

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.523 OF 2009
IN
SUIT NO.1336 OF 1988**

Rizvi Builders,
Sole Proprietary concern,
carrying on Business at
Rizvi House, Hill Road, Bandra,
Bombay – 400 050

... Appellant

Versus

1. Arun Subrao Prabhu
of Bombay Indian Inhabitant,
residing of A/602, Bafna Apartments,
276, Pandit Satvalekar Marg,
Mogul Lane, Mahim, Bombay – 400 050

2. M. M. Gulabani

3(a). Shri Harish Gulabani

3(b). Shri Nihit Harish Gulabani

Both of Bombay, Indian Inhabitant,
Residing at Devdarshan Bldg.,
6th Floor, Mogal Lane, Mahim,
Mumbai – 400 016

... Respondents

WITH
APPEAL NO.524 OF 2009
IN
SUIT NO.1336 OF 1988
WITH
NOTICE OF MOTION NO.4030 OF 2009

1. M.M.Gulabani
2. Mrs. Pushpa M. Gulabani
Both of Mumbai Indian Inhabitant,

Residing at Dev Darshan Building,
6th Floor, Mogul Lane, Mahim,
Mumbai – 400 016

... Appellant

versus

1. Arun Subrao Prabhu
of Bombay Indian Inhabitant,
residing of A/602, Bafna Apartments,
276, Pandit Satvalekar Marg,
Mogul Lane, Mahim, Bombay – 400 050

2. M/s. Rizvi Builders,
Carrying on business at Rizvi House,
Hill Road, Bandra, Mumbai – 400 050.

... Respondents

Mr. T.N.Subramanian, Senior Advocate with Mr. Akash Rebello, Mr. Prashant Dingrani, Mr. Anand Pai i/by Mr. Mahesh R. Mishra, for Appellant in APP 523 of 2009.

Dr. Virendra Tulzapurkar, Senior Advocate with Ms. Lata Dhruv, Ms. Khyati Pandit i/by Dhru and Co., for Respondent No.1 in both Appeals.

**CORAM: S.J. KATHAWALLA &
MILIND N. JADHAV, JJ.**

**JUDGMENT RESERVED ON : 1st OCTOBER, 2021
JUDGMENT PRONOUNCED ON : 28th JANUARY, 2022**

ORAL JUDGMENT (PER S.J.KATHAWALLA, J. & MILIND N. JADHAV, J.)

1. These Appeals have been preferred against the Judgment dated 10th September, 2009 ('the impugned Judgment') passed by the learned Single Judge of this Court in the captioned Suit filed by Dr. Arun Subrao Prabhu (Original Plaintiff) – hereinafter referred to as the 'flat purchaser' (the impugned Judgment). Appeal No.523 of 2009 has been preferred by the Appellant – Rizvi Builders (Original

Defendant No.1 in the captioned Suit) – hereinafter referred to as ‘the developer’. Appeal No.524 of 2009 has been preferred by the Original Defendant Nos.2 and 3 – M.M.Gulabani and Pushpa M. Gulabani in the captioned Suit – hereinafter referred to as the ‘Gulabanis’ . The flat purchaser is the Respondent No.1 in both the above Appeals.

2. Prayer clauses (a), (ai) and (b) in the Suit are reproduced hereunder :

“(a) That it be declared that the Agreement for Sale dated 6th March, 1980 between the Plaintiff and the Defendants, is valid, subsisting and binding on the Defendants;

(ai) That it be declared that the said Agreement for Sale dated 4th April, 1988 between the first Defendants and Defendant Nos.2 and 3 is sheer bogus, invalid and not enforceable in law and not binding on the Plaintiff;

(b) That the Defendants be ordered and decreed to specifically perform the said agreement mentioned in prayer (a) above;”

3. By the impugned Judgment, the captioned Suit was decreed in terms of prayer clauses (a), (ai) and (b) of the Plaint, subject to the condition that the flat purchaser shall within a period of four weeks deposit the balance consideration payable under the agreement i.e. Rs.1.44 Lakhs with the Prothonotary and Senior Master of this Court. Further that the developer and the Gulabanis shall execute a Deed of Transfer within four weeks of deposit of the balance consideration.

4. Certain germane facts are set out as under :

4.1 On 6th March, 1980 the flat purchaser had entered into an agreement

with the developer, by which the flat purchaser agreed to purchase a residential flat i.e. Flat No.104 in the building which the developer was to construct on the suit property ('the suit flat') at and for a consideration of Rs.1.80 Lakhs.

4.2 Clause 4 of the Agreement noted that the old structures standing on the land were tenanted and it was necessary for the developer to settle with the tenants.

4.3 Consequently, the development of the land was dependent on co-operation of the tenants of the building and the developers entered into a settlement with them.

4.4 Subject to this, Clause 5 of the Agreement provided that the flat purchaser was purchasing the residential premises comprised in Flat No.104 on the first Floor.

4.5 Clause 6 of the agreement, stipulated that the flat purchaser has paid an amount of Rs.5,000/- prior to the execution of the agreement and the balance linked with the casting of slabs by the developer; the payment being required to be made within 10 days of a notice in writing by the developer.

4.6 Further, clause 28 provided that the flat purchaser agreed to pay all the amounts due under the Agreement when they fell due and time was of the essence. Furthermore, as per Clause 28, the developer was not bound to give notice requiring payment and its failure to do so would not be treated as an excuse for non-payment.

4.7 On 13th March, 1980 the flat purchaser made a further payment of

Rs.31,000/- in accordance with clause 6 of the agreement which was to be followed by payment of the remaining installments linked to casting of slabs.

4.8 Between 1980 and October, 1987, construction of the building did not commence. The case of the developer is that the construction of the building commenced in October, 1987.

4.9 On 3rd June, 1987, the flat purchaser addressed a letter to the developer reiterating that the payment of the balance amount was due slab wise within ten days of a notice in writing calling for payment; however, the flat purchaser had not received any letters from the developer presumably because there was no progress in the construction of the building. The flat purchaser recorded that he had sought nearly twenty appointments from the developer during the previous two years; however, the developer had avoided a meeting. The flat purchaser sought another meeting for discussion on 27th June, 1987; however, there was no reply to the letter.

4.10 On 25th January, 1988, the developer accepted two cheques drawn in the total amount of Rs.4 Lakhs by the Gulabanis and addressed a letter on the same date to the Gulabanis. The letter records that the Gulabanis “*are insisting*” on buying the residential flat which was already sold to the flat purchaser i.e. the Suit Flat. The developer recorded that the flat purchaser had not made any payment of installments except the earnest money on execution of the Agreement. The developer stated that as a developer, it would wait for some time in case the flat purchaser was to come

forward to make payment of the installments due. Further that if the flat purchaser did not make further payment of the installments and the Agreement was cancelled, the developer stated that an agreement for sale would be entered into with the Gulabanis.

4.11 On 4th April, 1988, during the subsistence of the Agreement between the flat purchaser and the developer, the developer entered into an agreement with the Gulabanis for sale of the suit flat.

4.12 On 11th April, 1988 the developer addressed a telegram to the flat purchaser purporting to cancel the agreement on the ground that the flat purchaser had defaulted in not paying several installments for the flat booked in the building of the developer described as 'Rizvi Mansion'. The flat purchaser responded to the notice of termination on 20th April, 1988 stating that the developer had still not removed the old structure standing on a part of the property and that it had not started construction of that portion of the new building wherein the flat purchaser's residential flat was to be situated. The flat purchaser claimed that as construction had not commenced at all, the further installments had not become due and there was no question of default. There was no response to the aforesaid letter dated 20th April, 1988.

4.13 The captioned Suit for specific performance was filed thereafter by the flat purchaser on 27th April, 1988.

4.14 The flat purchaser also filed Notice of Motion No.1362 of 1988 inter alia seeking orders restraining the developer from selling, transferring, parting with possession or creating any third party interests in respect of the suit flat.

4.15 By an order dated 9th March, 1990 passed in Chamber Summons No.16 of 1990 filed by the flat purchaser, the Gulabanis were allowed to be impleaded as the Second and Third Defendants respectively in the captioned Suit.

4.16 By an order dated 10th July, 1990 an ad-interim order of injunction was passed in Notice of Motion No.1362 of 1988 restraining the developer from selling, transferring, parting with possession and/or creating any third party interests in respect of the suit flat.

4.17 By an order dated 8th October, 1990, Appeal No.994 of 1990 preferred by Gulabanis against the aforesaid order dated 10th July, 1990 was dismissed by this Court.

4.18 Against the aforesaid order dated 8th October, 1990, the Gulabanis preferred an Appeal before the Supreme Court of India being Special Leave Petition (Civil) No.16211 of 1990. The SLP was disposed of by the Supreme Court by an order dated 19th November, 1991 wherein the Supreme Court in paragraph No.6 observed as under :

“6. When the flat gets ready for occupation, the Builder will promptly report that circumstance to the Court which is trying the Suit. Thereupon, it shall be open to either of the parties to move the Court to issue appropriate directions to

ensure that during the pendency of the suit the flat is left unoccupied and without yield. This may be done by auctioning the right of occupation between the parties during the pendency of the suit or in such other appropriate manner as the Court may decide. The Court may also direct any of the parties to be inducted into possession on such terms that it may consider appropriate and in such a way that the interests of all the parties, including that of the Builders who claims to be entitled to the sale price before he could be called upon to part with possession, are protected.

4.19 By an order dated 3rd February, 2009 passed in Notice of Motion No.362 of 2009 filed by the flat purchaser in captioned Suit, a statement made by the Ld. Advocate appearing for the developer was recorded to the effect that the Suit flat was vacant and was not allotted to anybody; and that the electricity bills thereof were in the name of the son of the builder. By the aforesaid order, the Learned Single Judge ordered that the Appellant should not induct anybody in the suit flat until further orders and that the flat purchaser and his Advocate / representative were at liberty to inspect the suit flat after prior appointment with the developer and its Advocate.

4.20 The impugned Judgment came to be passed on 10th September, 2009.

4.21 On 14th September, 2009 in compliance with the impugned Judgment, the flat purchaser deposited the balance consideration of Rs.1,44,000/- with the Prothonotary and Senior Master of this Court.

4.22 On 10th November, 2009 the present Appeal No.523 of 2009 was filed by the developer against the impugned Judgment.

4.23 On 13th November, 2009 the present Appeal No.524 of 2009 was filed by the Gulabanis against the impugned Judgment.

4.24 By this Court's order dated 19th January, 2010, the captioned Appeal Nos.523 of 2009 and 524 of 2009 were admitted and it was ordered that both appeals be heard together. Rule on interim reliefs was made returnable in six weeks and in the meantime, the parties were directed to preserve status quo in so far as the suit flat was concerned, until further orders.

4.25 During the pendency of the Appeals, Notice of Motion No.4041 of 2009 was taken out by the developer seeking a stay on the execution of the decree of specific performance granted in favour of the flat purchaser. Furthermore, Notice of Motion No.560 of 2010 was taken out by the flat purchaser seeking an order to put him in possession of the suit flat and in the alternative, for appointment of the Court Receiver.

4.26 By an order dated 19th October, 2013 this Court inter alia directed that execution of the decree shall remain stayed conditional upon the developer paying the dues of the society upto the date of an agent being put in possession of the suit flat by the Court Receiver pursuant to the aforesaid order. The Court Receiver, High Court, Bombay was appointed as receiver of the suit flat.

5. Appearing for the developer in Appeal No.523 of 2009, Mr. T.N.Subramanian, Learned Senior Advocate submitted as follows :

5.1 The case of the flat purchaser is that his premises were not located in the completed building. This would mean that the captioned suit is not capable of specific performance as the plaint and reliefs therein relate to a building that has not been constructed.

5.2 The construction of the Agreement to mean that notice in writing was mandatory under Clause 6 of the Agreement is an incorrect interpretation of the Agreement. The purpose of the notice was to inform the flat purchaser about the casting of the slabs and discharge the burden on the developer if he gives notice at the address mentioned in the Agreement. The flat purchaser was aware of the casting of the slabs and yet did not make the payment. Therefore, if the flat purchaser was aware of casting of the slabs, he cannot seek refuge under the fact that formal written notice was not given.

5.3 The impugned judgment has gone beyond the case of the flat purchaser in his pleadings. As per the flat purchaser's pleadings, his grievance is that the portion of the building where the Suit Flat was located had not been constructed and therefore, payments were not due. It is not the case of the flat purchaser that payments were not due because a formal notice under Clause 7 of the Agreement was not issued.

5.4 The learned Single Judge in the impugned Judgment has wrongly dismissed the case of the developer on readiness and willingness of the Appellant to

perform the contract. That even if a notice had been served upon the flat purchaser, he would not be willing to perform the contract. The flat purchaser's case was that construction of his portion had not begun and unless the same was begun, he was not obligated to pay. Therefore, the flat purchaser has failed to prove his readiness and willingness.

6. When the hearing of the above Appeals commenced, Advocate Asgarali A.S.Shaikh represented the Gulabanis in both the Appeals. However, he later informed the Court that the Gulabanis are not coming forward to give him instructions in the matter. He himself visited the residence of the Gulabanis to serve the Orders passed by the Court when the grandson of the Gulabanis accepted his letter and informed him that Mr. Gulabani is 90 year old, is not available and Mrs. Gulabani has passed away. Advocate Shaikh finding himself helpless for want of instructions, later stopped appearing for the Gulabanis.

7. Appearing for the flat purchaser, Dr. Veerendra Tulzapurkar, Learned Senior Advocate submitted that the Appeal ought to be dismissed with costs on the following grounds :

7.1 It was mandatory and obligatory on the part of the developer to issue a written notice demanding payment of further installments as required under Clauses 6 and 7 of the Agreement. Once the parties had stipulated express modalities for payment, by making a demand by the developer, by a notice in writing, which was to be

transmitted in a particular mode, it would be impermissible to hold a buyer in default, on the supposed premise that he was aware of the construction by his own personal visits near the site.

7.2 The obligation of the flat purchaser to make any further payment arises only after receipt of the written notice from the developer. Therefore, the flat purchaser was not in default and was in compliance of his obligations.

7.3 The obligation to make payment was dependent on performance of the obligation of the developer to serve notices of demand on casting of slabs. That this obligation was breached by the developer who avoided stepping into the witness box. That the record of casting of slabs is deliberately withheld.

7.4 The impugned Judgment operates as a conveyance with a direction to the Court Receiver to handover vacant and peaceful possession of the suit flat to the flat purchaser.

7.5 On merits, it was submitted that the flat purchaser has proved existence of a written contract i.e. the Agreement and execution thereof.

7.6 The flat purchaser was ready and willing to perform the Agreement and is therefore entitled to specific performance.

8. We have considered the submissions of the Learned Senior Advocate and have also considered the Impugned Judgment passed by the Learned Single Judge. For the reasons stated hereinafter, these Appeals must fail.

9. At the outset, we will deal with the contention of the developer that it is the flat purchaser's own case that his premises were not located in the completed building and therefore; the Suit is not capable of specific performance. In support of this submission, the developer relies on the flat purchaser's correspondence, Plaint and evidence. The argument therefore is that it has at all times been the flat purchaser's consistent case that the building/wing where his flat was to be located had not been constructed. Consequently, the Ld. Single Judge could not have granted specific performance of a flat that the flat purchaser himself claims has not been constructed.

In order to consider the aforesaid argument, we will first appreciate the flat purchaser's evidence. In his Examination in Chief, the flat purchaser has deposed *"After negotiations, on or about 6th March, 1980 Agreement (hereinafter referred to as the 'said Agreement') in writing was executed between me and the 1st Defendant for purchase of a flat being Flat No.104 on the 1st floor of the building to be constructed by the 1st Defendant ...". That "even in October 1987, the 1st Defendant could not remove the same structures situate in the said property wherein the said flat was to be constructed. The said structure was demolished in or about April 1989. Thus in October 1987, the 1st Defendant could not start construction of portion of the new building wherein the said flat is situate and the question of the 1st Defendant laying all the slabs by March 1988, does not arise at all."* During the course of his cross-examination, the flat purchaser deposed that *"Till 1988, only a part*

of the suit building was under construction. In 1988, six slabs of the structure were put up. (Witness volunteers-however, no construction took place on the portion of the building wherein my flat is situated.)” Further, that “The first floor of the building was completed sometime in June 1988. (Witness volunteers- but no construction work had started on the portion wherein my flat is situated.)”. Further, that “It is true that the construction progressed substantially, save and except the portion where I was to be provided the flat.”

As opposed to the aforesaid deposition of the flat purchaser, in its Written Statement, the developer has deposed that until October 1987, construction of the building had not commenced. Further, that the first slab was cast on 5th December, 1987 and the subsequent slabs were cast by March, 1988.

10. We have considered the evidence led by the parties. In our opinion, the aforesaid submission of the Appellant that the Suit is not capable of specific performance as it is the flat purchaser’s own case that his premises were not located in the completed building does not pass muster. It is the flat purchaser’s consistent evidence that until June, 1988 no construction work commenced on the portion of the building where his flat was situated. The present Suit for specific performance was lodged on 27th April, 1988 i.e. a date when as per the flat purchaser, construction of the flat was not complete and therefore; the Plaintiff sought specific performance of the Agreement. The contention of the developer that merely because it was the flat purchaser’s case that construction of his flat had not commenced; he should not be

granted specific performance is preposterous. It is common practice for flats to be sold by developers when construction has not yet commenced. This non-commencement of construction cannot *ipso facto* defeat a Suit for specific performance. The developer's reliance on the Supreme Court's decision in *Mayawati V/s. Kaushalya Devi*¹ is clearly misplaced. In this decision, the Supreme Court laid down that the jurisdiction to order specific performance of a contract is based on the existence of a valid and enforceable contract. In the present case, at the time of entering into the Agreement, the developer contracted with the flat purchaser to sell the Flat which *was to be* constructed. The flat purchaser *inter alia* seeks a decree of specific performance ordering and directing the flat purchaser to specifically perform what it contracted to do i.e. construct the flat. Merely because at the time of filing of the Suit, it was the flat purchaser's case that the flat was not constructed cannot non-suit the flat purchaser. In addition, to the aforesaid, it would also be pertinent to refer to the Order dated 3rd February, 2009 in Notice of Motion No.362 of 2009, wherein the developer's statement has been recorded and the relevant part of which reads as under :

“.....

Mr. Kawli appearing for Defendant No.1 on instructions makes a statement that the flat is vacant and not allotted to anybody. It is neither sold or disposed of. No third party rights are created but the electricity bills are shown in the name of son of the builder (defendant No.1). However, even he is not occupying the flat.”

1 (1990) 3 SCC 1

11. After recording the aforesaid statement, the learned Single Judge had ordered that the developer should not induct anybody in the suit flat until further orders and that the flat purchaser and his Advocate / representative was at liberty to inspect the suit flat after prior appointment with the developer and its Advocate. In light of the aforesaid statement made by the developer, it would now be preposterous to hold that the suit flat is not located in a completed building and that the captioned Suit is not capable of specific performance. It is pertinent to note that at the stage of making the aforesaid statement, the developer did not raise any plea regarding the suit flat being in an unconstructed building and therefore, the developer is estopped from raising this plea of the suit flat not being in the completed building at this stage. If we were to accept this contention of the developer at this stage, the aforesaid statement made on 3rd February, 2009 would be rendered totally worthless.

12. At this stage, we consider it incumbent upon ourselves to deal with the argument putforth across the bar by the developer that there is a variation in the pleadings by the flat purchaser and in his evidence regarding the location of the suit flat and hence he cannot seek specific performance. It is alleged that on the one hand, the flat purchaser had deposed that the area where the flat which was agreed to be sold to Respondent No.1 had not been constructed upon and that consequently, the liability to pay the balance of the installments had not arise. On the other hand, in paragraph 5 of the Complaint, the plea was to the effect that there was no occasion for making any

further payment as the developer had not made any progress in respect of the construction work inasmuch as they were not in a position to demolish the existing structure in which place the building was to be constructed by the developer (*which was to house the suit flat*). We fail to find any inconsistency between paragraphs 3 and 5 of the Affidavit of evidence and the pleadings set up by the flat purchaser; and find no force in the contention putforth by the developer. In both, the Plaint and the Affidavit of Evidence, it is the grievance of flat purchaser that the area where the suit flat was agreed to be sold to the flat purchaser had not been constructed upon. We have culled out the relevant portions of the flat purchaser's evidence in this respect hereinabove. If the Affidavit of Evidence is closely examined, it is evident that there is no variance between the same and the Plaint, since the existing structure at the place on which the new building was to be constructed by the developer was not demolished. It is indisputable that the new building in which the suit flat was to be constructed, had not been constructed and therefore; the area where the suit flat was agreed to be sold to the flat purchaser had not been constructed leading to the filing of the Suit for Specific Performance.

13. As far as the contention of the Appellant that there is consensus *ad idem* on the description of the property and therefore, no scope for specific performance is concerned, the premises which forms the very subject matter of the agreement to sell, has been precisely defined and identified in the agreement at Exhibit P2. At this stage

i.e. when the flat purchaser has already instituted the captioned Suit, the developer cannot be allowed to contend that there is any ambiguity over the description of the premises, since the same would be in stark contradiction to the developers' prior conduct. The Appellant in its letter dated 25th January, 1988 addressed to Gulabanis has unequivocally stated that the same premises which have been agreed to be sold to the flat purchaser were those in respect of which the Gulabanis had expressed an intention to purchase. Infact, the Gulabanis were on notice of the fact that the premises which were to be sold to them were the same premises which are the subject matter of the Agreement with the flat purchaser. Similarly, the contention of the developer that the flat purchaser could not produce the original plan relating to the premises, would not help its case since there was palpably no dispute with regard to the identity of the premises.

14. Moreover, a mere perusal of the developer's statement recorded in the aforesaid Order dated 3rd February, 2009 in Notice of Motion No.362 of 2009, manifestly proves that there was infact no lack of consensus *ad idem* between the parties. The developer knew exactly where the suit flat was located and therefore, stated that the same was lying vacant and that the same had not been allotted to anybody. There is clearly no dispute with regard to the location of the suit flat as is sought to be contended by the developer. In light of inter alia the aforesaid statement, the question of there being an absence of consensus *ad idem* between the parties does

not arise.

15. The Supreme Court's decision in *Mayawati V/s. Kaushalya Devi*² was relied upon by the Appellant to contend that since there was no consensus *ad idem* between the parties on the property description, which is the subject matter of the contract, this Court cannot order specific performance. The aforesaid decision is inapplicable to the case at hand since there is, in fact, consensus *ad idem* between the parties herein. The Agreement is admitted. The description of the property in the Agreement is admitted. The property is precisely identified in the Agreement at Exhibit P-2. The same property has been purportedly sold to the Gulabanis. In these circumstances, the contention that there is an absence of consensus *ad idem* between the parties herein would not carry the case of the developer any further.

16. Amongst the arguments put forth by the developer before this Court is that the flat purchaser was aware of the progress of the construction of the building and hence no notice under Clause 6 and 7 of the Agreement was required to be given. Admittedly, no notice under Clause 6 of the Agreement was served. We find it difficult to accept the submission of the developer that the flat purchaser being aware of the construction, must be held to be in default of the payment of installments linked to the completion of each slab. Once the parties had stipulated an express procedure for payment, by the making of a demand by the builder, by a notice in writing, which

2 (1990) 3 SCC 1

was to be transmitted in a particular mode, in our view, it would be impermissible to hold a purchaser in default, on the supposed premise that he was aware of the construction, by his own personal visits near the site. The flat purchaser cannot be expected to be familiar with the nitty-gritties of the construction industry and furthermore, cannot be expected to release payments based on incomplete knowledge. As far as the Agreement is concerned, the only manner in which the flat purchaser could have been made aware of the casting of slabs, was by issuance of notice by the developer in strict compliance of Clause 6 of the Agreement and in the manner specified in Clause 7 of the Agreement. If we were to read anything else into the Agreement and accept the contention put forth by the developer, we would be laying down a dangerous precedent in as much as parties would tomorrow contend that just because another party's residence / place of business was near a construction site, it was to be assumed that they were fully aware of the progress of construction and specific clauses providing for the manner in which they were to be informed of the same, would no more be worth the paper they are written on it. For similar reasons, any other mode of communicating the progress of construction to Respondent No.1 or any other manner in which Respondent No.1 could have been made aware of the progress of construction (*such as by site visits, oral assurances of the builder's representatives etc.*), cannot be allowed to substitute the prescribed procedure in the Agreement itself. We are convinced that the obligation of flat purchaser to pay the

installments had not arisen in the absence of a demand for payment.

17. Admittedly, the construction could not commence until October, 1987. Moreover, we find it irrelevant whether or not the flat purchaser continued to reside at his address mentioned in the Agreement and consequently, find no force in the argument put forth by the developer that, if the Agreement was interpreted as proposed by the flat purchaser, a notice would be served at an address at which the flat purchaser no longer resided. Pertinently, it is also not the case of the developer that a notice was in fact issued to the flat purchaser. This is a weak attempt on the part of the developer to wriggle out of its express obligations under the Agreement. Furthermore, it would be absurd to suggest that a purchaser was required to keep an eye on the progress of the construction and keep inquiring from the builder regarding further payments.

19. During the hearing of the captioned Suit, the Appellant had contended that Clause 28 of the Agreement provided that the flat purchaser agreed to pay all the amounts due under the Agreement when they fall due, and time was of the essence. It was also contended by the developer that the developer was not bound to give a notice requiring payment and its failure to do so, would not be treated as an excuse for non payment. We are unable to agree with this interpretation of Clause 28 of the Agreement. In the event that we were to give any credence to this interpretation, it would render a large part of the commercial provisions of the Agreement completely

otiose and would render Clauses 6 and 7 thereof totally redundant. As has been laid down time and again by the Supreme Court of India, the golden rule of construction is to ascertain the intention of the parties to the instrument after considering all the words, in their ordinary and natural sense. To ascertain this intention, the Court has to consider the relevant portion of the document as a whole and also to take into account the circumstances under which the particular words were used. A clause of an Agreement cannot be looked at in isolation, as is being sought to be done by the Appellant herein. The Court cannot place emphasis on an isolated provision divorced from the context and unrelated to the other provisions which govern contractual obligations. An effort must be made to harmonize all the provisions of the contract. It is beyond cavil that Clause 28 is a general provision in relation to the payment of amounts that fell due under the contract. Besides payment of the agreed consideration, this contract refers to the payment of certain other sums such as security, municipal taxes, insurance, outgoings, and maintenance expenses etc. Clause 28 can obviously have no reference to payments which were due under Clauses 6 and 7 whereby parties specifically stipulated that the Appellant would address a written notice to flat purchaser demanding payment of each installment against the casting of each successive slab. Clauses 5 and 6 are express provisions relating to the payment of the installments towards the purchase price and Clause 7 provides for the mode of service of the notice. On the other hand, Clause 28 of the Agreement is a general

provision in relation to the payment of amounts that fall due under the contract. In light of these facts and circumstances, we are inclined to hold that Clause 28 of the Agreement cannot override Clauses 6 and 7 of the Agreement and the learned Single Judge has not erred in holding so. Thus, the obligation of the flat purchaser did not and could not by any stretch of imagination, arise until the developer had complied with his part of issuing notice under Clauses 6 and 7 of the Agreement.

20. The Supreme Court's decision in **Bachhaj Nahar V/s. Nilima Mandal and Anr.**³ was relied upon by the developer to contend that; since the factum of non-issuance of notice has not been pleaded by the flat purchaser, therefore, no relief should be granted. The aforesaid decision is inapplicable to the case at hand. It is indisputable that Respondent No.1 has pleaded non-issuance of notice by the Appellant in paragraph 7 of the Complaint. The averments contained in paragraph 7 of the Complaint have been reiterated in the course of the examination-in-chief. In paragraph 24 of the examination-in-chief, flat purchaser has reiterated what has been stated in paragraph 7 of the Complaint. In fact, this contention of Respondent No.1 has been expressly recorded by the learned Single Judge at paragraphs 13 and 23 of the impugned Judgment which read as under :

“13. Now, in assessing as to whether the Plaintiff was ready and willing to perform his obligation under the agreement, the submission of the Learned Senior Counsel for the Plaintiff is that the relevant date for considering readiness and willingness is when the obligation to perform arises. In the present case, the Plaintiff

3 (2008) 17 SCC 491

had admittedly paid Rs.5,000/- as earnest money and Rs.31,000/- subsequently as provided in the agreement and the occasion for the payment of the balance would arise under clause 6 only when a notice was sent by the First Defendant to the effect that the amount was payable against the casting of each slab. No notice having been given by the First Defendant, the payment – it is urged did not fall due.

23. *Counsel appearing on behalf of the First Defendant submitted that the Plaintiff resided in proximity to the construction site and that his dispensary was also situated in the same area. The Plaintiff fairly stated during the course of his cross-examination that between March 1980 and the institution of the suit, he had occasion while passing the premises to see the progress and development of the property. The Plaintiff stated that until 1988, only a part of the building was under construction and in that year six slabs of the structure were put up. The witness, however, stated that no construction had taken place on the portion of the building wherein his flat was situated. According to him, the First Floor of the building was completed sometime in June 1988. The Plaintiff stated that he had not paid the instalments as stipulated in clause 6, as the construction of the portion on which the flat was to be situated had not started and the builder had not sent him a notice to make payment.....”* (emphasis supplied)

Therefore, we find no force in the contention of the developer that the impugned Judgment has gone beyond the case of the flat purchaser in his pleadings, where the grievance is that the portion of the building where his flat located had not been constructed, and therefore payments were not due; and that it is not the case of flat purchaser that payments were not due because a formal notice under Clause 7 of the Agreement was not issued.

21. In its written submissions, the developer has contended that in the Flat

Purchaser's Affidavit of Evidence, he has disavowed his case regarding the failure of the developer to issue a notice. This averment will be of no help to the Appellant. If the agreement clearly stipulates that the Appellant was under an obligation to issue a notice to Respondent No.1 under Clause 6 thereof, this Court is bound to decide the matter in light of the aforesaid Clause.

22. In so far as the contention of the Appellant that Respondent No.1 was not ready and willing to perform his part of the obligation is concerned, after carefully considering the arguments put forth and after thoroughly going through the material on record, we unhesitatingly hold that Respondent No.1 was always ready and willing to perform his part of the contract. We have arrived at the aforesaid conclusion due to the following reasons :

22.1 At the outset, the flat purchaser has expressly pleaded his readiness and willingness to perform the contract in paragraph 7 of the Plaint. The flat purchaser has pleaded that no slab was raised or laid by the developer, of the building in which the Respondent No.1's flat was to be situated and the developer had at no point in time, demanded the payment of instalments. Consequently, the flat purchaser had not committed any default in making the payment of instalments. The flat purchaser has pleaded that he was at all material times, ready and willing to perform his obligations and was ready and willing even on the date of the filing of the captioned Suit.

22.2 In paragraph 5 of the Plaint, there is a categoric averment to the effect

that there was no occasion for the flat purchaser to make any further payment as the developer had not made any progress in construction.

22.3 It is the admitted case of the developer that between 1980 and 1987, no progress had taken place in construction and therefore, we are of the opinion that there was no occasion for the flat purchaser to make the payment. Furthermore, during this period between 1980 and 1987 there was not a single letter from the developer addressed to flat purchaser demanding payment. Also, during the subsistence of the agreement with the flat purchaser, the developer had accepted a deposit of Rs.4 lakhs from the Gulabanis in respect of the very same flat. On a mere perusal of the developer's letter dated 25th January 1988 addressed to the Gulabanis , it emerges that even at that very stage, the developer would wait for the flat purchaser to pay the instalments before entering into an agreement with the Gulabanis and that the developer did not treat time to be of the essence of the contract with the flat purchaser. Despite having addressed the aforesaid letter, the developer entered into an agreement with the Gulabanis on 4th April 1988, during the subsistence of the Agreement with the flat purchaser and without the Agreement being terminated. It has been stated by the witness that the agreement was handed over to the Gulabanis only after the termination of the Agreement took place, on 11th April 1988. We find ourselves unable to give any credence to this statement.

22.4 It is also pertinent to note that the flat purchaser's letter dated 3rd June

1987, which was addressed during the subsistence of the Agreement and regarding which we have stated more hereinafter, manifestly shows his readiness and willingness.

22.5 Moreover, the flat purchaser's conduct after the date of the termination *viz.*, 11th April 1988, shows a clear sense of ardour in resorting to remedies available to him under law. No sooner did the developer attempt at terminating the Agreement than the flat purchaser addressed a letter dated 20th April 1988 to the developer and the captioned Suit for specific performance was filed on 27th April 1988.

22.6 It is pertinent to note that on 3rd June 1987, the flat purchaser addressed a letter to the developer that the payment of the balance was due slab wise within ten days of a notice in writing calling for payment; however, the flat purchaser had not received any such letter from the developer since there was presumably no progress in the construction of the building. The flat purchaser recorded that he had sought nearly twenty appointments from the developer during the previous two years, but to no avail. The flat purchaser sought another meeting for discussion on 27th June 1987; however, there was no reply to the letter. These two letters alone, neither of which have been denied by the developer, sufficiently demonstrate that the flat purchaser was always ready and willing to perform his part of the contract.

23. In any event, in the case of *Ramesh Chandra Chandiok vs. Chuni Lal Sabharwal*⁴, the Supreme Court of India has held that readiness and willingness cannot

4 AIR 1971 SC 1238

be treated as a strait jacket formula. These requirements have to be determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned. The conduct of the flat purchaser before the institution of the captioned Suit, will clearly demonstrate that the flat purchaser had, at no stage, been languid, nor had he acted in any manner that would be inconsistent with his plea of being ready and willing to perform the contract.

24. In its Written Submissions, the developer has also contended that the other payments stipulated in the Agreement do not have any fixed timelines for payment as envisaged in Clause 28 of the Agreement. This argument cannot be accepted by us, because what the developer is practically attempting at doing is, rendering Clauses 6 and 7 of the Agreement totally redundant. If we were to accept this contention of the developer, Clauses 6 and 7 of the Agreement would be left with no purpose, which would be in blatant contravention of the axiomatic principal of interpretation of contracts which is that no part of an agreement or words used therein could be said to be redundant.

25. We have noticed that in paragraph 15 of the Impugned Judgement, the Learned Single Judge has relied upon the Supreme Court's decision in *M. Arul Jothi v. Lajja Bai*⁵, while reiterating that no part of the agreement or words used therein could be said to be redundant. In this regard, it would be appropriate to refer to what a Full

5 (2000) 3 SCC 723

Bench of this Court has held in *S. Kumar Construction Co., Mumbai and Another v. Municipal Corporation of Gr. Bombay and Others*⁶, which is as under :

“8. Having heard the learned counsel for the parties we now proceed to answer the questions framed by us. The answers to the said questions would undoubtedly be contingent upon the interpretation of Clauses 96 and 97 of the General Conditions of Contract which form part of the agreement entered into between the parties. Hence the position in law in so far as interpretation of agreements/deeds assumes some importance. In the said context the judgments cited on behalf of the MCGM by the learned Senior Counsel Shri Setalvad would have to be dealt with. In M. Arul Jothi's case (supra) the rent agreement between the parties regarding use of the shop premises contained a clause that shop should be used by the tenant for carrying on his own business and the tenant shall not carry out any other business than the one specified (dealing in radios, cycles, fans, clocks and steel furniture). The tenant started using the shop to carry out business of provisions such as spices and dals etc along with original specified business. The respondent-landlord filed a eviction suit under the Tamil Nadu Buildings (Lease and Rent Control) Act 1960 on the ground that the tenant was using the premises for different purpose than one specified). The Trial Court decreed the suit and the Appellate Authority dismissed the Appeal filed by the tenant. On the matter coming to the High Court, the High Court dismissed the Revision Petition filed by the tenant. On the matter coming to the Apex Court, the decree passed against the tenant was upheld. It was held by the Apex Court that since in the case before it there is specific prohibition clause in the rent deed which stated that the premises shall be used by the tenant only for carrying on his own business and the tenant shall not carry on any other business than the above said business. The said clause restricted user of the tenanted premises only for the business which is stated therein and no other. The word in the rent deed “not to use it for any other purpose” would have to be given effect to. The Apex Court held that once parties enter

6 2017 SCC Online Bom. 130

into a contract then every word stated therein has to be given its due meaning and no part of the agreement or words used therein could be said to be redundant unless it is contrary to statute.

.....

14. Insofar as Clause 97 is concerned, it has been worded in the widest possible manner, as it begins with the expression "all disputes and differences whatsoever" covers the stages when they may arise "concerning the works or the execution or the maintenance thereof or the construction meaning operation thereof and also covers the determination of the rights and liabilities of the parties or arising out of or in relation thereto also covers the point of time when they can arise "whether during or after completion of the contract, or whether before or after determination, foreclosure or breach of the contract."

Hence the manner in which Clause 97 is structured, it can be said to be an all encompassing clause covering all disputes and differences arising at whatsoever stage and providing for arbitration. The said Clause as indicated above inter alia covers, the aspect as to the manner of appointment of arbitrator, the qualifications of the arbitrator, fees that are payable to the arbitrator and the manner of their fixation etc.

Hence a conjoint reading of Clause 96 and Clause 97 indicates that the parties have provided themselves a dual mechanism i.e. Clause 96 providing for doubts, disputes and differences arising at the time of the execution of the works, being resolved in a particular manner, and then Clause 97 which is an arbitration clause which can be said to be all encompassing. Significantly in Clause 97 there is no reference to Clause 96 which can be said to be a defining feature of the agreement, in so far as the present works contract is concerned. Hence Clause 97 can be said to be a stand alone arbitration clause whose invocation is not contingent upon invocation of Clause 96. The said Clause 96 cannot eclipse Clause 97 which as indicated above is a stand alone arbitration clause and is all encompassing. It is therefore not possible to subscribe to the proposition as enunciated by the learned Senior Counsel Shri Setalvad that having regard to the law applicable to the interpretation of deeds, if every word is to be given meaning to in Clause 96 then all the disputes would be

covered by Clause 96 and therefore invocation of Clause 96 is a precursor to invocation of Clause 97. The acceptance of such a proposition would in fact render Clause 97 otiose. The acceptance of such a proposition would also militate against the object behind Clause 97 which is to provide a remedy by way of arbitration to the parties. Such an interpretation also cannot be accepted in view of the fact that it was also the submission of Shri Setalvad that in so far as the MCGM is concerned, it can directly invoke Clause 97. The same would give rise to an anomalous situation namely that the MCGM can invoke Clause 97 directly whereas the Contractor has to go through the route of Clause 96. The parties obviously cannot be meted out a different treatment under the same contract. The interpretation therefore would have to be one which results in a uniform treatment to the parties and furthers the object behind which the parties agreed to Clause 97. It would be one thing to say that Clause 96 is worded in the widest possible terms, but another thing to deny the efficacy of Clause 97 insofar as reference to arbitration de hors Clause 96 is concerned.

20. As indicated herein above, Clause 96 provides for any doubt, dispute or difference in respect of the matters mentioned in the said Clause between the Engineer or any other officer and the contractor being referred to the Municipal Commissioner. The said matters include the items covered by Clause 7, namely, plans, workings, drawings section and specifications. If that be so, then applying the rule of interpretation which is applicable in respect of deeds, the said Clause 7 and Clause 96 would have to be construed in a manner which would make the scheme envisaged in Clause 96 workable. If the Municipal Commissioner is the referable authority provided by Clause 96, he would also have to be so in respect of the items or matters mentioned in Clause 7 as otherwise the mechanism provided by Clause 96 would become meaningless. In fact the said proposition was advanced by the learned Senior Counsel for the Municipal Corporation of Greater Mumbai in support of his submission as regards the wide ambit of Clause 96. Hence to the extent that the items mentioned in Clause 7 are covered by Clause 96, to the said extent the decision of the Engineer would have to be held to be not final, conclusive and binding

and would therefore be at large before the Municipal Commissioner and thereafter before the arbitrator if the occasion so arises.”

(emphasis supplied)

In light of the aforesaid principle of interpretation of contracts, to hold that the payment of consideration as stipulated in Clause 6 of the Agreement is in fact covered by Clause 28 of the Agreement, would be to militate against the very object behind Clause 6 of the Agreement which is to provide for a categoric and pre-determined mechanism of informing the buyer of the progress of the laying of slabs.

26. We may also profitably refer to the Supreme Court’s decision in *JSW Infrastructure Limited and Anr. v. Kakinada Seaports Limited and Ors*⁷, wherein the Supreme Court discussed principles to be followed by Courts while interpreting tender documents. The Supreme Court held as under :

“ 6. We have given our careful consideration to the arguments. This Court in Ramana Dayaram Shetty v. International Airport Authority of India [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] held that the words used in documents cannot be treated to be surplusage or superfluous or redundant and must be given some meaning and weightage. It was held as follows : (SCC p. 500, para 7)

“7. ... It is a well-settled rule of interpretation applicable alike to documents as to statutes that, save for compelling necessity, the Court should be prompt to ascribe superfluity to the language of a document “and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use”. To reject words as insensible should be the last resort of judicial interpretation, for it is an elementary rule based on common sense that no

⁷ (2017) 4 SCC 170

author of a formal document intended to be acted upon by the others should be presumed to use words without a meaning. The court must, as far as possible, avoid a construction which would render the words used by the author of the document meaningless and futile or reduce to silence any part of the document and make it altogether inapplicable. ”

This view has consistently held the field and was recently reiterated in Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium) [Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622 : (2016) 4 SCC (Civ) 106].

.....

7. On a bare reading of the policy clause some weightage and meaning has to be given not only to the word “next” as done by the High Court but also to the words “only one private operator” appearing in the opening part of the clause. The words “only one private operator” cannot be treated as surplusage. The entire clause has to be read as a whole in the context of the purpose of the Policy which is to avoid and restrict monopoly. In our opinion, this clause will apply only when there is one single private operator in a port. If this single private operator is operating a berth, dealing with one specific cargo then alone will he not be allowed to bid for next berth for handling the same specific cargo. The High Court erred in interpreting the clause only in the context of the word “next” and ignored the opening part of the clause which clearly indicates that the clause is only applicable when there is only one private berth operator. It appears to us that the intention is that when a port is started, if the first berth for a specific cargo is awarded in favour of one private operator then he cannot be permitted to bid for the next berth for the same type of cargo. However, once there are more than one private operators operating in the port then any one of them can be permitted to bid even for successive berths. In the present case, as pointed out above there are already 5 private operators other than the first consortium. ”

If we were to give any credit to the contention put forth by the Appellant regarding the irrelevancy of the notice provided for under Clause 6 of the Agreement, the

aforesaid clause would in fact, be rendered superfluous, which would be in the teeth of settled law which has been reiterated by the Hon'ble Supreme Court time and again.

27. The developer has also raised a plea that the Impugned Judgement proceeds solely on the basis of failure to give notice. In light of all that has been stated herein, this argument has no legs to stand on. The Learned Single Judge has evidently referred to other aspects such as the readiness and willingness of the flat purchaser to fulfil his obligations under the Agreement, the lack of concern on the part of the developer to provide the flat purchaser with as much as an appointment, the developer's failure to establish when as a matter of fact, each slab was cast, etc. Also, the Learned Single Judge has categorically directed the developer to deposit the balance consideration payable under the Agreement i.e., Rs.1.44 lakhs with the Prothonotary & Senior Master. The Learned Single Judge has delivered the Impugned Judgement well within the four corners of the Agreement.

28. Furthermore, we find it appropriate to now briefly refer to the authorities cited by the developer before us. The Supreme Court's decision in *State of Madhya Pradesh v. Nomi Singh and Anr.*⁸ was relied upon by the developer to contend that, the burden of proof lies on the Plaintiff and for the relief claimed by a Plaintiff, he has to stand on his own legs by proving his case. The aforesaid decision is inapplicable to the case at hand since as discussed above, the flat purchaser has, indeed, succeeded in

8 (2015) 14 SCC 450

proving his case. Whilst the Appellant has made every effort to find fault in the Plaintiff's evidence, we do not find the Plaintiff's evidence lacking.

29. The England and Wales Court of Appeal's decision in *Newbold and Ors. V. Coal Authority*⁹ was relied upon by the developer to contend that, the non-compliance of issuance of Notice is not fatal to its case. The following paragraph from the decision is relevant :

“ I do not consider that there is any such conflict. In all cases, one must first construe the statutory or contractual requirement in question. It may require strict compliance with a requirement as a condition of its validity. In Mannai at 776B Lord Hoffman gave the example of the lease requiring notice to be given on blue paper: a notice given on pink paper would be ineffective. Against that, on its true construction a statutory requirement may be satisfied by what is referred to as adequate compliance. Finally, it may be that even non-compliance with a requirement is not fatal. In all such cases, it is necessary to consider the words of the statute or contract, in the light of its subject matter, the background, the purpose of the requirement, if that is known or determined, and the actual or possible effect of non-compliance on the parties. We assume that Parliament in the case of legislation, and the parties in the case of a contractual requirement, would have intended a sensible, and in the case of a contract, commercial result. ” (emphasis supplied)

In the case at hand, there is an express requirement of notice in Clause 6 of the Agreement. This is clear and unambiguous. The Ld. Single Judge has rightly considered the evidence and held that the issuance of the notice was a precondition to any payment falling due under Section 6 of the Agreement.

⁹ (2014) 1 WLR 1288

30. The Court of Appeal's decision in *Barrett Bros. v. Davies*¹⁰ was relied upon by the developer to contend that, the non-compliance of issuance of Notice is not fatal to its case. Apart from the fact that the aforesaid decision is not binding upon this Court, the aforesaid decision was delivered in light of facts and circumstances which bear no semblance to those at hand. In the facts therein, a notice was indeed given to the insurance company by the Solicitors. In the facts of the case in hand, admittedly, no written notice demanding payment has been issued by the developer.

31. Before we conclude, it would be apposite to refer to a few other aspects of the captioned Suit. During the hearing of the captioned Suit, the defence taken up by the developer in the Written Statement was that the first slab was cast on 5th December 1987 and that all subsequent slabs were cast by March 1988. The developer's sole witness Khalid Badsha (D.W.1), during the course of his cross-examination, stated that based on the commencement certificate, he could state that the construction of building had commenced in October 1987. The commencement certificate was, however, not produced on record and D.W.1 stated that he had no reason for not producing the commencement certificate. The witness admitted that he had no document available to show that the laying of the first slab took place in December 1987. He deposed that his statement in the affidavit of the Examination-in-Chief that the first slab was laid in December 1987, was based on the instructions

10 (1966) 1 WLR 13341

which the developer gave to the contractor regarding laying of the slabs after the work of the plinth was completed and that these instructions were not given in writing. Similarly, the witness states that he had no document to show that the construction of all the slabs was completed on 5th March 1988. Despite being a developer who would be in possession of the entire record relating to the construction of the building, the developer has failed to produce the best possible evidence to establish the dates on which each successive slab came to be cast. An adverse inference would, therefore, have to be drawn against the Appellant, as has been rightly done by the Learned Single Judge. Mr. Rizvi, who according to D.W.1, attended to the day-to-day business, did not choose to enter the witness box. Therefore, we hold that the Appellant has failed to establish the dates on which each successive slab of the building was cast. The failure of the Appellant to do so assumes significance because in the absence of that evidence, it cannot be stipulated that the obligation of the flat purchaser to pay the instalments had arisen before the date of the termination of the Agreement.

32. Furthermore, in so far as the agreement between the developer and Gulabanis dated 4th April 1988 is concerned, it cannot bind the flat purchaser, nor can it be enforced against the flat purchaser. The developer proceeded to accept an amount of Rs.4 lakhs from Gulabanis in January 1988. Gulabanis were clearly on notice by the developer's letter dated 25th January 1988 of the Agreement with the flat purchaser. The agreement was executed on 4th April 1988 during the subsistence of

the Agreement with the flat purchaser and therefore, before the Agreement with the flat purchaser was terminated on 11th April 1988.

33. In conclusion, it is admitted that the flat purchaser had paid Rs.5,000/- as earnest money and Rs.31,000/- subsequently towards the purchase price of Rs.1,80,000/-, as provided in the Agreement. Pertinently, the flat purchaser has already deposited Rs.1.44 lakhs (*balance consideration payable under the Agreement*) with the Prothonotary & Senior Master, pursuant to the Impugned Judgment. The flat purchaser was at all material times, ready and willing to perform his obligations and was ready and willing even on the date of the filing of the captioned Suit. There is a specific plea that the flat purchaser was ready and willing to perform the contract. Parties had agreed that the balance of the consideration would be payable upon the casting of each slab, in instalments, upon a written notice by the developer demanding payment. From the evidence on record, the developer has failed to establish when as a matter of fact, each slab was cast and hence, an inference, that there was a default on the part of the flat purchaser, cannot be drawn.

34. For the reasons aforesaid, the above appeals are accordingly dismissed. No order as to costs. Interlocutory Applications also stand disposed of.

35. During the pendency of the Appeals, Notice of Motion No.4041 of 2009 was taken out by the developer seeking a stay of the execution of the decree of specific performance granted in favour of the flat purchaser. Furthermore, Notice of Motion

No.560 of 2010 was taken out by the flat purchaser seeking an order to put him in possession of the Suit Flat and in the alternative; for the appointment of the Court Receiver. By an order dated October 19, 2013, this Court *inter alia* directed that the execution of the decree shall remain stayed conditional upon the developoer paying the dues of the society up to the date of an agent being put in possession of the Suit Flat by the Court Receiver pursuant to the aforesaid order. The Court Receiver, High Court, Bombay was appointed as receiver of the Suit flat. Now, since the captioned Appeals stand dismissed, the aforesaid stay stands vacated. The Court Receiver shall stand discharged without passing accounts but subject to payment of his costs, charges and expenses by the Plaintiff. The Court Receiver shall handover possession of the suit flat to the flat purchaser. The amount deposited by the flat purchaser with the Prothonotary & Senior Master alongwith interest accrued if any shall forthwith be handed over to the Appellant.

(MILIND N. JADHAV, J.)

(S.J.KATHAWALLA, J.)

36. At the request of Advocate Rebello representing the Appellant, this Order shall not be implemented for a period of two weeks from today.

(MILIND N. JADHAV, J.)

(S.J.KATHAWALLA, J.)