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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.16754 OF 2022
IN
SECOND APPEAL NO.549 OF 2022**

Moongipa Realty Pvt. Ltd.	... Applicant
In the matter between	
Moongipa Realty Pvt. Ltd.	
(Formerly Axayraj Buildwell Pvt. Ltd.	... Appellant
Versus	
Shekhar Rajan Prasad	...Respondent

Mr. Girish Godbole a/w Ms. Nikita Ghungarde, Ms. Riddhi Dhamecha i/b.
Dhiren Shah, for the Appellant/Applicant.

Mr. Nilesh Gala a/w Ms. Minal Shah i/b. Law Square for the Respondent.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 23rd DECEMBER 2022**

P.C. :

1. Heard Mr. Godbole, learned counsel appearing for the Appellant and Mr. Nilesh Gala, learned counsel appearing for the Respondent.

2. Both the learned counsel appearing for the Appellant and Respondent tenders Consent Terms. Consent terms are taken on record and marked 'X' for identification. Consent Terms reads as

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under :

“CONSENT TERMS

1. The Appellant and the Respondent (hereinafter collectively referred to as “**the Parties**”) have agreed to resolve all their disputes *inter se*, which are subject matter of the captioned Second Appeals and / or Interim Applications therein in relation to seven Agreements for Sale all dated 24th January 2013 duly registered with the office of Sub-Registrar of Assurances at Andheri under Sr. No. BDR15-701-2013, BDR15-702-2013, BDR15-703-2013, BDR15-704-2013, BDR15-705-2013, BDR15-706-2013, BDR15-707-2013, (hereinafter referred to as “**the Agreements**”) in respect of Shop Nos. G 37-G 43 (“**the Shops**”) admeasuring a total area of 1191 sq.ft. carpet area on the ground floor of the building named Moongipa Arcade (formerly known as Ark Arcade) situated at Andheri, Mumbai – 400 053 in accordance with the terms set out herein. For the sake of complete resolution of disputes, the Parties record their reciprocal obligations.
2. The summary of facts leading to the present proceedings is as under;
 - A) By under the Agreements, the Appellant agreed to sell the Shops to the Respondent for a total consideration of Rs.2,83,84,000 (Rupees Two Crores Eighty-Three Lakhs Eighty-Four Thousand Only (“**Total consideration**”) and on terms and conditions more particularly mentioned therein.
 - B) According to the Appellant, from and out of the Total consideration, the Respondent has paid to the Appellant a sum of Rs. 1,12,33,600/- (Rupees One Crore Twelve Lakhs Thirty-Three Thousand Six Hundred Only) excluding taxes towards the consideration of the Shops, thus leaving a balance of Rs. 1,71,50,400/- (Rupees One Crore Seventy-One Lakhs Fifty Thousand Four Hundred Only) (“**Balance Consideration Amount**”) payable towards the consideration of the Shops. According to the Respondent, he has paid to the Appellant a

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total sum of Rs. 1,14,33,600/- (Rupees One Crore Fourteen Lacs Thirty Three Thousand Six Hundred only) including taxes towards the consideration of the shops, thus leaving a balance of Rs. 1,69,50,400/- (Rupees One Crore Sixty Nine Lacs Fifty Thousand Four Hundred only).

- C) In addition to the Balance Consideration amount, the Respondent is also liable to pay Rs. 7,92,188/- (Rupees Seven Lakhs Ninety-Two Thousand One Hundred and Eighty-Eight Only) towards other charges in total under all the Agreements. The Respondent is also liable to make payment of the Service Tax/ VAT etc., under the Agreements.
- D) Since the Project could not be completed within the aforesaid timeline and therefore the Respondent filed Complaints No. CC00600000044128 of 2018 and CC006000000181957 of 2019 before the Maharashtra Real Estate Regulatory Authority ("Maha**RERA**") against the Appellant.
- E) RERA had passed a common order dated 28th January, 2021 in the said complaints directing the Appellant to pay interest at the rate of 9% p.a. on the amount of consideration paid by the Respondent and further restraining the Appellant from modifying the sanctioned plans of the project without following the procedure laid down by Section 14 of the RERA.
- F) The Appellant filed Appeals being Appeal Nos. AT006000000053065 of 2021 and AT006000000053066 of 2021 before the Hon'ble Maharashtra Real Estate Appellate Tribunal ("**the Appellate Tribunal**"). The Appellate Tribunal by its Order dated 23rd March, 2022 partially modified the order dated 28th January, 2021 passed by MahaRERA. By the said Order, the Appellate Tribunal restrained the Appellant from modifying the sanctioned plans relating to the Shops purchased by the Respondent without obtaining his prior consent.
- G) The Appellant filed the captioned Second Appeals before this Hon'ble Bombay High Court to challenge the Order dated 23rd March, 2022 passed by the Appellate Tribunal and Interim Applications being Interim Application No. 16754 of 2022 and 16757 of 2022 for stay of the said Order.
- H) During the pendency of the captioned Second Appeals, the

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Respondent filed an Execution Application being Execution Application No. 23 of 2022 and 24 of 2022 before the Appellate Tribunal to enforce the order passed by the Appellate Tribunal.

3. In view of the discussions and negotiations between the Appellant and the Respondent and with a view to end the litigation, the Appellant has decided to acknowledge that it has received a sum of Rs. 1,14,33,600/- (Rupees One Crore Thirty Three Thousand Six Hundred only) as part of the consideration, excluding taxes from the Respondent. The Parties hereby agree and confirm that -
 - a. The Appellant agrees and undertakes to handover six shops being Shop Nos. G-33 to G-36 and G-41 to G-43 (**“the New Shops”**) i.e. Shop Nos. G-33 (214 sq. ft. carpet area), G-34 (190 sq. ft. carpet area), G-35 (206 sq. ft. carpet area), G-36 (233 sq. ft. carpet area), G-41 and G-43 (233 sq. ft. carpet area) and G-42 (152 sq. ft. carpet area) with a total area of 1228 sq. ft carpet area on the ground floor (**as per the copy of the plan annexed hereto and the New Shops marked in pink colour for identification**) of building named Moongipa Arcade (formerly known as Ark Arcade) to be constructed in Phase III of the Project in lieu of the Shops sold under the Agreements to the Respondent. The Appellant agrees and undertakes not to charge or demand any additional consideration from the Respondent in respect of the additional area of 37 sq. ft. The Appellant undertakes not to modify the area and/or plan of the said New Shop Nos. G-33 to G-36 and G-41 to G-43 under any circumstances.
 - b. The Appellant states that out of the New Shops, Shop Nos. G-33 to G-36 have already been agreed to be sold to a third party. The Appellant agrees, confirms and undertakes to execute necessary Agreements/Cancellation deeds with the third party, in respect of the four shops i.e., G-33 to G-36 and also get the same registered, within a period of 45 days from the date of execution of the present terms.-
 - c. The Appellant further agrees, confirms, and undertakes to execute all the necessary documents/rectification

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deeds/supplementary agreements with the Respondent in respect of the New Shops in lieu of the Shops under the Agreements. The Appellant also agrees and confirms that it shall bear all the charges relating to stamp duty, registration and incidental expenses in respect of the rectification deeds/supplementary agreements to be executed with the Respondent.

- d. The Respondent also agrees, confirms and undertakes that, the Respondent shall execute all the necessary documents including and not limited to the rectification deeds/supplementary agreements, for effecting the sale of the New Shops either personally or through his duly constituted attorney or through his wife who is duly constituted Attorney. The Respondent further undertakes to either remain present himself or cause his wife and duly Constituted Attorney to remain present before the registering authorities for the registration of such documents/rectification deeds/supplementary agreements. The Parties confirm that at present the Respondent is out of India for his official duty and shall return only in the month of February end, hence the Appellant agrees to execute all the necessary documents including and not limited to the rectification deeds/supplementary agreements, for effecting the sale of the New Shops in the month of March 2023 when the Respondent returns back to India.
- e. The Respondent agrees, confirms and undertakes to make payment of the balance consideration amount of Rs. 1,69,50,400/- (Rupees One Crore Sixty Nine Lacs Fifty Thousand Four Hundred only), excluding Taxes, to the Appellant in the following manner:

On completion of the Plinth	Rs. 28,38,400/- [10% of total consideration amount]
On completion of the 2 nd Slab	Rs. 42,57,600/- [15% of total consideration amount]
On completion of the 4 th Slab	Rs. 28,38,400/- [10% of total consideration amount]
On completion of the Brick	Rs. 28,38,400/- [10% of total

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Work & Paster	consideration amount]
On completion of the Flooring	Rs. 28,38,400/- [10% of total consideration amount]
Simultaneously on handing over Possession	Rs. 13,39,200/- [balance amount]
Total:	Rs. 1,69,50,400/-

- f. The Respondent agrees to make the payment of the balance consideration amount of Rs. 1,69,50,400/- (Rupees One Crore Sixty Nine lacs Fifty Thousand Four Hundred only) to the Appellant in the manner aforesaid which is according to the progress of construction and as mentioned in table above. The aforesaid schedule of payments shall form a part of the above referred rectification Deeds/Supplementary Agreements. The Appellant agrees that it shall raise the demand as per the aforesaid schedule which shall be as per the construction and the Respondent agrees that he shall make the payment within 30 (thirty) days of such demand. It is agreed that the said demand shall be raised simultaneously with the similar demand which would be raised to the other tenement holders in the said proposed Wing. It is also agreed that the said demand shall be duly accompanied by the Certificate of the Project Architect evidencing the completion of the requisite stage of the project which would be the basis of such demand.
- g. The Respondent further agrees, confirms and undertakes to make payment of the total of other charges being Rs. 7,92,188/- (Rupees Seven Lakhs Ninety-Two Thousand One Hundred and Eighty-Eight Only) (consolidated with respect to all the New Shops) as mentioned in Clause 14 of the Agreements and also make payment of any and/or all taxes such as GST etc., as applicable in respect of the transaction for the sale and/or allotment of the New Shops and shall form a part of the above referred rectification Deeds/Supplementary Agreements to be executed between the parties in terms aforesaid.
- h. The Appellant agrees and confirms to hand over the New Shops to the Respondent on or before 31st December, 2027 (“**Revised Possession Date**”) after obtaining the Occupation Certificate, subject to force majeure circumstances.

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- i. The Appellant agrees, confirms and declares that an additional area of 37 sq.ft.in all, is provided to the Respondent in the New Shops, free of cost and the Respondent is not liable to pay any amount or charges towards the additional area of 37 sq.ft. allotted to him.
- j. The Appellant agrees, confirms and undertakes to pay interest at the rate of 9% p.a. on Rs. 1,14,33,600/- (Rupees One Crore Fourteen Lakhs Thirty-Three Thousand Six Hundred Only) from 1st January 2023 till the New Shops are handed over to the Respondent with Occupation Certificate. Such payment shall be made on or before 5th day of the next succeeding month for the previous month till handing over of possession of the New Shops to the Respondent. The Parties agree that incase the Appellant fails to pay the interest as described above, the Appellant shall deduct the said outstanding interest amount from the respective instalment of the balance consideration of Rs.1,69,50,400/- (Rupees One Crore Sixty Nine Lakhs Fifty Thousand Four Hundred Only) payable by the Respondent and the Respondent shall pay only such balance amount of the respective instalment to the Appellant.
- k. The Appellant agrees, confirms and undertakes that the interest for the period from 01.04.2014 to 31.05.2022 amounting to Rs.80,77,000/- (Rupees Eighty Lakhs Seventy Seven Thousand only) which is deposited by the Appellant with the Appellate Tribunal, can be paid over and/or withdrawn by the Respondent immediately on execution of the present Consent Terms and the Appellant has no objection to the same. The Appellant agrees, confirms and undertakes to give such No Objection to the Appellate Tribunal as may be required.
- l. The Appellant agrees, confirms and undertakes to pay interest at the rate of 9% p.a. on Rs. 1,14,33,600/- (Rupees One Crore Fourteen Lakhs Thirty-Three Thousand Six Hundred Only) to the Respondent for the period from 1.6.2022 till 31.12.2022 amounting to Rs. 6,00,264/- (Rupees Six Lacs Two Hundred Sixty Four only) on/or before 31.12.2022.
- m. The Respondent agrees, confirms and undertakes not to raise any objection as to the Revised Possession Date of 31stDecember, 2027 with respect to the New Shops.

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- n. The Appellant and the Respondent respectively irrevocably and unconditionally releases, waives and forever relinquishes any and all claims, causes of action, liabilities, obligations, indebtedness, attorneys' fees, demands, suits, costs, expenses or damages of every kind and nature (hereinafter collectively referred to as "**Claims**") that they respectively have or may have against each other arising out of or in connection with the subject matter of the present Second appeals and/or anything arising out of or in connection with the Agreements, save and except what is agreed between the parties under the present Consent Terms.
 - o. The Parties confirm and undertake that upon execution of these Terms, all the disputes between the Parties are resolved and the Parties shall not initiate any legal proceedings in any Court of Law and/or any authorities against each other with respect to the Shops and/or anything arising out of or in connection with the subject matter of the captioned Second Appeals and/or anything arising out of or in connection with the Agreements save and accept any proceedings for implementation of these Consent Terms or non fulfillment of any obligations cast on the respective parties under these Consent Terms. The Parties further agree that the present Terms record and constitute full and final settlement of all the Claims that the Respondent has/may have against the Appellant with respect to the Shops and/or the Agreement.
 - p. The Parties hereto withdraw all the allegations made against each other; and record that the Parties have entered into these Consent Terms under the legal advice and with their free will and volition.
4. The Parties agree that the captioned Second Appeals be disposed of in terms of these consent terms filed before the Hon'ble Bombay High Court and the Respondent agrees, confirms and undertakes to withdraw the Execution Applications No. 23 of 2022 and 24 of 2022 on the next scheduled date of hearing fixed before the Appellate Tribunal after the execution of the present Consent Terms.

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5. The Parties further undertake not to question/dispute the terms and conditions of these Consent Terms, which shall be binding upon them including their respective successors-in-title, legal representatives, executors, administrators and assigns.
6. The Parties hereby agree to bear their own legal costs and fees.”

3. Consent Terms are signed by Mr. Rajesh Agarwal, Director of Appellant who has been authorised by the Appellant by Resolution dated 22nd December 2022. Said resolution is annexed to the Consent Terms. Consent Terms are executed by Ms. Seema Rajan Prasad i.e. Constituted Attorney of the Respondent. Consent Terms are also signed by the respective Advocates of the Appellant and the Respondent and they identify the signature of their respective clients. Mr. Rajesh Agarwal, authorised Director of Appellant and Ms. Seema R. Prasad, Constituted Attorney of the Respondent who are present in Court confirm that the Consent Terms are arrived at as per the compromise entered into between the Appellant and the Respondent and they are acceptable to both Appellant and Respondent.

4. The Consent Terms are read and recorded. On the Appellant complying with the terms contained in Clause 3(b) of the Consent Terms, the impugned Judgments and Orders dated 28th November 2022 passed

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by the learned Member-II, MAHA RERA, Mumbai in Complaint No.CC006000000044128 and CC006000000181957, as also the impugned Judgment and Order dated 23rd March, 2022 passed by the Maharashtra Real Estate Appellate Tribunal, Mumbai in Appeal Nos.53065 and 53066 of 2021 stand substituted by the Order in terms of the Consent Terms. The respective parties through their respective Advocates agree that no reasons are required to be recorded for disposal of the Appeals in terms of the Consent Terms.

5. On the Appellant complying with the terms contained in Clause 3(b) of the Consent Terms, both the Second Appeals shall stand disposed off with no order as to costs.

6. The respective undertakings given by the Appellant and Respondent as contained in the Consent Terms are accepted.

7. Shop No.G-33, G-34, G-35 and G-36 which are mentioned in clause no.3(b) of the Consent Terms are presently allotted to Mr. Jitendra Dewoolkar. Affidavit dated 22nd December 2022 of Mr. Jitendra Dewoolkar is tendered by Mr. Godbole in the Court. Same is marked as 'X1' for identification. In the said affidavit, it has been stated that said Jitendra Dewoolkar will execute the Deed of cancellation and/or Deed of rectification and/or Deed of exchange to cancel allotment in respect of

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said shops in his favour. The statements made in said affidavit are accepted as undertaking given to this Court.

8. Second Appeal Nos.549 of 2022 and 550 of 2022 are disposed of in terms of Consent Terms dated 23rd December 2022 and also in above terms.

9. Parties are granted liberty to approach this Court, if required.

10. In view of the disposal of the Second Appeals, nothing survives in the Interim Applications and the same are also disposed of.

[MADHAV J. JAMDAR, J.]