

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
COMMERCIAL NOTICE OF MOTION NO. 75 OF 2017
IN
COMMERCIAL SUIT NO. 112 OF 2017**

Vikram Harlalka and Anr.

...Plaintiffs

Vs.

RNA Universal

...Defendant

Mr. Cyrus Ardeshir a/w Mr. Tushar Gujjar I/b Solicis Lex for Plaintiffs.

Mr. Cherag Balsara a/w. Ms. Neha Joshi I/b Vidhi Partners for Defendant.

Mr. R.Y. Sirsikar for MCGM.

CORAM : K.R.SHRIRAM, J.

DATE : 9th APRIL 2019

P.C.:

1 On 2nd November, 2018 the following order came to be passed:

“Mrs. Saranga Agarwal, Proprietor of Defendant No. 1 and her constituted attorney Mr. Anubhav Agarwal, though their Counsel, undertake to this Court that all the works required to be carried out and set out in the report of Mr. Amol Shetgiri, except the work set out at Sr. No. 14, shall be completed within a period of one week from today. As far as the works at Sr. No.14 is concerned, they undertake that the same shall be completed within a period of four months from today. The undertakings are accepted. The defendant shall apply for occupation certificate within two weeks from the date of completion of the works undertaken to be completed as above. The Notice of motion is accordingly disposed of. Liberty to apply.”

2 Serial No. 14 in Shetgiri's report reads as under:

“There was an passing remark on the installation of STP, which is the requirement of the occupants. However STP installation is time consuming and involves design, capacity quantification and cost of treatment both OPEX and CAPEX. As such, the installation of STP, unless mandated under the Development Agreement, committed by the developers, insisted by MCGM or under Environmental clearances would be a point of dispute between the two parties to the suit. More inputs from both the parties to the suit would be required to draw any conclusion over the said issue.”

3 The four months period, therefore, would have expired on or about 2nd March, 2019. Plaintiff no.1 has filed an affidavit dated 15.01.2019 in which it is stated that so far as item no. 14 is concerned, there is no work in progress. Therefore, for 2 ½ months defendant has not commenced any work regarding STP. Few more hearings took place subsequently and as directed by this Court, defendant no. 1 has filed an affidavit affirmed on 12th February, 2019 through one Gokul Agarwal, authorized representative of defendant. Defendant is a sole proprietary concern of one Mrs. Saranga Agarawal. It will be useful to reproduce paragraphs 5 of additional affidavit dated 12.02.2019 which read as under:

“5. I say that the present Defendant shall complete the remaining issues in the time line as encapsulated in the table herein below:

Sr. No.	Particulars	Status
1.	Submission of amended plans	<i>I have been informed by the Architect of the Defendant that the Defendant is yet to receive a confirmation from MCGM on the applicability of an existing transitional policy under the old DCR for a specific layout. I say that the application to be made to the MCGM by the Defendant will be dependent upon the said clarification. I humbly request that the Court may grant some time to the defendant to make their application in accordance of the confirmation received by the Defendant.</i>
2.	Application for Occupation Certification and gas connection	<i>I say that since the application for OC is dependent upon the approval of the plans, the Defendant cannot make an application as of yet.</i>
3.	Application for water connection	<i>I say that the Defendant has been served with a copy of the P-form by the Plaintiffs. I say that one of the requirements in the P-form is payment of property tax to the assessment department of MCGM. I submit that the Defendant would pay the necessary amount towards property tax that has been accrued till the year flats have been handed over to the flat purchasers for fit-out/ possession</i>

		within a period of 6 weeks.
4.	Application for Fire NoC	I say that as already stated in the Affidavit of 4th February 2019, the Defendant has already installed the fire system and the same is fully functional. In furtherance of the same, the Defendant can make an application for Fire NoC only upon receipt of approval from the MCGM to the amended layout plans. The Defendant is still awaiting their approval to the amended plans. It is however pertinent to point out that the security of the flat owners is intact as all the equipment and escape routes are functional and in place.
5.	STP renovation work	The work of Sewerage Treatment Plant will be completed by the Defendant in a time period of 3 months.
6.	Pump are yet to be provided in underground rainwater harvesting pump	The rainwater harvesting pumps have been installed already and are available for use on the site. Annexed hereto and marked as <u>Exhibit A</u> are the photographs showcasing the same.
7.	Lifts	All the 5 lifts have been installed and fully functioning. Annexed hereto and marked as <u>Exhibit B</u> are the photographs displaying the lifts.
8.	CCTV	The CCTVs are functional subject to a minor issue of snagging which shall be resolved within 2 weeks. Annexed hereto and marked as <u>Exhibit C</u> are the photographs of the CCTV display.
9.	Intercom	The work towards completion of repair and maintenance of the intercom will be completed within 4 weeks (subject to accessibility into flats of the purchasers)
10.	Snags towards painting	The same will be completed within one month.
11.	Unwanted debris	I say that the debris that is collected is created due to the fit-out works of the flat purchasers, as stated in the Affidavit of 4 th February 2019, the debris is being regularly removed from the site by the appointed agencies.
12.	Elevation feature for the duct in the form of precast vertical	The same will be completed within a period of 4 weeks (subject to accessibility into flats of the purchasers). Annexed hereto and marked as <u>Exhibit D</u> are the photographs displaying the fins.

4 In this, for the STP renovation work, defendant simply states “The work of Sewerage Treatment Plant will be completed by the Defendant in a time period of 3 months.”. Mr. Ardeshir states that no work has been commenced as on date. Two months, out of three months sought, has already expired as on date, as the affidavit is dated 12.02.2019. The attempt, therefore, is only to mislead the court, drag on the matter and not complete the work. This is also one attempt to cover up the breach of undertaking to court. Mr. Balsara states that he wants to put an end to this matter but the action of defendant speaks otherwise.

5 As regards item nos. 7 and 8 of paragraph 5 is concerned, Mr. Ardeshir states that lifts have been installed and CCTV cameras are functioning but AMC is not paid and the snagging of CCTV is continuing to happen. As regards item no. 12 is concerned, defendant wants four weeks time subject to accessibility into the flats of the purchasers. There is no evidence on record to show that defendant had even applied to the flat purchasers for access and they refused. This is also another case of bogus statements being made only to wriggle out of the undertaking given to this Court as noted in the order dated 02.11.2018. All these were to be completed within a period of 8 weeks, except item at Serial No. 14. Almost 5 months have passed and nothing is happening. Mr. Ardeshir states that as regards water connection, defendant is supposed to pay the property taxes

which have not been paid yet. In the additional affidavit it is stated that within six weeks it will be paid. I do not see any reason as to why 6 weeks time is required. This should have been paid long ago. Moreover, six weeks period in any event expired on 26.03.2019. Mr. Balsara states that whatever time court will give, defendant will pay the property taxes. Mr. Balsara states that possession has been given to the flat purchaser and therefore, his client will pay property taxes only for upto the date possession was given but he has no explanation as to why this tax was not paid even up to that date. Therefore, in my view this is another attempt to avoid payment and to harass flat purchasers.

6 As regards submission of amended plans and application for occupation certificate and fire NoC, Mr. Balsara states that unless confirmation from MCGM on the applicability of an existing transitional policy under the old DCR for a specific layout as opposed to a new transitional policy under the new DCR for a specific layout is finalized nothing can be done. Defendant was aware of this change in DCR, when thhe gave an undertaking to this court on 02.11.2018. In my view that is the problem of the developer, i.e., defendant. If only defendant had completed the project within time as per the original agreement with the flat purchasers, flat purchasers in need not have encountered problems. If there are extra amounts to be paid to MCGM, that has to be paid by

defendant and plaintiff cannot be saddled with any amount. It is rather obvious undertakings are being given with no intention of fulfilling. Undertakings are being given only to buy time and make flat purchasers run from pillar to post.

7 Extraordinary situation requires extraordinary orders. This court has heard so many litigations where flat purchasers are similarly placed. This defendant and entities of the group to which this defendant belongs to, are standard fixtures in this Court. Mrs. Saranga Agrawal, the sole proprietor of defendant, RNA Universal, and her two sons Anubhav Agrawal and Govind Agrawal are partners or directors in many firms / companies. Practically every week there is some matter or the other against this defendant or its group where flat purchasers cry hoarse alleging that the agreements are not fulfilled and they have been promised things which have not been given.

8 In my view the only way this defendant can be made to expeditiously honour the promise to the flat purchasers is to make defendant deposit a substantial amount with Prothonotary and Senior Master, High Court, Bombay.

9 The defendant, therefore, is directed to deposit sum of Rs. 5,00,00,000/- (Rupees Five Crores only) with Prothonotary and Senior Master, High Court, Bombay within 1 week. Prothonotary and Senior

Master, High Court, Bombay shall invest the same in fixed deposit with Nationalized Bank for an initial period of six months to be renewed thereafter for six months at a time until otherwise ordered. Once defendant completes the project and fulfills the undertakings given to this Court as recorded in the order dated 02.11.2018 and as per the undertakings given in the affidavit and promises made to flat purchasers in the suit project, Prothonotary and Senior Master, High Court, Bombay shall return this amount of Rs. 5,00,00,000/- with accumulated interest to defendant.

10 Notice of motion accordingly disposed with liberty for plaintiff to apply if required. Liberty to plaintiff to apply for utilization of this fund if the work to be completed by defendant as undertaken to this court is not completed within 4 weeks.

11 Defendant's sole proprietor was directed to remain present in Court today. When the matter was called out almost an hour ago, Mr. Balsara stated that defendant was stuck in traffic at Haji Ali. After 30 minutes, Mr. Balsara, on instructions, stated that defendant will be here in 20 minutes. It is 30 minutes since that was stated. Therefore, I would note that defendant has not remained present in court despite directions of this Court. I have to note that on 12.03.2019 also Mr. Balsara stated that defendant was not present in Court but he had a valid reason that day. There is no such valid reason whatsoever today for not remaining present in

court. Defendant, therefore, shall give a donation of Rs. 1,00,000/- to The Bombay Society for the Prevention of Cruelty to Animals, Beneficiary Name : BSPCA INCL. BSDPHA, beneficiary account no. 0064002100030631, account type : current, beneficiary bank name : Punjab National Bank, IFSC Code : PUNB0006400, MICR Code : 400024021. This amount shall be paid within 2 weeks and proof payment sent to plaintiff's advocate.

12 I have to also note that Mr. Balsara stated that he is not pressing the jurisdiction issue raised in paragraph 5 of the additional affidavit dated 12.02.2019 that this dispute should be refer to RERA.

(K.R. SHRIRAM, J.)