

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

**NOTICE OF MOTION NO. 2133 OF 2015
IN
SUIT NO. 576 OF 2014**

Mrs. Hina Sherikumar Shah ..Plaintiff

v/s.

Vaidehi Akash Hsg. Pvt. Ltd.
& Ors. ..Defendant/s

Mr. A.R.Shaikh I/b. ASD Associate for the Plaintiff/s
Mr. R.S.Ghadge I/b. A.S.Desai for the Defendant No.3.
Mr. Virag Tuljapurkar a/w. Ms. Apeksha Munot I/b. Wadia Gandhi
and Co. for the Defendant No.2.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 08th APRIL, 2019.**

P.C.

1. Heard the Counsel for the Plaintiff and the learned Counsel for the Defendant Nos.2 and 3 respectively. Perused the records.
2. The Plaintiff herein has filed a suit for specific performance of the Agreement dated 18th February, 2008 with other consequential reliefs. The Plaintiff has taken out the notice of motion for appointment of Receiver and further to restrain the Defendant Nos.1 and 2 from selling, transferring, alienating or creating third party right in respect of the Suit Flat No.501 on the 5th Floor of building

No.1, along with car parking space situated at DN.Nagar, Anheri (West).

3. The Defendant No.3 which is a Co-operative Housing Society had entered into a development agreement with defendant no.1 to develop the suit property. It appears that the Plaintiff and several other purchasers had entered into an agreement with the Defendant no.1 to purchase the said flat from the free sale component. The dispute between the Defendant No.3 society and the Defendant No.1 Developer resulted in termination of the Development Agreement with the Defendant No.1. The Society thereafter appointed Defendant No.2 as the new Developer. The Defendant No.2 has developed the property and has allotted the rehab flats to the members of the society and sold the free sale components to the third parties with whom he had entered into agreements.

4. The Plaintiff has filed this Suit for specific performance of the Agreement which was entered with the defendant no.1. Several other purchasers who had also entered into agreement with the Defendant No.1 to purchase flats from the free sale component had filed suits with similar prayers for interim relief. The notice of motion filed by the other proposed purchasers have been dismissed by this Court (Coram: S.C.Gupte, J.) by order dated 1st December, 2014, holding

that the said purchasers had no privity of contract either with the society or the Defendant no.2 and hence they could not seek any relief against the Defendant No.2 or 3. It is stated that one of the appeals challenging the similar order has already been dismissed by the Division Bench of this Court.

5. It is not in dispute that the Plaintiff in the present case is not a member of the Defendant No.3 society. He has not entered into any agreement with the Defendant No.2. There is no privity of Contract between the Defendant No.3 society and the Defendant No.2 Developer. The case of the Plaintiffs is therefore covered by the judgment dated 01.12.2014 in Notice of Motion No. 961 of 2013 in Suit No. 262 of 2012 and other companion matters.

6. Considering the above facts and circumstances, the Plaintiff is not entitled for any interim relief. The notice of motion stands dismissed in above terms.

(ANUJA PRABHUDESSAI, J.)