

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL SUIT NO.1418 OF 2018
WITH
COMMERCIAL NOTICE OF MOTION NO.2427 OF 2018
IN
COMMERCIAL SUIT NO.1418 OF 2018**

Darshan Group and Anr.Applicants/Plaintiffs
Vs.
Shri Bhairavnath CHSL and Ors.Defendants

Mr. Omkar Mohan Kulkarni for applicants/plaintiffs.
Mr. Rajendra Jain, partner of plaintiffs present.
Mr. Mrityunjay B. Barai for defendant no.1.
Mr. Ganesh S. Bhat for defendant no.2.
Mr. Mukesh Gupta for defendant no.5.
Mr. Damji M. Mangrolia, Secretary and Mr. Vithal B. Gavas, Chairman of defendant no.1 present.
Mr. Suresh N. Shetty, Director of defendant no.2 present.
Mr. Ravi Ranchandani, Partner of defendant no.5 present.

**CORAM : K.R.SHRIRAM, J.
DATE : 22nd JANUARY 2019**

P.C.:

- 1 By consent, chamber summons (lodging) no.1804 of 2018 is allowed and accordingly disposed in terms of prayer clause – (a).
- 2 Amendment to be carried out forthwith.
- 3 Plaintiffs seek leave to withdraw the suit as against defendant no.3 and defendant no.4.
- 4 Suit dismissed as withdrawn as against defendant no.3 and defendant no.4.
- 5 As regards plaintiffs and other defendants, viz., defendant nos.1, 2 and newly added defendant no.5, parties have entered into consent

terms dated 22nd January 2019. The consent terms signed by the partner of plaintiff, chairman and secretary of defendant no.1, director of defendant no.2, partner of defendant no.5 and their respective advocates is taken on record and marked "X" for identification.

6 Chairman of defendant no.1 states that though he has signed the consent terms in Marathi language, he understands English and he has read the consent terms as well. The counsel state that each of the signatory to the consent terms is present in Court and identify them.

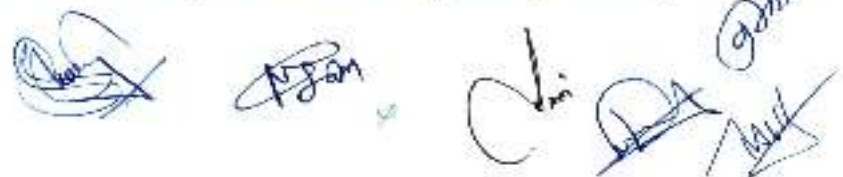
7 Order in terms of the consent terms. All statements and undertakings given in the consent terms are accepted.

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



acknowledge). The newly added Defendant No. 5 has also agreed to allot to the Plaintiff No. 1 two residential flats completed in all respect, each admeasuring approximately 725 sq. ft. RERA carpet area or thereabout on middle floors along with two car parkings. (hereinafter collectively referred to as "the said two flats") in any of the sale component building as to be sanctioned by the competent authority to be developed by the newly added Defendant No. 5 upon the Slum Properties in full and final settlement of all right, title, interest and claims as prayed for in the suit captioned above and the Plaintiffs hereby relinquish all their right, title and interest under the Agreement for Development dated 9th March 2006 and under the Assignment of Development Right dated 23rd September 2010 and the Plaintiff, the Defendant Nos. 1 and 2 hereby give their irrevocable consent and/or No Objection to the Slum Rehabilitation Authority for deletion of the names of the Plaintiffs and the Defendant No. 2 as Developers of the Slum Properties and substitute the name of the Defendant No. 5 as Developer and shall submit their irrevocable consent letter and shall make all necessary applications to Slum Rehabilitation Authority as may be required by the Respondent No 5 to substitute the name of newly added Defendant No. 5 viz; M/s. Dignity Realty and Housing as the Developer of the Slum Properties.

5. The Defendant No. 5 hereby agrees to construct and handover the said two flats as mentioned in clause 4 above within 48 months with grace period of 12 months from the date of present consent terms. The Defendant No. 5 further agree and undertake to register necessary sale deed/ agreement in respect of the said two flats in favour of the Plaintiff or its nominee immediately upon approvals of plans and issue of Commencement Certificate and in any case within one month from issue of Commencement Certificate/approval. The Stamp duty, registration fees and GST payable on Registration of such documents in respect of the said two residential flats each admeasuring 725 sq. ft. RERA carpet area or thereabout to the Plaintiffs by the Defendant No. 5 shall be borne and paid by the Plaintiff. Further, in the event the Defendant No. 5 enters into joint venture or assigns its rights to any



other developer/third party then the present consent terms and the rights of the Plaintiff under the present consent terms shall be binding upon the said developer/third party.

6. In the event the Defendant No. 5 is not continued as a developer and/or the Defendant No.1 develop the property themselves or through any other developer at any time in future then in that event the Defendant No. 1 agree to provide the said two flats to the Plaintiff or its nominee as mentioned in clause 4 above.
7. The Defendant No. 5 hereby agrees to pay market rate to the Plaintiff of the said two flats in the event the project is delayed and/or the Defendant No. 5 does not hand over the possession of the said two flats within 48 months with grace period of 12 months from the date of present consent terms. The said amount shall be paid by the Defendant No. 5 to the Plaintiff immediately upon expiry of 48 months with grace period of 12 months from the date of the present consent terms, failing which the said amount shall be treated as Decree against the Defendant No. 5 and the Plaintiff shall be entitled to execute the same and the Plaintiff shall also be entitled to claim charge and lien over the constructed area to the extent of market value of the said two flats as mentioned in clause 4 above.
8. The Defendant No. 5 shall offer the possession of the said two flats as mentioned in Clause 4 above to the Plaintiff before handing over the possession of premises in sale building to any other prospective purchaser.
9. The Plaintiff agrees and undertakes that save and except the consideration mentioned in Clause 4 herein above and/or possession of the said two flats as mentioned above all right, title, interest and claim of the Plaintiff in respect of the suit property and on the basis of Agreement dated 9th March 2006 and Assignment of Development Right dated 23rd September 2010 have come to an end automatically and the Plaintiffs shall not claim any rights on the basis of these two documents or otherwise howsoever.



10. The Plaintiffs and the Defendant No. 2 hereby declare and confirm that Agreement for Development dated 9th March 2006 and subsequent Assignment of Development rights dated 23rd September 2010 in respect of property viz; all that piece and parcel of land together with slum property at Bhairavnath Mandir Marg, Katrak Road, Wadala (W), Mumbai 400 031 bearing Cadastral Survey Nos. 438, 444 to 450, 453, 454, 457, 458, 463, 469, 474, 475, 479, 487, 488, 489, 492, 559 and 588 to 619 all of Nalgaon Division in 'F' North Ward in aggregate admeasuring 2228 sq. meters more particularly described in the schedule to the Agreement for Development dated 9th March 2000 made between Defendant No. 1 and the Plaintiffs herein have stood validity cancelled and/or revoked.
11. The Defendant No. 5 has without going into accounts agree to pay to the Defendant No. 2 the sum of Rs. 1,76,00,000/- (Rupees One Crore Seventy Six Lakhs Only) towards reimbursement of all expense incurred by the Defendant No. 2 for obtaining sanctions and permissions from Slum Rehabilitation Authority and relinquishing their right, title and interest in development rights granted by the Defendant No. 1 to the Plaintiff under the Agreement for Development dated 9th March 2006 for development of the Slum Properties as its Developer and assigned in favour of the Defendant No. 2. The Defendant No. 2 give their irrevocable consent letter and/or No objection letter to the Slum Rehabilitation Authority for deletion of the name of the Defendant No. 2 as Developers of the Slum Properties and shall execute Consent/No Objection Letter and shall sign all necessary applications as required by the Defendant No. 5 to the Slum Rehabilitation Authority to substitute the name of newly added Defendant No. 5 viz; M/s. Dignity Realty and Housing as the Developer of the Slum Properties.
12. The Defendant No. 2 hereby record and confirm that termination of Agreement for Development dated 9th March 2006 and the termination of assignment thereof by the Defendant No. 1 is valid and subsisting and binding upon it. The Defendant No. 2 hereby record and confirm that the Defendant No. 1 is absolutely entitled to appoint newly added Defendant No. 5 as its Developer for developing the Slum Properties.

13. The newly added Defendant No. 5 has paid the sum of Rs. 1,02,00,000/- (Rupees One Crore Two Lakhs Only) by Cheque No. 900457 dated 28th January 2019 drawn upon Bharat Co-operative Bank (Mumbai) Limited, Wadala (West) Branch in favour of the Defendant No. 2 (the payment and receipt the Defendant No. 2 do hereby admit and acknowledge) and the Defendant No. 5 also agree to pay the balance sum of Rs. 74,00,000/- (Rupees Seventy Four Lakhs Only) to the Defendant No. 2 within 30 days from the date Slum Rehabilitation Authority issues the Commencement Certificate of the sale building in favour of the Defendant No. 5 and/or on or before 9th December 2019 whichever date is earlier.

14. The Plaintiffs and the Defendant No. 2 hereby agree and undertake to this Hon'ble Court that the Plaintiff and the Defendant No. 2 at the cost of the Defendant No. 5 shall execute any such documents or writings or declarations as may be required by Slum Rehabilitation Authority to enter the name of the Defendant No. 5 for development of the Slum Properties without any demur or objection and shall also sign and execute any such documents or writings or declarations as may be required by Defendant No. 5 at the cost of the Defendant No. 5.

15. The Defendant No. 2 has furnished a Bank Guarantee for the sum of Rs. 35,50,000/- (Rupees Thirty Five Lakhs Fifty Thousand Only) to Slum Rehabilitation Authority. The Defendant No. 5 shall replace the said Bank Guarantee of their own Banker's within a period of 30 days from the date the Defendant No. 5 is accepted as New Developer on record of the Slum Rehabilitation Authority in respect of the Slum Properties.

16. In case, if any dispute arises between the Defendant Nos. 1, 2 & 5, upon the breach of any of the present terms, then in that case, it shall not affect the rights of the Plaintiffs under the Present Consent Terms & the Plaintiffs shall stand entitled in all the situations to their entitlements under the present consent terms.

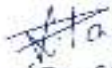
17. The Plaintiff shall not make any claim against the Defendants No. 2 under the Assignment of Development Right dated 23rd September 2010

and that the Defendant No. 2 shall not be liable to allot any area to the Plaintiff as the Defendant No. 2 is no more the Developer of the said Property and that the Defendant No. 2 is discharged from the obligation arising under the Assignment of Development Right dated 23rd September 2010.

18. Save and except aforesaid neither party shall have claim of any nature whatsoever and howsoever against each other.
19. The Defendant No. 1 declares and confirms that the Defendant No. 1 Society in its Special General Body Meeting held on 16th June 2018 has appointed newly added Defendant No. 5 as New Developer. The Special General Body pursuant to the Special General Body Resolution dated 23rd December 2018 has authorized the Chairman and Secretary to sign and execute these Consent Terms. The copies of the said Resolutions are annexed hereto and marked as Annexure 'A' and 'B' respectively.

Dated this 22nd day of January, 2019.


 Advocate for the Plaintiff
 Plaintiff


 Advocate for the Defendant No. 1
 Defendant No. 1


 Advocate for the Defendant No. 2
 Defendant No. 2


 Advocate for the Defendant No. 5
 Defendant No. 5

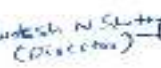

 Defendant No. 1

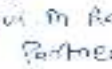

 Defendant No. 2


 Defendant No. 5


 Rajendra Jain
 (Partner)


 Vithal S.
 (Chairman)


 Suresh N.
 (Secretary)


 Ravi M.
 (Partner)

9 Suit accordingly stands disposed. Refund, if any, of court fees in accordance with rules. Consequently, all interim applications stand disposed and all interim orders also stand vacated.

(K.R. SHRIRAM, J.)