

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL SUIT NO. 1194 OF 2018

HALDIRAM FOODS INTERNATIONAL)
PRIVATE LIMITED)
a company registered under the)
Companies Act, 1956 having its)
office at A/204, Shyam Kamal)
West Wing, Agrawal Market)
Tejpal Road, Vile Parle (East))
Mumbai 400057)...PLAINTIFF

VERSUS

1. *M/s. S.S. ENTERPRISES,*)
a Partnership firm registered)
under the Partnership Act, 1932)
and having their registered)
office at Ground Floor, Chandra)
Villa Building, Near Shiv Sagar)
Hotel, Nehru Road, Vile Parle)
(East), Mumbai - 400057.)
2. *SHRI SUBODH MANOHAR PANDIT*)
of Mumbai Indian Inhabitant)
and Partner of *M/s. S.S.*)
Enterprises having his residence)
at Flat Nos. 11 & 12, Shubham,)

Bajaj Road, Vile Parle (West),)
Mumbai 400 056)

3. SHRI SHARAD JAYANTILAL MEHTA)

of Mumbai Indian Inhabitant)
and Partner of *M/s. S.S.*)
Enterprises having his residence)
at Flat No. 504, Parshwa Kunj,)
Malaviya Road, Vile Parle (East),)
Mumbai 400 057)

4. SHRI SHAILESH NAGINDAS SHAH,)

of Mumbai Indian Inhabitant and)
Partner of *M/s. S.S. Enterprises*)
having his residence at B-604,)
Walkeshwar Chandanbala)
CHS. Ltd., 4, R.R. Thakkar Marg,)
Walkeshwar, Mumbai 400006)

5. SHRI DEEPAK NAGINDAS SHAH)

of Mumbai Indian Inhabitant and)
Partner of *M/s. S.S. Enterprises*)
having his residence at B-605,)
Walkeshwar Chandanbala CHS.)
Ltd., 4, R.R. Thakkar Marg,)
Walkeshwar, Mumbai 400 006)

6. SHRI MUKESH KANAIYALAL SHAH)

of Mumbai Indian Inhabitant)

and Partner of M/s. S.S.)

Enterprises having his residence)

at A-II 01, Tirupati Mahalaxmi)

Apartment, Bhulabhai Desai)

Road, Mumbai 400 026.)

7. SHRI BHARAT KANAIYALAL SHAH)

of Mumbai Indian Inhabitant and)

Partner of M/s. S.S. Enterprises)

having his residence at A-1101,)

Tirupati Mahalaxmi Apartment,)

Bhulabhai Desai Road,)

Mumbai 400 026)...DEFENDANTS

CONSENT TERMS

1. On 14th June 2010, the Plaintiff and Defendant No. 1 (through Defendant No. 2) entered into separate Agreements for Sale (**‘Agreements for Sale’**) of office Nos.401 and 402 (***“the suit premises”***) in S.S. House, situated at Nehru Road, Vile Parle (E), Mumbai 400 057 (***“the said building”***), more particularly hereinbelow:

Date	Office	Area	as	Agreement	Amount Paid
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	No.	mentioned in Clause 3 and 4 of the Agreements for Sale ("Agreed Area")	Value	
14.06.2010	401	957.46 square Feet	1,58,00,000/-	1,42,00,000/-
14.06.2010	402	1454.54 square feet	2,40,00,000/-	2,16,00,000/-
			3,98,00,000/-	3,58,00,000/-

2. In the year 2018, Plaintiff filed the present Commercial Suit, *inter alia*, seeking specific performance of Agreements of Sale.

3. In order to arrive at an amicable settlement, the Plaintiff and Defendant Nos. 2 to 7 have agreed to settle their disputes and claims in the above Suit without admitting and adjudicating the rival contentions of the parties on the terms and conditions mentioned hereinbelow.

4. It is agreed, declared and confirmed that:

- (a) Defendant Nos.4 to 7 submitted the plans on 27th May, 2021 to Municipal Corporation of Greater Mumbai (“MCGM”) for regularization of the said building.
- (b) The SS House Premises Co-operative Society (the ‘Society’) passed a resolution in the special general body meeting held on 29th June, 2021 authorizing Mr. Shailesh Shah (Defendant No. 4) to regularize the said building as per the sanctioned plan approved by MCGM and obtain Building Completion Certificate. A copy of the extract of the Minutes of Meeting dated 29th June 2021 is annexed hereto and marked as **Annexure “1”**.
- (c) Pursuant to the resolution dated 29th June 2021 passed by the Society, MCGM issued IOD dated 9th August 2021 and approved the plans bearing number **P-6580/2021/(347)/K/EWard/FP/IOD/1/New (“the said Plan”)**. The suit premises is marked in Red Colour Boundary Line on the said plan. Hereto

annexed and marked as **Annexure “2”** is a copy of the said plan under File No.P-6580/2021/(347)/K/E Ward/FP/342/1/Newdated 9th August 2021 and **Annexure “2A”** is a copy of the plan for the suit premises which is marked in red colour boundary line.

- (d) Defendant Nos.4 to 7 have regularized and constructed the said building standing on the said property in accordance with the said Plan. Defendant No. 4 to 7 shall also obtain the part Occupation Certificate from the MCGM within three months from the execution of these consent terms with grace period of three months without any further extension. Defendant No. 4 has received the copy of the Commencement Certificate, after complying with the conditions mentioned in the IOD dated 9th August 2021 which is annexed as **Annexure “3”**.
- (e) Defendants declare and confirm that as a result of regularization and re-construction of the said building in accordance with the said Plan, the area of the suit premises now stands increased to 2449.02 square feet.

(f) As a result of the regularization, the Plaintiff will be provided an additional area of 37 square feet over and above the Agreed Area mentioned in the Agreements of Sale (**‘Additional Area’**). The parties have simultaneously executed supplemental agreement to the Agreements to Sale to account for this Additional Area, more specifically stated therein, which shall be registered within 7 days from the execution of these Consent Terms. On the execution of the supplementary agreement, the Plaintiff will take possession of the Suit Premises. A copy of the supplemental agreement to the Agreements to Sale is annexed hereto as **Annexure “4”**.

5. The Plaintiff shall make payment of Rs.61,32,459 [Rupees Sixty One Lakhs Thirty Two Thousand Four Hundred Fifty Nine only] comprising of (i) the balance sale consideration (ii) consideration for the Additional Area (iii) MVAT and Service Tax and (iii) ancillary expenses, in terms with the chart annexed hereto as Annexure 5 (**‘Balance Amount’**). The Balance Amount will be paid by the Plaintiff to the Defendant No. 1 simultaneously against

receipt of the part Occupation Certificate in respect of the suit premises (including the Additional Area) from the MCGM. The cheques of the Balance Amount has been kept in Escrow with the Advocates for the Plaintiff (“Escrow Agent”), which shall be released by the Escrow Agent to Defendant No. 4 upon a copy of the part Occupation Certificate in respect of Suit Premises (including the Additional Area) being furnished to the Escrow Agent. The Plaintiff agrees and undertakes to this Hon’ble Court to honour the aforesaid Cheques of Balance Amount being deposited by Defendant No. 4. .

6. The parties agree that any sums payable, pending claims or dues, cost of regularization, premiums, cost towards charges, fee, penalty paid or to be paid to MCGM or any other appropriate authority shall be deemed to be included and covered in the Balance Amount;
7. The Plaintiff shall not be liable to make any payment, nor shall the Defendants be entitled to raise any demand, towards any outgoings, maintenance, electricity charges, interest, dues, penalty, tax or any other expenditure

whatsoever arising, incurred or accrued prior to the date of taking possession of the suit premises by the Plaintiff. The Defendants shall not seek any revision on account of cost escalation or any other reason whatsoever from the Plaintiff. It is clarified that the Plaintiff will not make any payment towards the Amount of Tax as contemplated under Clause 23(l) of the Agreements for Sale save and except what is stated herein, for any period prior to the date of taking possession of the suit premises. From the date of taking possession of the Suit Premises, Plaintiff shall bear and pay all the maintenance and outgoings including property tax to the Society / MCGM etc. and the Defendants shall not be liable for the same in any manner whatsoever.

8. The parties agree that the security deposit of Rs.6,15,51,000/- deposited by Defendant No.4 as the partner of Defendant No. 1 with the MCGM as a security against the misuse of area is allowed to be adjusted against the balance amount to be paid to MCGM as demanded by the MCGM. It is clarified that in the event MCGM refuses to adjust the aforesaid deposit amount the same would be

paid over to Defendant No. 4. The MCGM challan evidencing deposit of security deposit of Rs. 6,15,51,000/- is annexed as “**Annexure 6**”. The Plaintiff shall not have any claim of any nature whatsoever on the said deposit amount.

9. Neither Plaintiff nor any person claiming through or under him shall raise any objection or create any hurdles during the course of regularisation/development and shall extend all cooperation to Defendant Nos. 4 to 7.
10. The amount towards regularization, premium / charges etc. totally amounting to **Rs.7,26,70,500/-** has already been paid by Defendant No. 4 to 7 to the Municipal Corporation of Greater Mumbai in compliance of the demand letters dated 14th June 2021 annexed hereto and marked as **Annexure “7 (colly)** and the Receipts whereof annexed hereto and marked as **Annexure “8”**.
11. As per the said Plan an additional unit No. 603 is proposed to be constructed and would be available for sale to Defendant No.4 to 7. Defendant Nos. 4 to 7 shall be

entitled to utilize the sale proceeds of unit no. 603 to meet the regularization expenses.

12. Society in its SGM held on 24th July 2021 unanimously resolved, inter alia, to issue necessary NOC for sale of Unit No. 603 and admitting the Purchaser of Unit No. 603 as a member of the Society. A copy of the extract of the Minutes of Meeting dated 24th July 2021 is annexed hereto and marked as **Annexure “9”**.
13. The Plaintiff has verified and confirmed that there is no defect or deficiency in the area of the suit premises including the Additional Area.
14. The Defendants indemnify the Plaintiff and hold it harmless against any claim, penalty, damages, or loss which may arise due to any act of commission or omission on the part of the Defendants.
15. The parties agree that time is of the essence with respect to the obligations and undertaking specified under the Consent Terms. The Defendants shall not be entitled to

seek any extension of time for complying with the obligations under the Consent Terms.

16. In case the parties fail to comply with the provisions of these Consent Terms or commits any breach of the Consent Terms in any manner whatsoever (“**Event of Default**”), the parties shall be entitled to enforce the terms herein contained.
17. The parties have represented and affirmed that the execution of the present Consent Terms is not in violation of any law or arrangement/agreement entered with any person including any other creditor or investor.
18. Any GST, Income Tax and or any other taxes, stamp duty and other incidental charges on Additional Area shall be borne and paid by the Plaintiff. The Parties waive their right to take defense of inadequate stamp duty in any legal proceedings under these Consent Terms.
19. Each Party shall bear and pay their respective legal costs in respect of these Consent Terms and matters arising therefrom or connected therewith.

20. All interim orders stand vacated.
21. The Suit is disposed of in terms of the Consent Terms.
22. Refund of Court fees as per Rules.
23. No order as to the costs.
24. Liberty to apply.

Advocate for the Plaintiffs

Plaintiff

Advocate for Defendant No.2

Defendant No. 2

Advocate for Defendant No.3

Defendant No. 3

Advocates for Defendants No.4 to 7

Defendant No. 4

Defendant No. 5

Defendant No. 6

Defendant No. 7

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HALDIRAM FOODS
INTERNATIONALPRIVATE
LIMITED ...PLAINTIFF

VERSUS

M/s. S.S. ENTERPRISES
& ORS. ...DEFENDANTS

CONSENT TERMS

Dated this ____ day of February 2022

LJ LAW
Advocates for Defendants No.4 to 7
Room No.10, 4th Floor,
Central Bank of India Bldg.,
55, M.G. Road, Fort,
Mumbai - 400 001