

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY AND ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO.2175 OF 2018
IN
SUIT (L) NO.1273 OF 2018**

Sanjay Krishan Luthra & Kiran Sanjay Luthra ..Plaintiffs/Applicants

Vs.

Niraj Kakad Builders LLP & Ors ..Defendants

Mr. Vikranjit Garewal I/b Siddharth Rankala for Plaintiff
(Ms Sejal Gandhi-constituted attorney of plaintiff present in court)
Mr. A. S. Daver I/b Mr. Ashok Dhanuka for Defendant Nos.1 to 3
Mr. Malcolm Singaporina a/w Ms Pranjali Mehendale I/b Kanga & Co. for Defendant No.4
Mr. Niraj Kakad Defendant No.2 and partner of Defendant No.1 and Ms Divya Kakad – Defendant No.3, Mr. Kishore Kulchandani Defendant No.4 are present in court

**CORAM : K.R.SHRIRAM, J.
DATE : 18th FEBRUARY, 2019**

P.C.:

1 Parties have entered into consent terms dated 18th February, 2019. The consent terms signed by plaintiffs (through power of attorney holder) and defendant Nos.1 to 3 and their respective advocates, is taken on record and marked as “X” for identification. Mr. Garewal, Mr. Daver and Mr. Singaporina state that power of attorney holder of plaintiff and defendant nos.1 to 4 are present in court and identify them.

2 For ease of reference the scanned copy of the consent terms is reproduced herein under:

IN THE HIGH COURT OF JUDICATURE, BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. (L) 1273 OF 2018

Sanjay Luthra and Anr

...Plaintiffs

V/S

Niraj Kakad Builders LLP. & Others

...Defendants

**CONSENT TERMS BETWEEN PLAINTIFFS AND
DEFENDANT NOS. 1 TO 3**

1. The disputes between the Plaintiff and the contesting Defendant Nos. 1 to 3 in respect of the Suit Flat have been amicably settled and the parties have agreed to file Consent Terms recording the settlement terms and apply for final orders and decree in terms thereof.

2. Agreed and recorded that:

- a. Vide an Agreement dated 8th July 2016 (hereinafter referred to as "Agreement for Sale"), the Plaintiff has agreed to purchase Flat No. 602 admeasuring 629 sq. ft. carpet area on the 6th floor (hereinafter to be called as "the said flat") in the proposed new building known as "The Kakad Imperial" (hereinafter to be called as "the said building") to be constructed upon all that piece and parcel of land or ground bearing Plot No. 694A of T.P.S. III, C. T.S. No. P/35 of Village Bandra, situated at 21st Road, Bandra(West), Mumbai 400050, in the Registration District of Mumbai City and Sub-District of Mumbai Suburban.
- b. The Plaintiff has filed Suit No.(L) 1273 of 2018 for declaration that the First termination letter dated 24th April, 2018 and Second termination letter dated 9th May 2018 addressed by the Defendant No. 1 to the Plaintiff (hereinafter to be called as "the said Termination Letters"), to terminate the Agreement dated

8th July 2016 executed by and between the Plaintiff and the Defendant No. 1 is bad in law, illegal, void and not binding on the Plaintiff and for declaration that the said Agreement dated 8th July 2016 is valid, binding and subsisting on the Defendants and also for specific performance of the Agreement for Sale.

3. The parties to these consent terms have now agreed that:
 - a. The Plaintiff, shall deposit a sum of Rs. 5,00,000/- (Rupees Five Lakhs Only) [in addition to the consideration of said flat mentioned under the Agreement for Sale] with Bank of India, Main Branch, Fort, Bank Account No. 000120110001201 (hereinafter to be called as "the said Bank Account") opened by the Committee constituted under the directions of the Honourable High Court of Bombay in Commercial Arbitration Petition (I) No. 885 of 2018 dated 10th August 2018, within 7 working days from the date of filing these Consent Terms, as and by way of exgratia payment and as full and final settlement of all disputes between the parties.
 - b. The Plaintiff agrees and undertakes to pay the installment mentioned in the said Termination Letters, within 7 days from the date of filing these Consent Terms in the said Bank Account. These monies shall be used for the purpose of obtaining a further commencement certificate for the said building permitting Defendant Nos.1 to 3 to commence construction beyond the top of stilt level.
 - c. That all the taxes, dues, charges, in the nature of Service Tax & CGT on the amounts paid, save and except the sum of Rs.5,00,000/- mentioned in clause 3(a) herein above shall be paid by the Plaintiff in the said Bank Account, within 7 working days of filing of these

① *[Signature]*

[Signature]

[Signature]

3

Current Terms and shall continue to pay GST on the balance consideration amount payable under the said Agreement for Sale.

- d. That the aforesaid monies and all the monies that shall become due and payable by the Plaintiff under the said Agreement dated 8th July 2016, and as called upon by the Committee constituted under the directions of the Honourable High Court of Bombay in Commercial Arbitration Petition (L) No. 885 of 2018 dated 10th August, 2018, shall be deposited by the Plaintiff with the said Account.

- e. That on deposit of the amounts stated in clause no. 3 (shend 30b) hereinabove, by the Plaintiff in the said Bank account, within the time period as stated therein, the termination of Agreement for Sale dated 8th July 2016 shall stand revoked and / or withdrawn and there shall be a decree in terms of prayer clause (b) and (c) as prayed for in the Plaint and as shall be decided by the Committee constituted under the order dated 10th August 2018.

4. The Defendant Nos.1 to 3 hereby agrees and undertakes to this Hon'ble Court that Defendant No.1 shall complete the construction of the building and obtain an occupation certificate with respect to the said building in accordance with the Order dated 10th August 2018, under the supervision of the Committee constituted under the directions of the Honourable High Court of Bombay in Commercial Arbitration Petition (L) No. 885 of 2018.

5. The parties hereto agree, confirm and declare that the terms and conditions agreed herein shall be in addition to the terms and conditions as contained in the Agreement for Sale dated 8th July 2016.

(1) *[Signature]*

[Signature] *[Signature]*

4

6. The parties hereto agree, confirm and declare that both the parties shall abide by the terms and conditions of the Agreement for Sale dated 8th July 2016 and of the terms contained herein.

7. ~~Agreed and Ordered that the above Suit be decreed in the above terms.~~

8. ~~Drawing up of the decree is dispensed with.~~

9. ~~Agreed and Ordered that the above Suit as against Defendant Nos. 4 and 5 stands withdrawn.~~

10. ~~Refund of Court fees as per rules.~~

11. ~~Liberty to apply.~~

Dated this 18th day of February, 2019

Advocate for the Plaintiffs

Advocate for the Defendant No. 1 to 3

Plaintiff No. 1 and 2
For NIRAJ KAKAD BUILDERS LLP
PARTNER

Defendant No. 1

Defendant No. 2
Designated Partner
Shri. Nitay, Kakad

Defendant No. 3
Designated Partner -
Jmt. Dnyanesh Kakad

- 3 Order in terms of consent terms.
- 4 All undertakings accepted.
- 5 Suit stand decreed in terms of consent terms. Drawn up decree dispensed with.
- 6 Suit against defendant nos.4 and 5 stand dismissed as

withdrawn.

7 Refund of court fees in accordance with rules.

8 Notice of motion also stands disposed.

9 All to act on authenticated copy of this order.

(K.R. SHRIRAM, J.)