

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO.3370 OF 1990**

Mahesh B. Parikh and Ors. ... Plaintiffs

Versus

Vijay Deep Development and Ors. ... Defendants

Mr. Parth Jain with Mr. Vinit Kamdar i/by Jain Law Partners LLP, for Plaintiffs.

Mr. Rushabh Parekh with Mr. Munaf Virjee i/by ABH Law LLP, for Defendant Nos.1, 2E and 3.

Ms. Saloni Shah i/by DSK Legal, for Defendant Nos.11 to 15.

Mr. Satyan Vaishnav with Ms. Nupur Mukherjee i/by N.N.Vaishnawa and Co., for Defendant Nos.9A and 10.

Mr. Sivakumar, 1st Asstt. To Court Receiver, present.

CORAM: N.J.JAMADAR, J.

DATE: 10th OCTOBER, 2022

P.C.:

1. Heard the learned Counsel for the parties.
2. The learned Counsel submit that the parties have arrived at an amicable settlement of the dispute. The learned Counsel have tendered Consent Terms executed by and between the Plaintiffs and Defendant Nos.1, 2E, 3, 9A, 10 and 11 to 15.
3. The learned Counsel for the Plaintiffs submits that the Plaintiffs intend to unconditionally withdraw the Suit against Defendant Nos.2A to 2D, 4A, 5, 6A to 6D, 7A, 8A and 16 to 20.
4. Mr. Mahesh B. Parikh, Plaintiff No.1, who is the constituted attorney of

Plaintiff Nos.2A, 3 and 4, is present. Mr. Manoj Wadhwa, Defendant No.2E and Partner of Defendant No.1 and also the power of attorney of Mr. Vijay Wadhwa, Defendant No.3, is present in Court. Likewise, Defendant No.9A – Roshan Tarachand Sanghvi and Smt. Babita Tarachand Sanghavi – Defendant No.10 are present in Court. Mr. Bhavesh Shantilal Sheth, constituted attorney of Defendant Nos.11 to 13, and the Director of Honest Consultancy Services Pvt. Ltd., who is authorised to represent the Company is present. Mr. Prakashchandra Chimanlal Sheth – Defendant No.14 is also present.

5. They all admit the contents of the Consent Terms and execution thereof. They are identified by their respective Advocates. Upon being inquired, the abovenamed parties specifically submit that they have executed the Consent Terms voluntarily and there is no coercion or duress. They agree to abide by the Consent Terms and the undertakings given therein.

6. The Consent Terms are taken on record and marked 'X'.

7. Paragraph Nos.4 to 16 of the Consent Terms read as under :

“4. Memorandum of Understanding, Supplemental Agreement and Conveyances

4.1 Mahesh Parikh, Rajul Shah and Bijal Vora confirm agree and acknowledge that that the Memorandum of Understanding and Supplementary Agreement are valid, binding and subsisting and further that the Deeds of Conveyances executed by Varjivandas, Suresh, Vasuben and [Kusumben] are valid and subsisting. Thus, the Firm is well and sufficiently entitled to 80% undivided right, title and interest in the Land.

4.2 Mahesh Parikh, Rajul Shah and Bijal Vora agree, confirm and acknowledge that they have no right, jointly and/or severally to exercise any option under the Supplemental Agreement and/or the Memorandum of Understanding or any other writing to purchase any further flats in the Building, including but not limited to Flat Nos. 31 and 41. Mahesh Parikh, Rajul Shah and Bijal Vora hereby agree and confirm that other than in the Flat No. 11, they have no right, title, interest or claim of any nature whatsoever in any other premises in the building.

4.3 The Deposit Amount (along with the interest accrued thereon) by the Firm shall be distributed to Mahesh Parikh, Rajul Shah and Bijal Vora has no objection for the same. The aforesaid amount shall constitute full and final payment under the Memorandum of Understanding and Settlement Agreement and *in lieu* thereof Mahesh Parikh, Rajul Shah and Bijal Vora, shall transfer the balance 20% undivided, right, title and interest in the Land in favour of Honest and/or its nominees and shall unconditionally execute and register such declaration in favour of Honest and / or its nominees for transferring 20% undivided, right, title and interest in the Land & Building in favour of Honest and/or its nominees within 7 days of being called upon to do so. The Plaintiffs and Defendant No. 1, 2A, 2-E, 3, agree and undertake to execute and register such further and other documents when called upon to do. The Plaintiffs and Defendant No. 1, 2A, 2-E, 3, agree and undertake to execute and register such further and other documents including Deed of Rectification or other documents for amendment of all the Declaration filed under Section 2 of the Maharashtra Apartment Ownership Act and/or the Bye-laws of Gokul Condominium and undertake such filings before the concerned authorities as may be required in this regard by Honest and/or its nominees. The costs and charges in respect of stamp duty and registration fees in respect of such declaration and such deeds of rectification shall be borne by the concerned flat purchasers entitled to the flats / apartments comprised in the Gokul Condominium equally.

5. Flat No. 11

5.1 The Firm shall execute an Agreement for Sale/ Deeds of Apartment as the case may be, in favour of Mr. Mahesh Parikh in respect of Flat No. 11 on the first floor of the Gokul Building (“**Flat No. 11**”), wherein the Firm shall sell and transfer the Flat No. 11 to Mahesh Parikh (in his capacity as the Administrator to the Property and the Credits of Late Mr. Babubhai J Parikh). The costs and charges in respect of stamp duty and registration fees in respect of such Agreement for Sale / Deed of Apartment shall be borne by Mahesh Parikh.

5.2 Mahesh Parikh, Rajul Shah and Bijal Vora and the Firm agree and undertake to unconditionally execute any and all such deeds, writings, documents as may be required for the purposes of the aforesaid Agreement for Sale/ Deed of Apartment and undertake to appear before the Sub-Registrar of Assurances for registration thereof, as and when required to do so.

5.3 Mahesh Parikh, Rajul Shah and Bijal Vora and the Firm agree and confirm that the Agreement for Sale / Deed of Apartment, along with all formalities in respect thereof, shall be completed within a period of 2 months from the execution of these Consent Terms.

5.4 Mahesh Parikh agrees, declares and confirms that all the amenities as per the Memorandum of Understanding has been provided with and the area of Flat No. 11 is as per the terms and conditions of the Memorandum of Understanding.

6. **Flat No. 31**

6.1 The Firm agrees, confirms and acknowledges that the Sheth Family and Honest were entitled to the rights in respect of Flat No. 31. The Sheth Family has under diverse deeds and documents relinquished their entitlement in respect of Flat No. 31 in favour of Honest. Therefore, to give effect to the aforesaid understanding, the Firm on the one hand and Honest on the other hand shall execute a Deed of Reversion and/or Deed of Apartment for the transfer of the reversionary rights in respect of the Flat No. 31 on the third floor of the building Gokul, in favour of Honest and/or its nominees.

6.2 Sheth Family and the Firm agree and undertake to execute any and

all such deeds, writings, documents as may be required for the purposes of the aforesaid Deed of Reversion and/or Deed of Apartment and undertake to appear before the Sub-Registrar of Assurances for registration thereof, as and when required to do so.

6.3 The Firm agrees, confirms and undertakes that the aforesaid Deed of Reversion and/or Deed of Apartment, along with all formalities in respect thereof, shall be completed within a period of 2 months from the execution of these Consent Terms.

6.4 It is hereby agreed that the order of this Hon'ble Court dated April 22, 1991 appointing a Court Receiver in respect of Flat No. 31 shall stand vacated.

6.5 The Plaintiffs agree and undertake to unconditionally execute any and all such deeds, writings, documents as may be required for the purposes of more perfectly effectuating the aforesaid transaction and shall also appear before the Sub-Registrar of Assurances for registration thereof, if required, and to do all such further acts, deeds and thing as may be required in that regard.

7. Flat No. 41

7.1 The Firm agree, confirm and acknowledge that Roshan Sanghvi and Babita Sanghvi are entitled to the rights in respect of Flat No. 41. Therefore, to give effect to the aforesaid understanding, the Firm on the one hand and Roshan Sanghvi and Babita Sanghvi on the other hand shall execute a Deed of Reversion and/or Deed of Apartment for the transfer of the reversionary rights in respect of Flat No. 41 on the fourth floor of the Gokul Building to Roshan Sanghvi and Babita Sanghvi.

7.2 Roshan Sanghvi, Babita Sanghvi and the Firm agree and undertake to execute any and all such deeds, writings, documents as may be required for the purposes of the aforesaid Deed of Reversion and/or Deed of Apartment and undertake to appear before the Sub-Registrar of Assurances for registration thereof, as and when required to do so.

7.3 Roshan Sanghvi, Babita Sanghvi and the Firm agree and confirm

that the aforesaid Deed of Reversion and/or Deed of Apartment, along with all formalities in respect thereof, shall be completed within a period of 2 months from the execution of these Consent Terms.

7.4 It is hereby agreed that the order of this Hon'ble Court dated April 22, 1991 appointing a Court Receiver in respect of Flat No. 41 shall stand vacated.

7.5 The Plaintiffs agree and undertake to unconditionally execute any and all such deeds, writings, documents as may be required for the purposes of more perfectly effectuating the aforesaid transaction and shall also appear before the Sub-Registrar of Assurances for registration thereof, if required, and to do all such further acts, deeds and thing as may be required in that regard.

8. **Car Parking Spaces – Flat No. 11**

8.1 The Firm hereto agrees, confirms and acknowledges that the car parking spaces allocated to the Flat No. 11 shall be revised as follows :

Sr. No.	Flat No.	Revised Car Parking Space
1.	11	No. 2 in the upper stilt in the building Gokul

9. These Consent Terms are executed by the Consenting Parties with the intent to bind the parties hereto and/or any and all persons claiming by, through, under or in trust for the Consenting Parties.

10. The Consenting Parties are executing these terms by mutual consent, of their own free will and desire and without any nature of force, fraud, threat, undue influence and / or coercion from anyone. Any parties that are not executing these Consent Terms are not necessary parties to the Consent Terms and the Suit against them stands dropped.

11. Any taxes, statutory liabilities or government dues etc. arising on account of payment of any monies, consideration etc. by any parties under these Consent Terms, shall be paid by such parties as per applicable law.

12. Any notice, demand or other communication to be served pursuant to these Consent Terms may be served upon any party hereto only by registered speed post with acknowledgement due or delivering the same by courier to be served at its address as given below, or at such other address or number as it may from time to time notify in writing to the other party hereto.

S.No	Name	Address
1.	Mr. Mahesh Babubhai Parikh (Plaintiff No. 1)	11, Gokul , 99 Walkeshwar Road, Mumbai - 400006
2.	Mrs. Rajul Ajit Shah (Plaintiff No. 2)	11, Gokul , 99 Walkeshwar Road, Mumbai - 400006
3.	Mrs. Bijal Bhadresh Vora (Plantiff No. 3)	11, Gokul , 99 Walkeshwar Road, Mumbai - 400006
4.	Vijay Deep Developments (Defendant No. 1)	11, Happy Home, 244 Waterfield Road, Bandra (W), Maharashtra, Mumbai – 400050.
5.	Mr. Manoj Wadhwa (Defendant No. 2-E)	11, Happy Home, 244 Waterfield Road, Bandra (W), Maharashtra, Mumbai – 400050.
6.	Mr. Vijay Wadhwa (Defendant No. 3)	Plot No. - C - 59 Platina, G Block, Bandra Kurla Complex, Bandra East, Mumbai, Maharashtra 400051.
7.	Mr. Roshan Tarachand Sanghvi (Defendant No. 9A)	41, Gokul, 4 th Floor, 99 Walkeshwar Road, Mumbai – 400 006
8.	Mrs Babita Tarachand Sanghvi (Defendant No. 10)	41, Gokul, 4 th Floor, 99 Walkeshwar Road, Mumbai – 400 006
9.	Mr. Shantilal C. Sheth (Defendant No. 11)	31, Gokul, 3 rd Floor, 99 Walkeshwar Road, Mumbai – 400 006
10.	Mr. Girishkumar C. Sheth (Defendant No.	31, Gokul, 3 rd Floor, 99 Walkeshwar Road, Mumbai – 400 006

	12)	
11.	Mrs. Kantaben Girishkumar Sheth (Defendant No. 13)	31, Gokul, 3 rd Floor, 99 Walkeshwar Road, Mumbai – 400 006
12.	Mr. Prakashchandra Chimanlal Sheth (Defendant No. 14)	31, Gokul, 3 rd Floor, 99 Walkeshwar Road, Mumbai – 400 006
13.	Honest Consultancy Services Pvt. Ltd. (Defendant No. 15)	31, Gokul, 3 rd Floor, 99 Walkeshwar Road, Mumbai – 400 006

13. Honest has the requisite authority for entering into these Consent Terms and has provided a Board Resolution dated **06.09.2022**. Any individuals executing these Consent Terms through their constituted attorneys confirm the Power of Attorney executed by them. The details of such Powers of Attorney(s) and Board Resolution are collectively annexed as **Annexure “1”**.

14. For the purposes of implementing and giving due effect to these consent terms, all parties shall: [a] enter into all such documents, deeds and writings; and [b] perform all such acts, deeds, matters and things, that may be required, from time to time.

15. The Consenting Parties hereby confirm, covenant and undertake that:

15.1 except what is stated above, they have no claims of any nature whatsoever against each other;

15.2 each of the Consenting Parties hereby unconditionally withdraws all allegations, insinuations, averments, aspersions cast including withdrawal of all litigation filed and pending against each other in various courts / forum:

15.2.1 each of them shall sign all the necessary documents and / or papers required, if any, for the purposes of implementing these Consent terms; and

15.2.2 each of their respective undertakings and / or obligations hereunder are final, binding and shall for all intents and purposes be treated as

undertakings given to this Hon'ble Court. Necessary consequences shall follow from any breach of the undertaking(s).

15.3 The Plaintiffs hereby unconditionally withdraw the captioned Suit against the Defendant Nos. 2A-2D, 4A, 5, 6A-6D, 7A, 8A, 16 to 20 alongwith all allegations, insinuations, averments, aspersions cast against the Defendants.

16. All the parties hereby agree and confirm that the captioned Suit be disposed off in terms of these Consent Terms”.

8. In view of the aforesaid Consent Terms, the Suit stands decreed as between the Plaintiffs and Defendant Nos.1, 2E, 3, 9A and 10 to 15 in accordance with the Consent Terms, marked 'X'.

9. The undertakings given in the Consent Terms are accepted as undertakings given to the Court.

10. The Suit stands disposed of as withdrawn as against Defendant Nos.2A to 2D, 4A, 5, 6A to 6D, 7A, 8A, and 16 to 20.

11. The Court Receiver stands discharged without passing accounts. However, costs and charges of the Court Receiver till date shall be paid by the Plaintiffs.

12. By way of abundant caution, it is clarified that the Consent Terms shall not affect rights of the parties who are not executants to the Consent Terms, especially against whom the Suit has been unconditionally withdrawn by the Plaintiffs.

13. The Plaintiffs are entitled to refund of Court Fees, if any, in accordance with the rules.

14. Decree be drawn accordingly.

(N.J.JAMADAR,J.)