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

**APPEAL FROM ORDER NO. 351 OF 2021
WITH
INTERIM APPLICATION NO. 3031 OF 2021**

M/s. Agam Buildtech and anr. .. Appellants
vs.
M/s. Mars Investments Private Ltd. and ors...Respondents

Adv. Girish S. Godbole a/w. Adv. Kishore Shriyan and Adv. Bhavika Thingalaya i/b MST Legal for the Appellant.
Adv. D. V. Sawant a/w. Mr. Priyank Kulkarni and Ms. Manali Sawant i/by. Mr. Jayesh Talekar for Respondent No. 1.
Adv. Shishir Joshi i/b Adv. Priti S. Joshi for Respondent Nos.2 to 8.
Adv. Rohit Sakhdeo i/b Sakhdeo & Associates for Respondent Nos.9 to 11.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 21, 2022

P.C. :

1. The Appellant has filed the present Appeal against the Judgment and Order dated 20th April, 2021 passed by the learned Jt. Civil Judge, Senior Division Panvel, below Exhibit 64 in Special Civil Suit No. 150 of 2017 whereby the Appellant / Defendant No. 11 has been restrained from

creating third party interest in the Suit property which is being developed, except 12 + 5 flats and two shops in respect of which third party interest had already been created by the Appellant.

2. The Appellant and Respondent No.1, being the contesting Respondent, agree that the Appeal may be disposed of in terms of the Minutes of Order and no reasons are required to be recorded for disposal of the present Appeal in terms of the Minutes of Order.

3. The parties have tendered the minutes of the order duly signed by the authorised signatory of the appellants and advocate for the appellants as well as the respondent no. 1 (original plaintiff) and advocate for the respondent no.1. The minutes of the order along with annexure I and annexure II thereof are taken on record and marked 'X' for identification.

4. The impugned Judgment and Order dated 20th April, 2021 is, hereby partly set aside, modified and substituted in terms of the Minutes of Order as below:

- a) The Appellant has agreed and is directed not to sell or allot or create any third-party rights or interest in

respect of eight residential flats being Flat Nos. 404, 503, 601, 602, 608, 701, 702 and 708 particulars of which are annexed in a Chart annexed to this Minutes of Order as **Annexure-I**. Based on the market values evidenced by the agreements for the twelve flats which are already executed and registered by the Appellant in favour of third parties. The Appellant declares that the market value of the said eight flats would be Rs. 4,05,86,883/- (Rupees Four Crores Five Lakhs Eighty-Six Thousand Eight Hundred and Eighty-Three Only) which is calculated on the basis of the value of Flat No.604 for which the Agreement for Sale dated 31/12/2020 has been executed and registered at Sr. No. 362/2021 on 08/01/2021. The Appellant agrees and is directed not to create any third party, rights, title and / or interest in the said eight flats till the said Special Civil Suit No. 150 of 2017 is decided by the Trial Court.

- b) It is made clear that the order passed by the Trial Court granting injunction is now restricted only in

respect of the said eight flats. It is further made clear that the Appellant will not claim any equities in the proceedings of the suit on account of being allowed to create third party interest in respect of the remaining flats, excluding the aforesaid eight flats.

- c) The Appellant is further directed that every prospective purchaser in whose favour the Appellant would now be entitled to create third party interest (except the aforesaid eight flats mentioned in Annexure-I) shall be informed about the pendency of the Special Civil Suit No. 150 of 2017. It is further directed that in every subsequent agreement or allotment letter which would be executed/issued by the Appellant in respect of flats which would be agreed to be sold/allotted, a specific clause regarding the present order and the pendency of the Suit shall be inserted, the text of the said clause as approved by the respective advocates of the Appellant and Respondent No. 1 is enclosed to this Minutes of Order as **Annexure-II**.

- d) It is further directed that the Appellant shall upload a copy of this order on the MAHA RERA Website.
- e) It is made clear that the order passed in the present Appeal is without prejudice to the rights and contentions of the respective parties in the present Appeal as also in the suit and shall not be construed to be an expression of opinion on the merits of the controversy involved in the Appeal or the suit and all the contentions are kept open to be decided by the Trial Court on its merit, without being influenced by the present order.
- f) The hearing of Special Civil Suit No. 150 of 2017 is expedited.

5. The Appeal from Order is disposed of in the aforesaid terms with no order as to costs. In view of the disposal of the Appeal, Interim Application No. 3031 of 2021 does not survive and the same is disposed of.

(M. S. KARNIK, J.)