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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.681 OF 1994**

Komal Ravji Chheda ... Appellant.
Versus
M/s. Everlasting & Co. & Ors. ... Respondents

Mr. Timish Shah for the Appellant.
Mr. T. D. Deshmukh for the Respondent Nos.1, 2 and 6.
Mr. Pradeep Sancheti, Senior Advocate for the Respondent No.4.
Mr. Sagar Kursija for the Respondent Nos.5 and 7.

**CORAM : REVATI MOHITE DERE &
MADHAV J. JAMDAR, JJ.**
DATED : 6TH MAY 2022

P.C. :

1. Not on board. Taken on board.
2. Learned counsel for the parties submit that the parties have entered into Consent Terms. They have tendered the Consent Terms dated 6th May 2022, duly signed by the parties and their respective advocates. Learned counsel for the parties have identified the signatures of the respective parties. The said Consent Terms are taken on record and marked 'X' for identification.

3. The said Consent Terms entered into between the parties are reproduced hereinbelow :-

“1. The above First Appeal stands disposed of in terms of the consent terms as recorded hereinbelow:

I. As between the Appellant on one hand and the Respondents on the other hand the following Order is passed by consent of the parties: -

(i) ORDERED and DECREED That the Agreement dated 30th October 1992 executed between the 1st Respondent and the Appellant (hereinafter referred to as the ‘Suit Agreement’) stands cancelled and the Appellant claims no right, title or interest thereunder.

(ii) ORDERED and DECREED that:-

*(a) Under the Suit Agreement the possession of the property situated at Village Chitalsar, Manpada, Thane, described in **Annexure – A** attached hereto (hereinafter referred to as the ‘Suit Property’) was not handed over to the Appellant and that Appellant is not in possession thereof and that the 1st Respondent continues to be in possession of the Suit Property.*

(b) That the Appellant has already received from the 1st Respondent a sum of Rs.1 lakh paid by the Appellant to the 1st Respondent under the suit Agreement.

(c) All the allegations contained in the pleadings filed before the Trial Court and/or before this Hon’ble Court stands withdrawn.

(iii) ORDERED and DECREED that the Appellant and Respondents shall have no claim of any nature whatsoever against each other.

2. It is ORDERED and DECREED by CONSENT as under:-

- (a) *The Deed of Admission of new partners dated 9th September 1992 and Deed of Partnership (Retirement- cum- Partnership) dated 14th October 1992 (both hereinafter collectively referred to as **'the Partnership Documents'**) made between Respondent Nos. 2 and 6 and the Vinod Gowani (then a minor) are valid and subsisting. Vinod Gowani opted to become the partner of Respondent no 1 firm upon attaining majority.*
- (b) *That the Respondent Nos. 5 and 6 have ceased to be the partners in the firm of the 1st Respondent on the date of execution of the aforesaid Partnership Documents and they do not claim any right, title and interest in the assets of the said Partnership, including the Suit Property.*
- (c) *Respondent Nos. 5 and 6 further confirm that inadvertently they have executed diverse deeds, declaration and writings inter alia stating, declaring and confirming that Tejraj Gowani and Hitesh Gowani are the present partners Respondent No. 1 firm. The present consent terms nullifies and supersedes the aforesaid deeds, declarations and writings in as much as what is stated and agreed in these Consent Terms by the parties hereto, will prevail over the said deeds, declarations and writings executed by Respondent No. 5 and 6, save and except, the diverse Powers of Attorney executed by Respondent 5 and/or 6 in favour of the Gowani Family members which will continue to be valid and subsisting.*
- (d) *Respondent nos. 5 and 6 reiterate and confirm that inadvertently the aforesaid deeds, declarations and writings executed by Respondent Nos. 5 and 6 with Gowani family members pertaining to constitution of partnership of Respondent No.1 firm. The Parties hereto confirm and agree that the present partners of Respondent No.1 are Tejraj Gowani and Vinod Gowani only and that there are no other partners of Respondent No.1 firm and the said deeds, declarations and writings, execute by Respondent No.5 and 6 stand revoked and cancelled, save and except the diverse Powers of Attorney executed by Respondent No. 5 and 6 in favour of Gowani Family members which will continue to be valid and subsisting. The Parties*

hereto agree, confirm and undertake that they will not take any action, initiate any legal proceedings or make any claim against Respondent No.5 and 6 on account of they having inadvertently executed the aforesaid deeds, declarations and writings which are contrary to the facts mentioned herein and further the parties hereto indemnify and agree to keep indemnified and save harmless Respondent No.5 and 6 as also all members of the Gowani family, in that behalf. Provided, however, the aforesaid deeds, declarations and writings referred in this paragraph shall not include the documents now sought to be executed by all the parties in respect of the respective obligations, undertakings recorded in deeds, declarations, documents and writings executed in the month of May, 2022 are valid and binding.

- (e) That upon execution of the aforesaid Partnership Documents, the Respondent Nos.2 and 4 and Vinod Gowani are partners of the 1st Respondent and have become solely entitled to all the rights and the assets of the said firm, including the Suit Property.
- (f) That the Respondent Nos.5 and 6 have no right, title or interest in the Suit Property or any part thereof.
- (g) That the Agreement dated 24th December 1992 executed between the 1st Respondent on the one hand and the 7th Respondent on the other hand also stand cancelled and the 7th Respondent claims no right, title or interest thereunder. That the Agreement dated 7th August 1992 executed between the 1st Respondent on the one hand and the 7th Respondent on the other hand also stand partly modified and partly cancelled as setout in supplementary Deed, the executed copy of which is annexed hereto as **Annexure B**. The Respondent No. 1 confirms that their rights are restricted to the entitlement to develop Front /a portion of the said suit property of the Respondent no. 1 being the developable land component approximately admeasuring 37,600 sq. mtrs (hereinafter referred to as the **said front portion of the suit property**) with right to exploit/ utilise FSI of 4,77,405 square feet and more particularly described in Sixth Schedule of the supplementary Deed annexed hereto and shown in blue colour hatched lines on plan annexed hereto as **Annexure C**. The Respondent No. 7 confirms that they claim no right, title or

interest in the said front portion of the suit property. The Respondent No. 7 confirms that their rights are restricted to the entitlement to develop a rear side portion of the said suit property of the Respondent no. 1 being the developable land component admeasuring 34,036 sq. mtrs (hereinafter referred to as the **said rear side portion of the suit property**) with right to exploit/ utilise FSI of 4,60,206 square feet more particularly described in Fifth Schedule of the supplementary Deed annexed hereto and shown in red colour hatched lines on plan annexed hereto as **Annexure C**. The Respondent No. 1 confirms that they claim no right, title or interest in the said rear side portion of the suit property.

- (h) The Respondent No. 7 have retained the said rear side portion of the suit property on as is where is basis in respect of the title, area and physical condition etc. of the rear portion of the suit property including all the existing defects in title and proceedings pending in respect thereof and they will not arise any requisition on title or any other queries as regards the rear side portion of the suit property retained by them.
- (i) The Respondent No. 1 have retained the said front portion **of the suit property** on as is where is basis in respect of the title, area and physical condition etc. of the front portion **of the suit property** including all the existing defects in title and proceedings pending in respect thereof and they will not raise any requisition on title or any other queries as regards the front portion **of the suit property** retained by them.

(j) **ORDERED and CONFIRMED that:**

- (i) Respondent No.7 were at no point of time put in possession of the Suit Property and do not claim to be in possession of the Suit Property and the 1st Respondent alone are in possession of the Suit Property. Upon execution of these consent terms, the Respondent No.7 is put in possession of the said rear side portion of the said suit properties and the Respondent No. 1 will continue to be in possession of the said front portion of the said Suit Properties.

- (ii) *AGREED AND CONFIRMED* that pursuant to the order passed by the Ld. Arbitrator and in view of the overall settlement amongst the parties, Respondent No. 7 is reconstituted by appointing Usha Shah, Sanjay D. Shah, Mr. Mehul J. Shah, Hemang J. Shah, Mr. Premji Shah, Sanjay P Shah, Damji Shah and Jadavji Shah as its incoming partners and Tejraj Gowani and Hitesh Gowani have retired to now reconstitute the partnership firm.
- (iii) The erstwhile partners of Respondent No.7 viz. Ugamraj Jain and Ashok Jain have declared and confirmed that from the date of execution of Agreement dated 24/12/1992 till the order of status quo was granted by the Hon'ble High Court of Bombay in the First Appeal, the Respondent No. 7 has sold some premises in the building known as Oxford and/or Harward and possession of the same has already been handed over to the Flat Purchasers. The parties further states that save and except the premises sold to the Flat purchasers as setout hereinabove they have not created any third party rights and have not entered into any writing for sale of land/FSI nor entered into any agreement for sale of flats/Shops in respect of the buildings constructed and/or under construction on the suit property and/or has not received any advances thereunder. The erstwhile partners of Respondent No 7 undertake that if Prior to the date hereof, any land /FSI/Premises are found to be sold and or any amount is found to have been received towards the same, AND similarly if any further flats are found to be sold/allotted and or any amount is found to have been received towards the flats sold by Respondent nos. 2,5,6 or Mr. Vinod Gowani on behalf of respondent no 7 other than sold in the buildings Oxford and/or Harward as setout hereinabove THEN the Respondent No.1 shall be responsible and/or liable to provide the same from the front portion of the suit property retained by Respondent No.1 and the Respondent No.7 shall not be responsible for any such allotment/sale as stated hereinabove.

- (iv) *RECORDED that the Respondent Nos. 2 and 6 have agreed and undertaken to this Court to unconditionally withdraw Suit No.487 of 1994 filed by Respondent No. 2 and 6 before the Civil Judge, S. D., Thane.*
- (v) *Respondent No.5 and his brother Ashok Jain as erstwhile Partners of Respondent No.7 will unconditionally withdraw Suit No.459 of 1994 filed in Thane Court.*
- (vi) *The Respondent Nos. 3 and 4 had filed Suit No. 4511 of 1995 in the Hon'ble High Court at Bombay, against Respondent nos. 2,5,6,7 and Vinod Gowani and Ashok Jain. The same is withdrawn by the Respondent Nos. 3 and 4.*

3. *As between Respondent Nos.2 to 4, it is ordered by consent as under:*

(i) *By Deed of Retirement cum Reconstitution, the Respondent No.3 and 4 have retired from Respondent no 1 firm viz Everlasting & Co. and Respondent No.2 and Vinod Gowani continued as Partners of said firm, Copy of Deed of Retirement cum Reconstitution is annexed hereto as **Annexure D.***

(ii) *Agreed, declared and confirmed that any dispute / litigation/ legal proceedings initiated by any of the parties hereto in respect of the Suit property, buildings / structures standing thereon not explicitly setout herein shall also deemed to have been settled and unconditionally withdrawn by the party/parties initiating / instituting / filing such dispute / litigation / legal proceedings.*

4. *Agreed and confirmed by the parties hereto that these Consent Terms and the settlement recorded herein are final, binding, irreversible and irrevocable, and the same wholly supersede all, without limitation, instruments, documents, understandings, consent terms, deeds, documents, writings and communications whatsoever (whether verbally or in writing), entered into, executed, exchanged between, and/or issued, and/or communicated by and/or between the*

parties or any of them, and/or their predecessors, prior to the date hereof, and which include writings earlier deposited with Late Mr. Shamji Gogri which may have been executed by all or some of the parties thereto and which are not traceable (hereinafter collectively referred to as **“Prior Writings/Arrangements”**) and whether or not the Prior Writings/Arrangements, are known, and/or available, and/or on record, and/or were deposited in escrow, and/or are unavailable and/or have been lost or misplaced. The Parties hereto further irrevocably and unconditionally agree and confirm that the Prior Writings/Arrangements are and shall all be and be deemed to be void, non-est and stand terminated, cancelled, and are non-enforceable and inoperative; whereby none of the Parties hereto nor any of their family members, nor any one claiming under or through them, or any of them, nor any of their group, affiliate, or associate companies, firms, or entities, HUFs, trusts, etc., are and/or shall be entitled to refer to, rely upon, or in any manner use or enforce the same, and/or attempt to place any reliance on the prior writings/ Arrangements for interpretation of these consent terms and this consent terms supersedes all prior writings/Arrangements.

5. Agreed, declared and confirmed by the Respondent No. 3, 4 and 7 for themselves, their respective legal heirs and family members / relatives will not claim any right, title and/or interest on the said front portion of suit property and/or building/s constructed or to be constructed thereon and further shall not purchase / acquire any right, title and interest in the units/premises constructed or to be constructed on the said front portion of suit property and in the event, it is found at any time that the said Respondent nos. 3,4 and 7 and/or any of their legal heirs / family members / relatives have purchased and/or agreed to purchase and/or acquire any right, title and interest in any of the premises constructed or to be constructed on the said front portion of suit property, then such acquisition of right, title and interest will be deemed to be non-est and void ab-initio and/or deemed to be of no legal consequence whatsoever.

6. Agreed, declared and confirmed by the Respondent No. 1,2,5 and 6 for themselves, their respective legal heirs and family members / relatives will not claim any right, title and/or interest on the said rear side portion of suit property and/or building/s constructed or to be constructed thereon and further shall not purchase / acquire any right,

title and interest in the units/premises constructed or to be constructed on the said rear side portion of suit property and in the event, it is found at any time that the said Respondent nos. 1 , 2, 5 and 6 and/or any of their legal heirs / family members / relatives have purchased and/or agreed to purchase and/or acquire any right, title and interest in any of the premises constructed or to be constructed on the said rear side portion of suit property, then such acquisition of right, title and interest will be deemed to be non-est and void ab-initio and/or deemed to be of no legal consequence whatsoever.

7. *ORDERED ad DECREED that all the objections filed by Respondents Nos.2, 5 and 6 before the Registrar of Firms stand withdrawn and Respondents Nos.2, 5 and 6 confirm that simultaneously herewith they have filed all necessary documents before the Registrar of Firms for effecting the change in the constitution of the 1st Respondent firm.*

8. *AGREED and CONFIRMED that Respondent Nos. 3 and 4 have simultaneously herewith executed an irrevocable Power of Attorney in favour of Respondent No. 2 and Vinod Gowani for doing diversified acts pertaining to the 1st Respondent firm, including for effecting the change before the Registrar of Firm.*

9. *Ordered and decreed that the Registrar of Firm do carry out changes in the constitution of the 1st Respondent firm by deleting the names of Respondent Nos.3 and 4 as partners thereof and showing the names of Respondent Nos. 2 and Vinod Gowani as partners thereof.*

10. *ORDERED and CONFIRMED by the Respondents Nos.5 and 6 that Bank Account of the 1st Respondent with Vijaya Bank, Vysa Bank and O.B.C. Bank and or any other Bank have already been closed.*

11. *AGREED and CONFIRMED that the Present Partners of the firm of Respondent No.1 consisting of Respondent Nos. 2 and Vinod Gowani as partners thereof have taken over the liabilities and/or obligations of the 1st Respondent firm towards flat purchasers, as separately disclosed. The retiring partners have vide a separate declaration declared and confirmed that as partners they have not sold any flats to third parties apart from what is mentioned therein. If after filing of the Consent Terms and or passing of decree, if any further flats*

are found to be sold/allotted and/or any amount is found to have been received towards the flats sold in then proposed buildings, then the person executing such agreement / writing shall be responsible and/or liable for such undisclosed claim. No such claim shall lie on the present partners of firm of Everlasting & Company. The Respondents nos. 3 and 4 being the retiring partner shall co-operate with the present partners of the Respondent no.1 firm and shall not obstruct and/or hinder the development of the front portion of suit property so as to comply with the their obligations towards the flat Purchasers/Allottee. The Respondents nos. 3 and 4 are aware that on the express undertaking given by them as setout hereinabove, the present partners of Respondent No. 1 have expressly agreed to take the responsibility of the Flat purchasers. Allottees.

12. The parties hereto further confirm that the reconstituted firm of M/s. Everlasting & Co. will be responsible to defend all the proceedings initiated by flat purchasers/allottees as disclosed in Annexure E hereto, before various forums/courts including RERA, consumer courts etc.

13. The parties hereto confirm that upon filing of consent terms all the documents which are exhibited by Court lying in High Court shall be withdrawn and handed over to the reconstituted firm of Everlasting & Co.

14(a). The Respondent no 1 firm viz Everlasting & Co. will be fully entitled to all the unsold flats, shops, pent houses and any other premises on the front portion of the suit property retained by the reconstituted firm of Ms. Everlasting & Co. as more particularly stated hereinabove including FSI available, FSI to be acquired and any additional FSI, TDR and all other benefits that are presently available or that may become available in future in respect of the said front portion of the suit property and to realize proceeds thereof for their absolute use and none of the other parties will be entitled to the same or any part thereof.

14(b). The Respondent no. 7 namely Manish Construction Co., will be fully entitled to all the flats, shops, pent houses and any other premises on the said rear side portion of the suit property retained by the Manish Construction Co. as more particularly stated hereinabove

including FSI available, FSI to be acquired and any additional FSI, TDR and all other benefits that are presently available or that may become available in future in respect of the said rear side portion of the suit property and to realize proceeds thereof for their absolute use and none of the other parties will be entitled to the same or any part thereof.

15.(a) Pursuant to the diverse Agreements for Development-Cum-Sale executed by and between the original owners of the suit property and Respondent no 1 firm, Respondent Nos.5 and 6 were appointed as Constituted Attorneys by the original owners of the Suit Property by virtue of the seven Power of Attorneys as mentioned herein below to do diverse acts, deeds matters and things with power to appoint one or more substitutes:-

- i. Power of Attorney dated 29th September, 1986 in favour of Mulchand Mehta and Ugamraj Jain in pursuance of Agreement for Development-cum-Sale dated 29th September, 1986 for conveyance.*
- ii. Power of Attorney 29nd September, 1986 in favour of Mulchand Mehta and Ugamraj Jain in pursuance of Agreement for Development cum Sale dated 9th September, 1986 for development.*
- iii. Power of Attorney 2nd February, 1988 in favour of Rajmal Jain and Ugamraj Jain and Everlasting & Co. in pursuance of Agreement for Development cum Sale dated 29th September, 1986 for execution of Agreements etc.*
- iv. Power of Attorney 5th February, 1988 in favour of Rajmal Jain and Ugamraj Jain in pursuance of Agreement for Development cum Sale dated 20th October, 1987 for development.*
- v. Power of Attorney 5th February, 1988 in favour of Rajmal Jain and Ugamraj Jain in pursuance of Agreement for Development cum Sale dated 20th October, 1987 for conveyance.*

- vi. *Power of Attorney dated 5th February, 1988 in favour of Rajmal Jain and Ugamraj Jain in pursuance of Agreement for Development cum Sale dated 3rd February, 1988 for development.*
- vii. *Power of Attorney 5th February, 1988 in favour of Rajmal Jain and Ugamraj Jain in pursuance of Agreement for Development cum Sale dated 3rd February, 1988 for conveyance.*
- (a) *Respondent Nos. 5 and 6 have executed 4 substitute Power of Attorneys in favour of Vinod Gowani and Hitesh Gowani appointing them as Constituted Attorneys of the respective land owners in their place and stead.*
- (b) *Respondent Nos. 5 and 6 hereby declare and undertake to this Hon'ble Court that they shall not make any claim by virtue of the said seven Power of Attorneys and/or in pursuance thereof.*
- (c) *Respondent Nos.3 and 4 do hereby confirm, agree and declare that they have not raised any funds nor have they borrowed any amount in the name of Respondent No. 1 till date. However, if there be any claim made by third party, on account of Respondent Nos. 3 and 4 in respect of Respondent No. 1, then Respondent Nos. 3 and 4 will be liable to resolve the same at their costs.*
- (d) *Respondent Nos. 5,6 and 2 do hereby confirm, agree and declare that they have not raised any funds nor have they borrowed any amount in the name of Respondent No.7 till date. However, if there be any claim made by third party, on account of Respondent Nos.5, 6 and 2 will be liable to resolve the same at their costs.*
- (e) *It is further confirmed, agree and declared that Respondent No. 1 will have no claim on Respondent No.7 and Respondent No.7 will have no claim against Respondent No.1 of any nature whatsoever.*

16. *The parties agree to execute one or more documents to effectively carry out the terms hereof.*

17. *In view of consent terms, the Cross objection (Stamp) No. 18147 of 1994 filed by Respondent No.1, 2 and 6 and Cross Objection (Stamp) No.18148 of 1994 filed by Respondent Nos. 5 and 7 in above First Appeal stand withdrawn and all interim orders passed therein, including the interim orders passed in Civil Application No. 1129 of 1994 on 13th June, 1994 and Order passed in C.A. No. 5626 of 1994 on 25th October, 1994 in the above First Appeal stand vacated.*

18. *The statements and undertakings made by Respondents Nos.2,5 6 and 7 as recorded herein are accepted by this Hon'ble Court.*

19. *This Consent Terms shall operate as executable Decree if the execution thereof becomes necessary in future. In the event if any party fails to attend the office of Registrar for registration of any documents executed by the parties and required to be registered then the party aggrieved due to non-presence of the other party shall be entitled to draw up the decree and get the same registered with the concerned Office of Sub Registrar of Assurances.*

20. *The parties hereto confirm that all the disputes and differences between the parties, mentioned in their pleadings in the above referred Court proceedings and all other incidental disputes are fully and finally settled hereby and the parties have no outstanding claim against one another save and except as provided herein.*

21. *The parties withdraw all statements, allegations, complaints whether civil or criminal, correspondence and proceedings addressed/ initiated by them in relation to the subject matter and agree not to raise any claims in the future.*

22. *First Appeal stands disposed off in terms of this consent terms.*

14. *No order as to costs."*

4. Order in terms of the Consent Terms. Undertakings given by the parties in the Consent Terms are accepted. Parties to abide by the said undertakings and all the terms and conditions as set out in the Consent Terms.

5. First Appeal is accordingly disposed of.

6. All concerned to act on the authenticated copy of this order.

MADHAV J. JAMDAR, J.

REVATI MOHITE DERE, J.