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

**NOTICE OF MOTION NO.1859 OF 2016
IN
COUNTER CLAIM NO.12 OF 2016
IN
SUIT NO.921 OF 2013**

Mukesh D. Narang and ors

... Counter Claimants.

V/s.

Narang Developers Pvt. Ltd
and ors

... Defendants

- Ms. Neeta Jain i/by Chaitanya Nikete, for the Plaintiff.
- Mr. Shriram Kulkarni i/by Pranita Dhane, for the defendant No.1 and for Counter Claimant in the Counter Claim.
- Mr. Anil D'souza for defendant No.2.

CORAM : B. P. COLABAWALLA, J.

DATE : 10th October, 2019.

PC. :

1] The original plaintiff has filed the above referred suit bearing No.921 of 2013 for seeking rescission of agreement to sale dated 26/02/2005 executed by the original plaintiff in favour of defendant Nos. 1 and 2 in respect of Flat bearing No.501 admeasuring 1184 Sq. ft carpet area on the

fifth floor in the building to be constructed in pursuant to the development agreement dated 17/01/2000.

2] Defendant Nos. 1 and 2 in the said suit filed Counter Claim bearing No.12 of 2016 thereby praying for a declaration that the original plaintiffs are under a statutory obligation to complete the construction of the building wherein the counter claimants have purchased a flat vide a registered agreement to sale dated 26/02/2005. In the said Counter Claim, the counter claimants/original defendant Nos. 1 and 2 have preferred the above referred Notice of Motion for various reliefs.

3] It is contended by the counter claimants that as such as on date the MOU/Development Agreement as referred in the consent terms dated 21/12/2015 still exists and the right to redevelopment vests with the present original plaintiff and therefore in the event even if the redevelopment is undertaken by the original plaintiff, still they will be under an obligation to hand over the flat of the same size of 1184 sq. ft carpet area to the Counter Claimants.

4] After hearing both the parties at length and after various deliberations, the parties have agreed that no reasons be assigned to the

present order which is as follows :-

- a) The original plaintiff, if undertakes the redevelopment of the building, it is directed that he will earmark the same size carpet area of the suit flat i.e. 1184 sq. ft from the saleable component in the newly constructed building for the counter claimants.
- b) In the event if the defendant society terminates the arrangement of redevelopment referred in the consent terms dated 21/12/2015 arrived at in the City Civil Court, Mumbai in S. C. Suit No.3940 of 2003, annexed to the Counter claim, then the said termination shall be communicated to the counter claimants within a period of 7 days of such termination.
- c) Any action in furtherance of the suit flat shall be subject to the final order passed in the Counter Claim.'
- d) Having regard to the age of the counter claimants and health issues of counter claimant No.1, hearing of the suit is expedited. The parties to the suit shall complete their respective pleadings within a period of 2 weeks from today and submit the draft issues. The matter to be placed for framing of issues on **14th November, 2019.**
- e) The parties shall co-operate for early disposal of the suit so that the counter claimants will get the final results and fruits

of the decree if passed in their favour.

5] The Notice of Motion is disposed of in terms of the above directions with no order as to costs.

[B. P. COLABAWALLA, J]