is taken up for hearing. By consent, chamber summons is allowed and accordingly disposed.

2 Amendment to be carried out within one week from today.

3 After the notice of motion was heard extensively, parties requested that the following order be passed by consent :

(a) defendant nos.1, 1(a) to 1(d) (who are family members

of defendant no.1) and defendant no.2 undertake that they shall vacate their respective premises in the suit building not later than 30th March 2019;

(b) before vacating their respective apartments, defendant nos.1 and 2 being members of defendant no.3, plaintiff and defendant no.3 shall enter into a Tri-Partite Permanent Alternate Accommodation (PAA) Agreement. Mr. Engineer states that the agreement is ready and if defendant nos.1,2 and 3 are ready and willing to come even tomorrow for signing the PAA, it can be organised and day after tomorrow registration can be completed. Mr. Shah states that his clients will come at the time and date fixed by plaintiff and they only require 24 hours advance notice;

(c) Mr. Engineer states that under the development agreement with the society, the society, viz., defendant no.3, had agreed to accept, in lieu of bank guarantee, security of two flats being flat no.403 and 1003 (the said two flats) in the building to be erected. Mr. Engineer states that plaintiff shall also keep flat no.204 in the building Atmaran Co-operative Housing Society, admeasuring 624 sq. ft. Rera carpet area, Jaipali Hill, Borivali (West), Mumbai - 400 101 (additional security flat) unencumbered in favour of defendant no.3 in addition to the said two flats, flat no.403 and 1003, which were to be kept as security in lieu of bank guarantee, in the building to be erected. Once the RCC structure of the building is complete, then the additional security flat, simultaneously with flat no.403, will stand released. The lien on flat no.1003 shall stand released on plaintiff obtaining OC of the proposed building as provided in development agreements read with supplementary agreements. Mr. Engineer, on instructions states that the said flats and additional security flats are free from all encumbrances and shall remain so;

(d) Mr. Engineer undertakes that as per the agreement each member of defendant no.3 society, which would include defendant no.1 and defendant no.2, has to get 662.50 sq. ft. carpet area and that area will be provided without any adjustment;

(e) Mr. Engineer, apart from the assurances in the development and PAA agreements, also undertakes that not only defendant no.1 and defendant no.2 but all other members will get transit rent on the date it falls due and on no occasion will there be a default;

(f) Mr. Engineer, also undertakes that even the other amounts payable to defendant no.1 and defendant no.2 will be paid on the dates the payment falls due;

(g) as regards clause 11 of the supplementary agreement dated 24.09.2018, plaintiff and defendant no.3 agree that in future if there is additional FSI/TDR for the said suit building available, plaintiff and defendant no.3 shall jointly appoint an Architect and Chartered Accountant. The Architect shall ascertain how much additional FSI/TDR was consumed and the expenses incurred for construction of additional floor/additional structure. The Architect and the Chartered Accountant shall also inspect the accounts and certify the costs, charges and expenses incurred. The Chartered Accountant shall certify the sale consideration received by plaintiff, the construction costs, charges, premiums and expenses incurred for acquiring the FSI/TDR by plaintiff and other expenses that were incurred by plaintiff, and the surplus to be shared between plaintiff and defendant no.3.

(h) all parties agree and undertake that they shall co-operate with each other and not create any hurdle or hindrance;

(i) Mr. Shah undertakes to withdraw two suits pending in City Civil Court being suit no.1706 of 2018 and suit no.2192 of 2018 within one week from today under advice to plaintiff.

(j) the statements recorded above are accepted as undertaking by plaintiff, its partners, defendant no.1, defendant no.1(a) to 1(d) and defendant no.2.

4 In view of the above, Mr. Engineer, counsel for plaintiff seeks leave to withdraw the suit as well as notice of motion.

5 Suit as well as notice of motion dismissed as withdrawn in view of the order recorded above which is binding on all parties notwithstanding withdrawal of the suit and notice of motion.

Refund, if any, of court fees in accordance with rules.

(K.R. SHRIRAM, J.)