

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

**SUIT NO.300 OF 2018
WITH
NOTICE OF MOTION NO.484 OF 2018
IN
SUIT NO.300 OF 2018**

Santosh Yogesh JainPlaintiff

Vs.

M/s. AVI Housing and Anr.Defendants

Mr. N.N. Vaishnawa a/w. Ms. Nupur Banerjee I/b. M/s. N. N. Vaishnawa and Company for plaintiff.

Mr. Yogesh Jain, husband of plaintiff present.

Mr. Bipin J. Joshi for defendants.

Mr. Priyank C. Chabadia, partner of defendant no.1 present.

Mr. Pares V. Chabadia, defendant no.2 present.

CORAM : K.R.SHRIRAM, J.

DATE : 25th JANUARY 2019

P.C.:

1 Parties have entered into consent terms dated 25th January 2019. The consent terms signed by plaintiff, partner of defendant no.1, defendant no.2 and their respective advocates is taken on record and marked "X" for identification. Plaintiff is not present in Court but Mr. Vaishnawa states that plaintiff has signed the consent terms in his presence and he identified her signature. Mr. Vaishnawa also states that plaintiff's husband is present in Court and identifies him. Mr. Joshi states that partner of defendant no.1 and defended no.2 are present in Court and identify them.

2 Order in terms of the consent terms. All undertakings given in the consent terms are accepted and so ordered.

3 For ease of reference, a scanned copy of the consent terms is reproduced hereinbelow :

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 300 OF 2018

SANTOSH Y. JAIN

... PLAINTIFF

VERSUS

AVI HOUSING & ANR.

... DEFENDANTS

CONSENT TERMS

1. The Defendants, by Modified Memorandum of Understanding dated 9th March, 2013, agreed to sell to the Plaintiff Flat No. 502 admeasuring 838 sq. ft. usable carpet area, along with car parking space at the building "Vrai A Paradise" situated at Garden Lane, Sanghvi Estate, Sareys Cinema, L. R. S. Marg, Gharkopar (W), Mumbai - 400 086.
2. The Plaintiff thereafter filed a suit for specific performance, when the Defendants informed the Plaintiff that the project, along with the flats constructed thereon, was mortgaged with Syndicate Bank, Marunga Branch.
3. The Defendants state that the area of the flat that can be allotted to the Plaintiff is now different from that which was agreed upon. In view thereof, it is agreed by and between the parties that the Defendants shall sell, transfer and convey to the Plaintiff and Mr Hitesh Y. Jain Flat No. 501, 'A' Wing, admeasuring 555 sq. ft. carpet area (excluding fungible area and/or elevation features) as approved by RERA on payment of Rs. 60,00,000/- to be paid in the escrow account as follows:
 - a. Out of the said amount, the Plaintiff has paid a sum of Rs. 9,00,000/- after deducting 11% of Rs. 60,000/- in the escrow account of Defendant No. 1 maintained in

(Signature)
Gauri Gaekwad

Santosh

Syndicate Bank, Matunga (Main Branch): Account No. 500510100006440.

b. In view of the said payment, the Syndicate Bank has issued a no-objection certificate for sale of the said Flat No. 501.

c. It is further agreed by and between the parties that the Plaintiff shall pay the balance sum of Rs. 50,40,000/- in the said escrow account of Defendant No. 1 maintained with Syndicate Bank, being Account No. 500510100006440 against vacant and peaceful possession of Flat No. 501, which shall be given by the Defendants to the Plaintiff after obtaining full occupancy certificate and commencement certificate from the MCGM.

4. It is further agreed by and between the parties that the Defendants shall sell, transfer and convey to the Plaintiff along with (1) Mr Jitendra Shantilal Kothari (HUF), (2) Mrs Santosh Yogesh Jain and (3) Mr Harachand D. Jain Flat No. 803, 'A' Wing, Vraj A Paradise, admeasuring 472 sq. ft. carpet area as approved by RERA on payment of Rs. 49,00,000/- to be paid in the escrow account as follows:

a. Out of the said amount, the Plaintiff has paid a sum of Rs. 7,50,000/- after deducting TDS of Rs. 49,000/- in the escrow account of Defendant No. 1 maintained in Syndicate Bank, Matunga (Main Branch): Account No. 500510100006440.

b. In view of the said payment, the Syndicate Bank has issued a no objection certificate for sale of the said Flat No. 803.

c. It is further agreed by and between the parties that the Plaintiff shall pay the balance sum of Rs. 41,01,000/- in the said escrow account of Defendant No. 1 maintained with Syndicate Bank, being Account No.

Rohit
Harachand

Santosh

500510100006440 against vacant and peaceful possession of Flat No. 803, which shall be given by the Defendants to the Plaintiff after obtaining full occupancy certificate and commencement certificate from the MCGM.

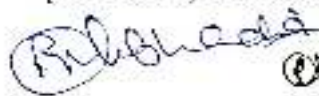
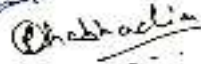
5. The Defendants undertake to furnish the Plaintiffs with full occupation certificate and commencement certificate to be obtained from the MCGM. The Defendants also undertake to hand over a no lien certificate from Syndicate Bank in respect of Flat No. 501 and Flat No. 803 to the Plaintiff on payment of the balance sum of Rs. 91,41,000/-. The Defendants further undertake to provide a GST Certificate to the Plaintiff.
6. The Defendants undertake not to claim any interest on the balance amount from the Plaintiff for any delay in payment due to any delay in the project on the part of the Defendants. The Plaintiff undertakes to pay the balance amount as stated hereinabove.
7. The Defendants undertake to complete the project and handover possession, after obtaining occupation certificate and commencement certificate, on or before 31st December, 2019.
8. With a view to safeguard the interests of the parties, the Plaintiff and Defendants agree that the Court Receiver, High Court, Bombay be appointed as the Receiver in respect of Flat No. 501 and Flat No. 803 in execution of a decree for specific performance in favour of the Plaintiff and against the Defendants with further directions to appoint the Plaintiff as the agent of the Receiver in respect thereof. The Receiver shall take formal possession of the suit flat and shall handover vacant and peaceful possession to the Plaintiff along with (1) Mr. Jyendra Shamilal Kothari (HUF), (2) Mrs. Santosh Yogesh Jain and (3) Mr. Hiraband D. Jain only after the payment of the balance sum of Rs. 91,41,000/- by the Plaintiff in the escrow account no. 500510100006440

(Signature) Santosh

Santosh

of Defendant No. 1 maintained with Syndicate Bank, Matunga Branch. The Court Receiver shall stand discharged on handing over peaceful and possession of Flat No. 501 and Flat No. 803 after grant of occupancy certificate and commencement certificate and after payment of the balance consideration by the Plaintiff as aforesaid, without passing accounts and on payment of the Court Receiver's costs and charges by the Plaintiff.

9. It is agreed by and between the parties that the parties shall be entitled to sell, transfer and convey the said flats after they have paid the entire consideration amount and after the Receiver is discharged, to any third party without paying any transfer fees to the Defendants. The Defendants shall not ask for any transfer fees for sale, transfer or conveyance of the said flats to any intending purchaser.
10. It is further agreed by and between the parties that, in the event the FSI of the suit plot of land is increased and any additional floor is constructed, i.e., above the 11th Floor on the 'A' Wing and above the 7th Floor on the 'B' Wing, the Defendants shall sell, transfer and convey two flats each admeasuring 317 sq. ft. carpet area as per the RLRA for a lump sum price of Rs. 35 lakhs each in the name of the Plaintiff on the same terms and conditions as agreed to between the parties for the other flats as aforesaid with regard to payment and possession.
11. The Defendants shall also allot one car parking space for each of the said flats at no additional cost.
12. The agreement for sale to be executed by the Defendants in favour of the Plaintiff, Mr Jitendra Shantilal Kothari (HUF), Mrs Santosh Yogesh Jain and Mr Hirachand D. Jain is approved by the parties hereto and the Plaintiff agrees and undertakes to make payment of the consideration payable under the said agreement to the Bank and to the Defendants, particularly towards share money, advances, maintenance, etc.

Santosh

13. The Plaintiff agrees and declares that, other than the flats as mentioned hereinabove, the Plaintiff has no claim of whatsoever nature in respect of the flats referred to in the Memorandum of Understanding or any other agreement, and except for flats as mentioned in these consent terms, the Plaintiff has no claim on any other flat in the said project.
14. Except for the amounts as mentioned hereinabove to be paid by the Plaintiff in the escrow account at Syndicate Bank, the Defendants shall have no claim of any nature whatsoever against the Plaintiff.
15. The parties shall bear all GST charges as applicable in equal share.
16. The parties withdraw the allegations made against each other.
17. The Plaintiff undertakes to bear all expenses and costs that may be payable to the Court Receiver, High Court, Bombay.
18. No order as to costs.

Mumbai, dated this 25th day of January, 2019

→ Santosh
Plaintiff (Santosh y Jain)

For Ane Hensong
Defendant No. 1
(Pant chubwa)

Defendant No. 2
Chabolia

Advocates
for the Plaintiffs

Advocates
for the Defendants

4 Suit accordingly stands disposed in terms of the consent terms. Refund, if any, of court fees in accordance with rules. All interim applications stand disposed. All interim orders also stand vacated.

5 All to act on authenticated copy of this order.

(K.R. SHRIRAM, J.)