

[CORAM : G. S. PATEL J.]

(Date : 16.1.2018)

Consent to sign taken from the
respondent as "E-1"

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION [CIVIL] NO. 103 OF 2018

IN

SUIT NO. 631 OF 2003

1. Mrs. Vandana Ashok Dwivedi)
Residing at 12, Shri Ram Mandir,)
Janata Colony Road, Jogeshwari (E))
Mumbai – 400 060)
2. Mr. Jagdish Chand S. Yadav)
Mrs. Sushma Devi J. Yadav,)
Chandrakant Dairy, Shri Krishna Nagar)
General Arun Kumar Vaidya Marg)
Goregaon (East))
Mumbai - 400 065)
3. Mr. Shrikant Devadiga,)
Dhakad Compound, General Arun)
Kumar Vaidya Marg, Goregaon (East))
Mumbai - 400 065)
4. Mr. Madhavprasad Krishnanand)
Mishra, Flat No. 7, Shaw Tulip,)
1st Floor, Nalasopara (West))
District Thane, Maharashtra.)
5. Mr. Devendra Kumar Tripathi)
Mrs. Pratibha D. Tripathi,)
Room No. 1, Jay Bhavani Society,)
Tepari pada, Malad (West))
Mumbai - 400 097)
6. Mr. Gajendra Pandey)
c/o Ashok Dwivedi, Room No. 12,)
Shri Ram Mandir Janta Colony Road,)
Jogeshwari (East), Mumbai – 400060) ... Petitioners

Versus

1. Capt. Dilip Vimlanand Kopikar (Retd))
Residing at Room No. 1657,)
Bldg. No. 52, Tagore Nagar,)
Vikhroli (East), Mumbai – 400 083)

2. Ex. Sevicemen Co-op. Housing Soc. Ltd.)
3. Shri Raja Dasrath S. Yadav,)
aged about 54 years,)
4. Shri Shivaji Trilokchand Yadav,)
aged about 52 years,)
5. Shri Abhiraj Baiju Yadav,)
aged about 50 years,)
6. Shri Abhimanyue Arjun Yadav,)
aged about 58 years)
7. Shri Dashrath Ram Yadav,)
aged about 59 years) ... Respondents

Having address of
Respondent No. 1

CONSENT TERMS

1. The seven (7) Respondents herein, Land Owners, had entered into a Conditional Development Agreement, CDA for short, with one M/s Shanil Builders, a Partnership Firm, for construction of a building on their land at Goregaon East, Mumbai, more specifically stated in the captioned suit No. 631 of 2003.
2. The said Shanil Builders breached all the terms and conditions of the said CDA when purchasers of residential flats and shops (Petitioners herein) from the said M/s Shanil Builders approached this Hon'ble Court by filing Suit No. 631 of 2003 for specific performance of their Sale Agreements praying, *inter alia*, for –
 - (i) Declaration that the Agreement for Sale and/or allotment letters issued by M/s Shanil Builders to the Plaintiffs therein are valid, subsisting and/or are in force and binding on the Defendants therein and Respondents herein; and
 - (ii) Vacant and peaceful possession of the respective flats/shops mentioned therein be granted to them.
3. The said Suit No. 631 of 2003 was compromised between Plaintiffs therein (including Petitioners herein) and Defendant Nos. 4 to 10 therein (Respondents herein) under Consent Terms dated 18th June 2012 which were taken on record and the said Suit No. 631 of 2003 was disposed off.

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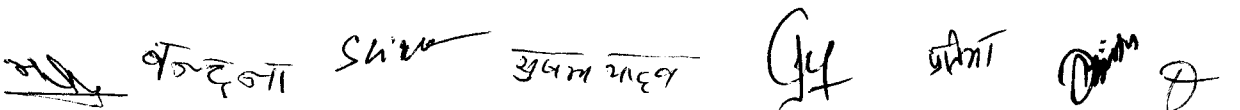
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4. Under the said Consent Terms dated 18th June 2012 and the respective Agreements for Sale between M/s. Shanil Builders and Petitioners herein, Petitioners herein are entitled to the following Shop areas as per Sale Agreements registered by them with the Sub-Registrar of Assurances, Borivali, Mumbai Suburban District, Mumbai.

Petitioner	Names of Shop Buyers	Shop area
Petitioner No. 1	Mrs. Vandana Ashok Dwivedi	135 sq. ft.
Petitioner No. 2	Mr. Jagdish Chand S. Yadav/ /Mrs. Sushma Devi J. Yadav	298 sq. ft.
Petitioner No. 3	Mr. Shrikant Devadiga	200 sq. ft.
Petitioner No. 4	Mr. Madhavprasad Krishnanand Mishra	300 sq. ft.
Petitioner No. 5	Mr. Devendra Kumar Tripathi /Mrs. Pratibha D. Tripathi	189 sq. ft.
Petitioner No. 6	Mr. Gajendra Pandey	135 sq. ft.

5. Under Clause 5 of the said Consent Terms dated 18th June 2012, it was provided that in case Municipal Corporation of Greater Mumbai, MCGM, did not sanction plans for construction of shops on the ground floor in the new building for any reason whatsoever, then Respondents herein shall construct residential flats in lieu of shops of sizes either equivalent to the area of their respective shops or such area as is permissible in law and in that event Petitioners herein agreed and undertook to accept such residential flats in lieu of shops and further agreed to pay Respondents herein, price for extra area of flats over and above their respective areas of shops at prevailing market price in the same vicinity.
6. Pursuant to the execution of the said Consent Terms dated 18th June 2012, the shops have not been constructed till date.
7. It is now hereby agreed and decreed that Respondents herein shall handover to the Petitioners, the following ready Flats in Shanil Park renamed as Sai Sainik



Apartments in lieu of the Shops to which Petitioners were entitled to as per the said Consent Terms dated 18th June 2012.

Petitioner	Flat No.	Total built up area
Petitioner Nos. 1, 4 and 6 allotted jointly	A/703	550 Square Feet
Petitioner No. 2 & 3 allotted jointly	A/203	550 Square Feet
Petitioner No. 5	B/702	550 Square feet

8. The areas of the aforesaid Flats is as per identical/similar Flats sold by M/s. Shanil Builders (original Defendant Nos. 1 to 3 in the said Suit No. 631 of 2003) to some of the Plaintiffs in the said Suit No. 631 of 2003. The Respondents confirm that the said Flat Nos. A/703, A/203 and B/702 are marketable and free from any encumbrances and that Respondents have not created any rights of any nature whatsoever in respect of the said Flats in favour of any third party. In case, it is found that the titles of Respondents to these said Flats are defective or that there are any encumbrances or claims thereon, Respondents agree to indemnify and, hereby, indemnify Petitioners, individually, jointly or severally, or their nominees and their successors in title to the said Flats, against any loss, damage, cost and expenses which may be suffered by Petitioners/their nominees/successors in title as a result thereof.
9. Petitioners hereby agree to pay to Respondents Rs.12,750.00 per square foot for the additional area over and above their respective shop area entitlements (mentioned in their respective Agreements for Sale for shops).
10. Petitioner No. 1 is entitled to 135 sq. ft. built-up shop area under the Agreement for Sale dated 25th June 2001, Petitioner No. 4 is entitled to 300 sq. ft. built-up shop area under the Agreement for Sale dated 18th October 2001 and Petitioner No. 6 is entitled to 135 sq. ft. built-up shop area under the Agreement for Sale dated 25th June 2001. Petitioner Nos.1, 4 and 6 hereby, jointly and severally, agree to combine their entitlements aggregating to 570 Square Feet (i.e. 135 + 300 + 135) and individually, jointly and severally agree to accept the said Flat

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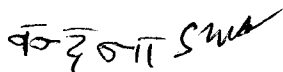
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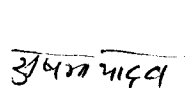
No. A/703 from Respondents in lieu thereof and Respondents confirm that nothing is, thus, payable by Petitioner Nos. 1, 4 & 6 to the Respondents in respect of the said Flat in lieu of their shops and vice versa.

11. Petitioner No. 1 confirms that the Agreement for Sale dated 25th June 2001 for shop admeasuring 135 sq. ft. or thereabouts was executed between Petitioner No. 1 and her husband Mr. Ashok Kumar Dwivedi who expired in Bombay on 3rd October 2017. The said Ashok Kumar Dwivedi left behind Petitioner No. 1 (his wife/widow) and wife (Mrs. Seema Amit Dwivedi) and her two sons (Mst. Gopam Amit Dwivedi and Mst. Tushar Amit Dwivedi) of his pre-deceased son Amit Ashok Dwivedi who expired at Bombay on 1st June 2009. Petitioner No. 1, the aforesaid widowed daughter in law and her aforesaid two sons, together, become Class I heirs of the said deceased Ashok Kumar Dwivedi as per the Hindu Succession Act 1956 and are entitled to the estate of the deceased Ashok Kumar Dwivedi equally. However, Petitioner No. 1 hereby indemnifies the Respondents in respect of any claim/allegations that may be raised by the aforesaid widowed daughter in law and/or her aforesaid two sons.

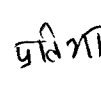
12. Petitioner Nos. 2 together are entitled to 298 Square Feet built-up shop area under their single Agreement for Sale dated 24th October 2001 and Petitioner No. 3 is entitled to 200 Square Feet built-up shop area under his Agreement for Sale dated 10th December 2002. Petitioner Nos. 2 and 3, hereby, jointly, agree to combine their entitlement aggregating 498 Square Feet (298 + 200) and accept the said Flat No. A/203 from Respondents in lieu thereof. Petitioner Nos. 2 and 3, individually and jointly, undertake to pay to Respondent No. 1 herein price for difference 52 Square feet built-up area (550 – 498) at fixed rate of Rs. 12,750.00 per Square Foot aggregating to Rs. 6,63,000.00-towards purchase of the said flat. This amount shall be paid by Petitioner Nos. 2 & 3, individually and/or jointly, within 2 months from the date of execution of their Agreement for Sale for Flat A/203. It is, hereby, agreed and confirmed that 50% of the total amount due to Respondent No.1 shall be paid on the date of execution and registration of the Agreement for Sale for Flat A/203 and remining 50% within two months thereof.











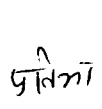
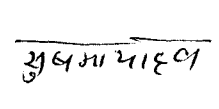
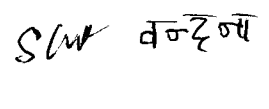


13. Petitioner No. 5 is entitled to 189 Square Feet built-up shop area as per his Agreement for Sale dated 28th September 2001. As such, Petitioner No. 5 hereby agrees and undertakes to pay to Respondent No. 1 herein cost for 361 Square Feet built-up area (550 – 189) at committed rate of Rs. 12,750.00 per Square Feet aggregating to Rs. 46,02,750.00 towards purchase of the said Flat No B/702. The said amount of Rs. 46,02,750.00 shall be paid by Petitioner No. 5 to Respondent No. 1 within 4 months from the date of execution of his Agreement for Sale with 10% thereof payable on the date of execution and registration of the Agreement for Sale as more particularly set out hereinafter. Petitioner No. 5 shall not be liable to pay any interest on the any amount if paid within the aforesaid time period of 4 months.

14. It is agreed and decreed that, within one month from the date of execution of these Consent Terms, Respondents herein shall execute Agreements for Sale in respect of the said three (3) Flat Nos. A/703, A/203 and B/702 in favour of Petitioner Nos. 1, 4 & 6, Petitioner Nos. 2 and 3 and Petitioner No. 5 respectively and terms of the said Agreements for Sale to be prepared thereof shall be in accordance with these Consent Terms and payment terms set out in ¹³ ~~12~~ Clauses 10 to ~~12~~ hereinabove incorporated in those Agreement for Sale to be executed by the respective Petitioners with Respondent No. 1 herein.

15. Respondent No. 1 shall handover quiet, vacant and peaceful possession of the said three (3) Flat Nos. A/703, A/203 and B/702 to Petitioner Nos. 1, 4 & 6, Petitioner Nos. 2 and 3 and Petitioner No. 5 respectively in accordance with the terms of the respective Agreements for Sale to be executed as aforesaid. It is agreed that if the entire amount is paid prior to the period stipulated in the respective Agreements for Sale as stated hereinabove, Respondents shall handover quiet, vacant and peaceful possession of the respective Flat to the concerned Petitioner(s) forthwith.

16. Costs for registration of Agreements for Sale will be borne, amongst respective Petitioners in proportions mutually decided between them. It is further agreed and decreed that Petitioners shall pay the stamp duty that may be payable in



respect of their respective Sale Agreements (to be executed pursuant to these Consent Terms).

17. Petitioners shall be entitled to claim benefit of stamp duties paid by them on their respective Agreements for Sale for the shops, in accordance with Law. Respondents shall co-operate and execute any and all documents including such applications as may be necessary for the purpose of claiming the said benefit of stamp duty, if applicable.
18. Petitioners and Respondents hereby undertake and agree to co-operate and execute any and all documents required to complete the transfer of the flats as recorded hereinabove.
19. At the time of handing over possession of respective Flats to Petitioners, Respondents shall make the said Flats habitable, including but not limited to repairing of leakages, electrical wiring, any structural works, fresh coat of paint, etc. and if there is any damage, the same shall be repaired at the cost and expense of the Respondents as early as possible.
20. Respondents undertake to pay any and all dues including but not limited to MCGM taxes, water, electricity, maintenance charges and any other charges or taxes or cess or fees of any nature that may be payable in respect of the aforesaid Flat Nos. A/703, A/203 and B/702, incurred prior to the date of handing over possession of the Flats to the respective Petitioners. Respondents hereby indemnify and shall keep indemnified Petitioners herein in respect of any claims related to payments payable in respect of flats prior to handing over possession of the flats, that may be made in respect of the aforesaid amounts.
21. The Petitioners hereby undertake that they are aware that Respondent No. 1 is developing the remaining plot area by utilising balance FSI/TDR of 2.5 as per MCGM revised DP 2034, and as per the proposed plans of Wings C and D of 21 storeys tower and shall neither have any objection nor claim on the same.

22. Save and except as set out in these Consent Terms, Petitioners and Respondents shall have no claims against each other.



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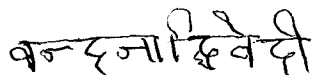
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23. It is agreed and confirmed that Respondent No. 1 is the duly Constituted Attorney of Respondent No. 2 vide Power of Attorney dated 14th March 1996 and that of Respondent Nos. 2 to 7, both inclusive, vide power of Attorney dated 22nd December 1995 granted to him and that any act done by Respondent No.1 shall be for and all behalf of all the Respondents.

24. Petitioners hereby agree to submit their original sale agreements entered into by them by M/s. Shanil Builders to the Respondents for cancellation as they are now being offered residential flats in lieu of the shops they intended to procure from the said M/s. Shanil Builders.

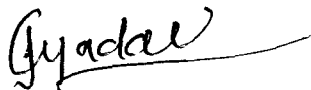
25. Parties shall be at the liberty to apply for any further directions in respect of the present Consent Terms if necessary.



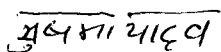
Mrs. Vandana Ashok Dwivedi
Mr. Ashok Kumar Dwivedi,
Petitioner No. 1



Capt. Dilip Vimlanand Kopikar
(Retd.) Respondent No. 1 for self
and as Constituted Attorney for
Respondent Nos. 2 to 7.



Mr. Jagdish Chand S. Yadav/



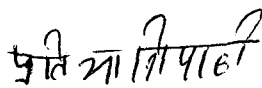
Mrs. Sushma Devi J. Yadav
Petitioner No. 2



Mr. Shrikant Devadiga,
Petitioner No. 3



Mr. Madhavprasad Krishnanand Mishra
Petitioner No. 4



Mr. Devendra Kumar Tripathi/Mrs. Pratibha D. Tripathi

Petitioner No. 5

Gajendra m. Pandey

Mr. Gajendra Pandey

Petitioner No. 6

Read over and explained to the Petitioners

Tamhane

Ms. Vijaya Tamhane

Advocate for the Petitioners

Bhadkamkar
16/01/2020

Mr. V. S. Bhadkamkar

Advocate for the Respondents

IN THE HIGH COURT OF JUDICATURE AT
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CONTEMPT PETITION NO. 103 OF 2018

Mrs. Vandana Ashok Dwivedi and Ors.

... Petitioners

Vs.

Capt. Dilip Vimlanand Kopikar (Retd) and Ors.

... Respondents

CONSENT TERMS

Dated 16th January 2020