

CORAM : G. S. PATEL J.

Date : 22/11/2019

"C-1"

22/11/2019

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION (L) NO. 1239 OF 2019

GANESH RAJA PATEL & ANR.

... PETITIONERS

VERSUS

PRIMA TERRA BUILDTECH PVT. LTD.

... RESPONDENT

CONSENT TERMS

The Petitioners have filed the captioned Petition inter alia seeking reliefs as are more particularly stated therein. The parties hereto have, after mutual discussions and deliberations, decided to amicably settle all the disputes and differences that had arisen between them on the terms and conditions which are more particularly set out hereunder.

1. The Parties hereto agree, declare and confirm that the Deed of Confirmation dated 28th November 2011 (hereinafter referred to as "**said Deed**") is valid, binding and subsisting upon the Petitioners and the Respondent. Under the said Deed, the Respondent had agreed to sell and the Petitioners had agreed to purchase Flat No.802 on the 8th Floor of Wing "A" of Building No.1 (hereinafter referred to as "**Suit Premises**") on terms and conditions more particularly set out therein. However, on account of certain exigencies, the Respondent is now not in a position to allot the Suit Premises to the Petitioners as agreed under the said Deed. The Respondent has therefore offered to allot and the Petitioner has agreed to accept Flat No.402 on the 4th Floor of Wing 'A' of Building No.1 (hereinafter referred to as "**said Flat**") in place and stead of the Suit Premises.
2. The Petitioners agree, declare and confirm that they have personally visited the said Flat and have seen, inspected and verified the same. The Petitioners agree, declare and confirm that they have no objections whatsoever in accepting the said Flat in place and stead of the Suit Premises. In view thereof, the Petitioners agree and undertake to this Hon'ble Court that they are ready and willing to accept the said Flat in place and stead of the Suit Premises.
3. It is agreed between the Parties hereto that the fixtures and fittings as are more particularly set out herein below in point (a) and (b) shall be installed by the Respondent in the said Flat at their own costs and expenses within 7 (seven) days from the date hereof and as far as point (c) i.e. safety grill, the

same shall be installed within 40 (forty) day from date of receipt of Occupation Certificate.

- a. Bathroom fixtures and fittings;
 - b. Painting of the said Flat; and
 - c. Safety grill on windows.
4. The Petitioners hereby agree and undertake to this Hon'ble Court that neither the Petitioners nor anyone claiming through or under them shall claim any right, title and interest of any nature whatsoever with respect to the Suit Premises.
5. Simultaneously with the execution of the present consent terms, the Respondent has handed over keys of the said Flat to the Petitioners for fit out purpose.
6. The Petitioners agree and undertake to this Hon'ble Court that they shall on or before 20 December 2019 make the payments of the following amounts to the Respondent:
 - a. A sum of Rs.10,62,733/- (Rupees Ten Lakhs Sixty-Two Thousand Seven Hundred and Thirty-Three Only) shall be paid to the Respondent by way of a demand draft towards the balance consideration payable under the said Deed. The demand draft for making payment of the amount mentioned in this clause shall be drawn in name of "*Prima Terra Buildtech Private Limited Master Collection Escrow Account*"; and
 - b. A sum of Rs.1,87,528/- (Rupees One Lakh Eighty-Seven Thousand Five Hundred and Twenty-Eight Only) shall be paid to the Respondent by way of a demand draft towards GST payable on the consideration mentioned in the said Deed. The demand draft for making payment of the amount mentioned in this clause shall be drawn in name of "*Prima Terra Buildtech Private Limited Tax Account*".
7. Upon the Petitioners making payment of the amounts mentioned in clause 6 above, the Parties shall execute and register a Deed of Rectification/Supplemental Deed inter alia to record the said Flat in lieu of the Suit Premises so as to implement the present consent terms.
8. The Parties agree and undertake to this Hon'ble Court that on the date fixed for the registration of the Deed of Rectification/Supplemental Deed, they shall remain present and attend the office of the Sub-Registrar of Assurances and/or other competent authority as may be required to admit execution and for due registration of the Deed of Rectification/Supplemental Deed.

9. The Respondent agrees and confirms that it shall handover possession of the said Flat to the Petitioners on or before 30 March 2020 or upon receipt of the Occupation Certificate (OC)/Part OC failing which the Petitioners shall be at the liberty to file appropriate applications before the Appropriate Authorities or in the alternative and without prejudice to the above, apply to this Hon'ble Court which shall solely be at the risk of the Respondent. The Petitioners further agree and undertake to this Hon'ble Court that they shall within a period of 30 (thirty) days from date of receipt of OC/Part OC make payment of an amount of Rs. 2,68,850/- (Rupees Two Lakhs Sixty-Eight Thousand Eight Hundred and Fifty Only) to the Respondent in accordance with clause 32 of the said Deed. The clause 32 of the said Deed is reproduced hereinbelow for the sake of clarity:

"...32. The Flat Purchaser/s shall on or before taking possession of the said Flat, keep deposited with the Developer the following amounts:

- (i) Rs. 1,000/- for the entrance fee.*
- (ii) Rs. 250/- for share application money*
- (iii) Rs.25,000/- for new membership premium*
- (iv) Rs.10,000/- legal charges*
- (v) Rs.15,000/- for water, electric meter and fire cess deposit*
- (vi) Rs.10,000/- towards the Gas Pipeline, however if for any reason Developer are unable to provide the Gas Line, it shall refund the said amount without any interest on the same.*
- (vii) Rs.1,25,000/- towards membership of Health Club / Swimming Pool*
- (viii) Rs.11,800/- for Development Charges @ Rs.20/- per sq. feet.*
- (ix) Rs.70,800/- @ Rs.5/- per sq. feet towards interest free deposit against proportionate / provisional share of taxes, maintenance and other charges for 24 months.*

Total Rs.2,68,850/- (Rupees Two Lakh Sixty-Eight Thousand Eight Hundred and Fifty Only)..."

10. The Respondent agrees, declares and confirms that stamp duty implication, if any or any charges, of whatsoever nature arising out of execution and registration of the Deed of Rectification/Supplemental Deed in accordance with the present consent terms shall be borne and paid by the Respondent and shall not be claimed from the Petitioners at any point in time.
11. The Petitioners agree, declare and confirm that if the Petitioners fail and/or neglect to make payment of any of the amounts mentioned in clauses 6 and 9 above as per the timelines provided therein or breaches the undertakings given by them in the present consent terms then the following consequences shall follow: -

- a. The understanding arrived at by and between the Parties in the present consent terms shall forthwith come to an end and the Respondent shall be entitled to forfeit/retain the amount paid by the Petitioners to the Respondent;
 - b. The said Deed executed between the Petitioners and the Respondent with respect to the Suit Premises shall forthwith stand annulled/cancelled/terminated with immediate effect and neither the Petitioners nor their legal heirs, executors and administrators and/or anyone claiming through or under them shall claim any right, title and interest of any nature whatsoever with respect to the Suit Premises or the said Flat;
 - c. The Petitioners agree and undertake to this Hon'ble Court that they have no objection if the Respondent deals with the Suit Premises and the said Flat in any manner as he may deem fit and proper.
 - d. The Petitioners agree and undertake to this Hon'ble Court that they shall execute necessary documents, if so required so as to give effect to the aforesaid.
12. In view of execution of the present Consent Terms, the Petitioners hereto agree and undertake to this Hon'ble Court that:
- a) The Petitioners shall provide all possible assistance as may be required by the Respondent for the purpose of obtaining the Occupation Certificate for the Wing "A" in which the said Flat is situated;
 - b) The Petitioners shall strictly adhere to the timelines for making payments of the amounts mentioned in the present consent terms.
 - c) The Petitioners shall within 30 (thirty) days from the date hereof make the necessary Application before the RERA Authority to withdraw their complaint against the Respondent.
13. The Parties hereto further agree, declare and confirmed that:
- a) They do not have any right, claim or demand whatsoever against each other, save and except as provided in the present Consent terms; and
 - b) That the Parties have executed the present Consent terms of their own free will and volition and without any inducement or coercion by the other party.

14. In view of the above, the captioned Petition be disposed of in terms of the present Consent terms.

15. No order as to costs.

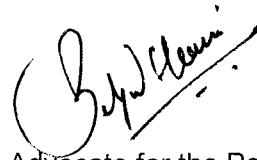
Dated this 29th day of November, 2019

ગણેશ રાજા પટેલ

Ganesh Raja Patel
(Petitioner No.1)

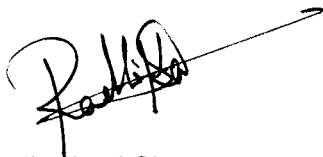
૧૨૨૧૧

Varsha Ganesh Patel
(Petitioner No.2)



Advocate for the Petitioners

For Prima Terra Buildtech Pvt. Ltd.



Authorized Signatory
(Respondent)

For M/s. Hariani & Co.



Associate Partner
Advocates for the Respondent



PRIMA TERRA
BUILDTECH
New directions. New Life.

CERTIFIED TRUE COPY OF RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF PRIMA TERRA BUILDTECH PRIVATE LIMITED AT THE MEETING HELD ON 24TH NOVEMBER, 2017, AT THE REGISTERED OFFICE OF THE COMPANY AT 702, AKRUTI ORION, SHRADDHANAND ROAD, VILE PARLE (EAST) MUMBAI :-400057.

"RESOLVED THAT MRS. RADHIKA PUNIT DAVE, be and is hereby authorised to execute, sign, verify, affirm, in the name of and on behalf of the company the required Vakalatnama, plaints, written statements, petitions, Replies and/or any other documents, to submit before any court all over India."

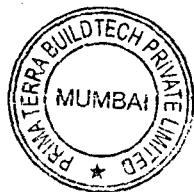
"RESOLVED FURTHER THAT MRS. RADHIKA PUNIT DAVE is also authorised to settle, adjust, compound, submit to arbitration and to compromise all actions, suits, legal proceedings, whatsoever which now or are which may hereafter be filed by the company or wherein the company is one of the party and further for the purpose to sign, verify, affirm the necessary consent terms, settlement Agreement and/or any other document as he may deem fit and proper.

"RESOLVED FURTHER THAT the common seal of the company be affixed as and when necessary."

For PRIMA TERRA BUILDTECH PRIVATE LIMITED

[Handwritten signature]

DIRECTOR



True Copy
[Signature]
Advocate for Respondent

Corporate Office: Prima Terra Buildtech Pvt. Ltd. Hari Om Chambers, 6th Floor, 601/602, B/16, Veera Industrial Estate, Off. New Link Road, Andheri (W), Mumbai 400 053. T: 022 4233 4444 | W: primaterra.in

Registered Office: 702, Akruti Orion, Shradhanand Road, Vile Parle (E), Mumbai 400 057. CIN: U45201MH2006PTC162778

IN THE HIGH COURT OF JUDICATURE AT
BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL JURISDICTION
COMMERCIAL ARBITRATION PETITION (ST) NO.
1239 OF 2019

GANESH RAJA PATEL & ANR

... PETITIONERS

VERSUS

PRIMA TERRA BUILDTECH PVT. LTD.,

... RESPONDENT

CONSENT TERMS

DATED THIS 29th DAY OF NOVEMBER 2019