

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

**SUIT NO.299 OF 2018
WITH
NOTICE OF MOTION NO.483 OF 2018
IN
SUIT NO.299 OF 2018**

Priyanka Jayantilal Kothari Plaintiff

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.

Ms. Priyanka Jayantilal Kothari, 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. Mr. Vaishnawa and Mr. Joshi state that the signatories to the consent terms 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 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.

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

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ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 299 OF 2018

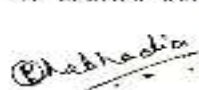
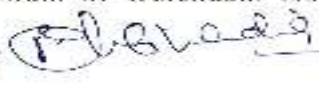
PRIYANKA J. KOTHARI ...PLAINTIFF

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. 603 admeasuring 693 sq. ft. usable carpet area, along with car parking space at the building "Vraj A Paradise" situated at Garden Lane, Saughani Estate, Shreeas Cinema, L. B. S. Marg, Ghatskopar (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, Matunga 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 Mrs. Jayantilal H. Kothari Flat No. 1002, 'X' Wing, admeasuring 693 sq. ft. carpet area (excluding fungible area and/or elevation features) as approved by RERA on payment of Rs. 74,00,000/- to be paid in the escrow account as follows:
 - a. Out of the said amount, the Plaintiff has paid a sum of Rs. 11,50,000/- after deducting TDS of Rs. 74,000/- in the escrow account of Defendant No. 1 maintained in

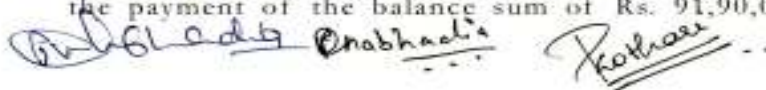




Syndicate Bank, Matunga (Main Branch): Account No. 500510100006440.

- b. In view of the said payment, the Syndicate Bank has issued a no-objection certificate for sale of the said Flat No. 1002.
 - c. It is further agreed by and between the parties that the Plaintiff shall pay the balance sum of Rs. 61,76,000/- 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. 1002, 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 Mrs Gunvanti Jayantilal Kothari and Mrs Dhiraj Kevalchand Mehta (HUF) Flat No. 101, 'B' Wing, Vraj A Paradise, admeasuring 331 sq. ft. carpet area (excluding fungible area and/or elevation features) as approved by RERA on payment of Rs. 36,00,000/- to be paid in the escrow account as follows:
- a. Out of the said amount, the Plaintiff has paid a sum of Rs. 5,50,000/- after deducting TDS of Rs. 36,000/- 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. 101.
 - c. It is further agreed by and between the parties that the Plaintiff shall pay the balance sum of Rs. 30,14,000/- in the said escrow account of Defendant No. 1

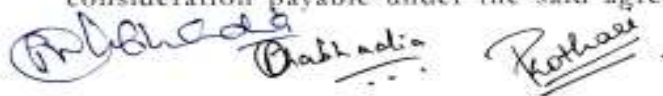
maintained with Syndicate Bank, being Account No. 500510100006440 against vacant and peaceful possession of Flat No. 101, which shall be given by the Defendants to the Plaintiff after obtaining full occupancy certificate and commencement certificate from the MCGM.

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. 1002 and Flat No. 101 to the Plaintiff on payment of the balance sum of Rs. 91,90,000/-. 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. 1002 and Flat No. 101 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, Mrs Jayantilal Kothari, Mrs Gunvanti Jayantilal Kothari and Mrs Dhiraj Kevalchand Mehta (HUF) only after the payment of the balance sum of Rs. 91,90,000/- by the

 The block contains three handwritten signatures in black ink. The first signature on the left is 'Gauri Gade', the middle one is 'Dhobhaadhi', and the one on the right is 'Kothari'.

Plaintiff in the escrow account no. 500510100006440 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. 1002 and Flat No. 101 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 RERA 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, Mrs Jayantilal H. Kothari, Mrs Gunvanti Jayantilal Kothari and Mrs Dhiraj Kevalchand Mehta (HUF) 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, advance, maintenance, etc.

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 the 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

Kulkarni
Plaintiff (Prayank J. Kulkarni)

For Anil Harsing
Anil Harsing
Defendant No. 1 (Prayank Chabhai)

Chabhai
Defendant No. 2 (Prayank Chabhai)

[Signature]
Advocates
for the Plaintiffs

[Signature]
Advocates
for the Defendants

5 All to act on authenticated copy of this order.

(K.R. SHRIRAM, J.)