

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

COMMERCIAL SUIT NO.907 OF 2019

Sajjid Amir Khan and Ors.Plaintiffs

Vs.

Shree DevelopersDefendant

Mr. Deepak Chitnis I/b. M/s. Deepak Chitnis-Chiparikar and Co. for plaintiffs.

Mr. Sajjid Amir Khan- plaintiff no.1 present.

Ms. Sonali Dalvi I/b. Mr. Mangesh Parte for defendant.

Mr. Digamber Sukhee- Partner of defendant present.

CORAM : K.R.SHRIRAM, J.

DATE : 15th JULY 2019

P.C.:

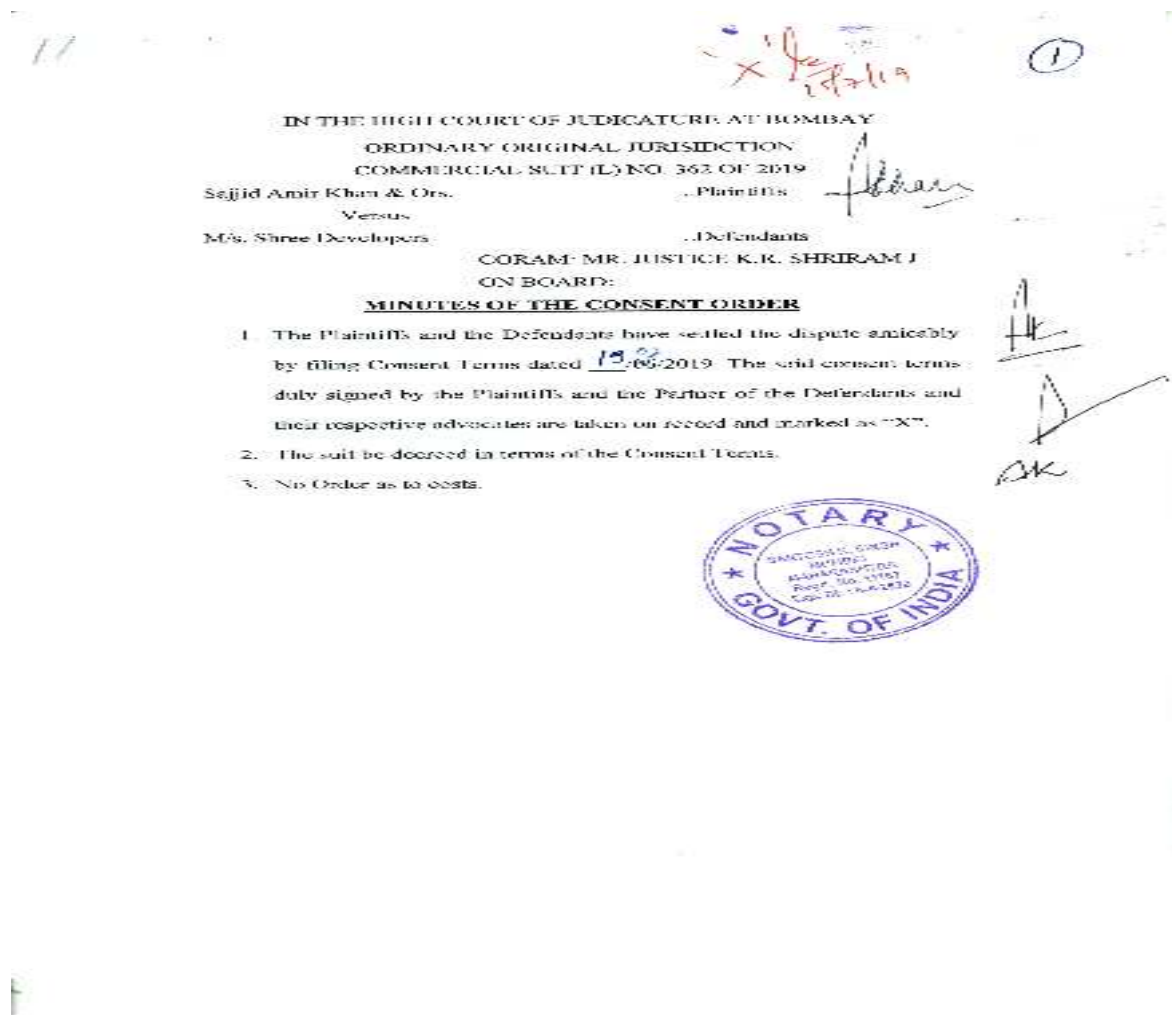
1 At the outset, Ms. Dalvi states that her instructing advocate – Mr. Mangesh Parte will file Vakalatnama on behalf of defendant during the course of this week. Statement accepted.

2 Plaintiffs and defendant have entered into consent terms and also minutes of the consent order. The minutes of the consent order is undated whereas the consent terms is dated 4th July 2019. Both have been stitched together and notarised.

3 The consent terms is signed by plaintiff no.1 for himself and as constituted attorney of plaintiff no.2 and plaintiff no.3 and these plaintiffs have also signed the minutes of the consent order, partner of defendant and their respective advocates. Mr. Chitnis states that plaintiff nos.2 and 3

signed in his presence and he is also satisfied that plaintiff no.1 has the requisite power to sign the consent terms. Plaintiff no.1 states that plaintiffs are the only legal heirs of late Mrs. Rasheeda Firdaus Khan and there is no impediment to the Court taking on record the consent terms. The consent terms is marked "X" for identification alongwith the minutes of the consent order. Plaintiff no.1 and one Digamber Sukhee, partner of defendant are present in Court and are identified by their advocates.

4 For ease of reference, minutes of the consent order and consent terms are reproduced hereinbelow :



2

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL JURISDICTION
COMMERCIAL SUIT (L) NO. 362 OF 2019

Sajid Amir Khan & Ors.

Plaintiffs

Versus

M/s. Shree Developers

Defendants

CONSENT TERMS

1. The Plaintiffs and the Defendants have agreed to settle the above dispute amicably by filing Consent Terms.
2. The Defendants hereby agree, confirm and accept that by a Deed of Apartment dated 21st May 2007, the Defendants have agreed to sell the Unit No.1 situate on the 1st Floor of the building known as Shreeji Plaza admeasuring approximately 167.87 sq. meters (built up area) equivalent to 145.37 sq. meters (carpet area) situated on the plot of land bearing C.T.S. No. F/136 of Village: Bandra, Plot No. 507 of T.P.S-III situated at 33rd Road, Off Linking Road, Khar (West), Mumbai-400 052 bearing Municipal H/W Ward No. 5545, Street No.2.
3. The Defendants hereby agree, confirm and accept that after execution of the Deed of Apartment dated 21st May 2007, the Defendants have received the entire consideration of Rs. 1,50,00,000/- from late Mrs. Rasheeda Firdaus Khan.
4. The Defendants hereby agree, confirm and accept that upon execution of the said Deed of Apartment dated 21st May 2007, and on receipt of the entire consideration of Rs. 1,50,00,000/-, the Defendants have handed over the vacant and peaceful possession of the said Unit No. 1 to late Mrs. Rasheeda Firdaus Khan and thereafter the said Mrs. Rasheeda Firdaus Khan started carrying on her business from the said Unit No.1.
5. The Defendants hereby agree and confirm that by a Registered Declaration which is registered in the office of the Sub-Registrar of Assurance bearing Registration No. BDR-1/8010/2004, signed under the provisions of Section 3 of the Maharashtra Apartment Ownership Act, 1970, on 9th September 2004 by the Defendants through its partners, the Defendants had submitted the immovable property

3

bearing C.T.S. No. 17136 of Village: Bandra, Plot No. 507 of T.P.S.-III situated at 33rd Road, Off Linking Road, Khar (West), Mumbai-400 052 with the new commercial building constructed thereon and known as Shreeji Plaza standing thereon by forming a Condominium in respect of the said immovable property.

6. The Defendants hereby agree and confirm that under the said Declaration filed under the provisions of Section 2 of the Maharashtra Apartment Ownership Act, the Defendants have agreed and confirmed that the premises on the first floor viz. Unit No.1 was kept with the Defendants. The Defendants hereby agree and confirm that after execution of the Deed of Apartment dated 21st May 2007, Mrs. Rasheeda Firdaus Khan expired on 27th August 2009 and in view thereof the said Deed of Apartment could not be registered in the office of the Sub-Registrar of Assurances.
7. The Plaintiffs hereby agree and confirm that the Plaintiffs are the only heirs and legal representatives of late Mrs. Rasheeda Firdaus Khan. The Plaintiffs have represented to the Defendants that the said Mrs. Rasheeda Firdaus Khan has not left behind or signed and executed any Will and Testamentary disposition and at the time of her death, she was governed by the provisions of Mohammedan Law and that the Plaintiffs are the only heirs and legal representatives of Mrs. Rasheeda Firdaus Khan and that the Plaintiffs are entitled for rights, title and interest in the said Unit No.1 in Shreeji Plaza absolutely and that all these rights held by Mrs. Rasheeda Firdaus Khan will now belongs to the Plaintiffs herein.
8. The Defendants hereby agree and confirm that as per the Declaration dated 9th September 2004, signed by the Defendants under the provisions of Section 2 of the Maharashtra Apartment Ownership Act, 1970, the Plaintiffs will be accepted as a member of Condominium formed and registered under the provisions of Maharashtra Apartment Ownership Act, in respect of the said Unit No.1. The Defendants hereby agree and confirm that they shall sign and execute all such documents and writing as may be required in law for the purpose of accepting the Plaintiffs as members of the said condominium.

(4)



9. The Defendants hereby agree and confirm that the possession of the entire plot of land along with building standing thereon has been handed over by the Defendants to the said condominium and that the Plaintiffs will be entitled to exercise those rights as available in law under the provisions of Maharashtra Apartment Ownership Act in respect of the Unit No.1 being member of the said condominium. The Defendants hereby agree and confirm that they have received the entire consideration due and payable by Mrs. Rasheeda Firdaus Khan under a Deed of Apartment dated 21st May 2007 and no other amount is due and payable by the Plaintiffs to the Defendants under the said Deed of Apartment.
10. The Defendants hereby declare that after execution of the Deed of Apartment dated 21st May 2007, the Defendants have not sold, transferred and/or created any third party rights in respect of the said Unit No.1 in Shreeji Plaza Building. The Defendants hereby agree and confirm that after the said Mrs. Rasheeda Firdaus Khan was put in possession of the said Unit No.1, thereupon MCGM has issued property tax bills in respect of the said Unit No.1 in the name of the said Mrs. R.F. Khan. The Defendants shall grant NOC if required to the Plaintiffs after making an application to MCGM for deleting the name of Mrs. Rasheeda Firdaus Khan and for bringing the names of the Plaintiffs as owner of the said Unit No. 1 and all the costs, charges and expenses will be borne by the Plaintiffs.
11. The Defendants hereby agree and confirm that the Plaintiffs will be entitled to use the common area and shall have undivided interest in proportionate to the area of their office premises in the said Shreeji Plaza Building, which are coming to the share of Mrs. Rasheeda Firdaus Khan as one of the member of the said condominium registered under the Maharashtra Apartment Ownership Act and as more particularly mentioned in the Deed of Declaration dated 9th September 2004 signed by the Defendants and registered in the office of the Sub-Registrar of Assurance bearing Registration No. HDR-1-8013/2004.
12. The Plaintiffs hereby agree and confirm that they will abide by the bye laws of Shreeji Plaza Condominium, a copy of which is provided

(5)

by the Defendants to the Plaintiffs prior to the date of execution of these presents. The Plaintiffs hereby agree and confirm that they are provided with the copy of the Declaration dated 9th September 2004 and they will also abide and perform all these acts, deeds and things provided in the said Declaration dated 9th September 2004 under the provisions of the Maharashtra Apartment Ownership Act and more particularly known as Shreeji Plaza Condominium. The Plaintiffs hereby agree and confirm that they will bear and pay the charges for the common area, which will be used by the Plaintiffs jointly with other members of Shreeji Plaza Condominium in proportionate to the area of the Unit No.1 purchased by Mrs. Rasheeda Firdaus Khan.



13. The parties hereby agree and confirm that this Consent Terms shall operate as a Declaration signed by the Defendants under the provisions of Section 2 of the Maharashtra Apartment Ownership Act in favour of the Plaintiffs in respect of the Unit No.1 and the same shall operate as conveyance in favour of the Plaintiffs. The said Consent Terms shall be registered by the Plaintiffs and the Defendants. The necessary stamp duty and the registration charges shall be borne and paid by the Plaintiffs. The Defendants shall grant all necessary co-operation as may be required for registration of this Consent Terms.
14. The Plaintiffs hereby agree and confirm that by signing the above consent terms, the Defendants have agreed and confirmed about execution of the said Deed of Apartment on or about 21st May 2007 and accordingly the Defendants have signed this Consent Terms and agreed to register the said Deed of Apartment in the office of the Sub-Registrar of Assurance by confirming that the said consent decree to operate as a conveyance/declaration under the provisions of Maharashtra Apartment Ownership Act. The Plaintiffs hereby agree and confirm that in view of the execution of the consent terms, which operate as declaration under the provisions of Maharashtra Apartment Ownership Act if any income tax liability or any claims are raised by the income tax authorities or by any other authorities and in view





6

thereof if any income tax, GST or any other tax or any other amounts are payable to any authorities by the Defendants, the said liability shall be borne and paid by the Plaintiffs alone. The Plaintiffs hereby agree and undertake to this Hon'ble Court to pay the said amount. The Plaintiffs hereby agree, confirm and undertake to this Hon'ble Court that the Plaintiffs shall also grant all co-operation and assistance to the Defendants to defend and/or to challenge any such action in any court of law. The entire costs, charges and expenses for attending the said liability shall be borne and paid by the Plaintiffs alone.

15. The Plaintiffs hereby indemnify and keep indemnified the Defendants that by signing and executing this consent terms, if any liability of tax or any other tax liability towards payment of interest, penalty etc. is levied or initiated against the Defendants by any authorities whatsoever, in that event, the Plaintiff hereby indemnify and keep indemnified, the Defendants to pay the said liability together with all costs, expenses including legal fees and interest or penalty that such authorities may charge.
16. The Plaintiffs hereby indemnify and keep indemnified the Defendants all costs, charges and expenses which will be incurred by the Defendants in prosecuting the said proceedings or actions or any issues relating to the payment of the penalty or interest etc., the said entire costs, charges and expenses shall be borne and paid by the Plaintiffs without raising any dispute of whatsoever nature.

17. No order as to costs.

Dated this 4th day of June 2019

[Signature]

1

Sajjid Amir Khan

[Signature]



5 All statements accepted as undertaking to this Court and all undertakings are also accepted.

6 Suit stands decreed in terms of the consent terms. Drawn up decree dispensed with. Refund of court fees, if any, in accordance with rules. No order as to costs.

7 All to act on authenticated copy of this order.

(K.R. SHRIRAM, J.)