

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

***CONTEMPT PETITION NO. 67 OF 2016
IN
WRIT PETITION NO. 2402 OF 2013***

Anand Ramesh Sangani & Ors. ...Petitioners
Versus
M/s. Shagun Realty & Ors. ...Respondents

Mr. Rajiv Narula i/b Jhangiani Narula & Associates for the Petitioners

Mr. Sharad Wakchoure i/b Kishore Thakordas & Co. for the Respondent
Nos. 1 to 3

**CORAM : REVATI MOHITE DERE &
MADHAV J. JAMDAR, JJ.
FRIDAY, 22nd APRIL 2022**

P.C. :

1 At the outset, learned counsel for the petitioners seeks leave to
amend to delete the respondent No. 3 from the array of the respondents in
the aforesaid contempt petition. Leave granted. Amendment to be carried
out forthwith.

2 Learned counsel for the petitioners and learned counsel appearing for the respondent Nos. 1 and 2 have, in view of the amicable settlement arrived at between the parties, tendered the Consent Minutes of Order, duly signed by the parties and their respective advocates. Learned counsel for the petitioners and respondent Nos. 1 and 2 identify the signatures of their respective clients. The said Consent Minutes of Order is taken on record and marked 'X' for identification. The same reads thus :

“1) The Respondent Nos.1 and 2 agree to perform their obligation as per Consent Minutes of Order dated 26th September 2013 filed in Writ Petition [L] No. 1823 of 2013 with certain modifications, as follows:

2) In lieu of 10% additional compensation payable by the Respondent Nos. 1 and 2 to the Petitioners and Respondent Nos.6(a) as per Clause 11 of the Consent Minutes of Order dated 26th September 2013, the Respondent Nos. 1 and 2 shall allot to the Petitioners and Respondent Nos. 6(a) additional carpet area corresponding to 8% of the existing premises of the Petitioners and Respondent Nos.6(a);

3) The Respondent Nos. 1 and 2 do provide to the Petitioners and Respondent Nos.6(a) in lieu of their existing area, the said Permanent Alternate Accommodation free of costs on Ownership Basis in the proposed building to be constructed on the property bearing C. S. No. 2243, 2244, 2245, 2246, 2247, 2248, 1/2249, 2/2249, 3/2249, 4/2249, 2250, 2251, 2251 and 2255 of Bhuleshwar Division situated at Bhuleshwar Division on or before 31st July 2022, with the agreed additional area of 30% (as per Clause 3 of the said

Consent Minutes of Order) plus 8% additional area as provided in Clause 2 hereinabove. The statement showing area to be allotted to each of the tenants viz. Petitioners and Respondent Nos. 6(a) is annexed hereto and marked as **ANNEXURE-A.**

4) The Respondent Nos. 1 and 2 shall provide to the Petitioners and Respondent Nos.6(a) the permanent alternate accommodation consisting of the carpet area as enumerated in Annexure-A hereto on the First Floor of the Building under construction on the subject property in accordance with the plan submitted for approval which Plan is hereto annexed and marked as **ANNEXURE-B.**

5) Upon the Respondent Nos. 1 and 2 completing the premises in the building for the Petitioners and Respondent Nos.6(a) and offering possession of the same i.e. the Permanent Alternate Accommodation with the agreed additional area of 8% as enumerated in Annexure-A hereto along with Part Occupation Certificate, covering all the units allotted to the Petitioners and Respondent No.6(a), they would be discharged from their obligation as under the Minutes of Order dated 26th September 2013 (passed in Writ Petition (L) No. 1823 of 2013);

6) The Respondent Nos. 1 and 2 hereby agree to construct and complete the Petitioners and Respondent Nos.6(a) premises and hand over possession of the permanent alternate accommodation to the Petitioners and Respondent Nos.6(a) on or before 31st July 2022;

7) The Respondent Nos. 1 and 2 further agree before this Hon'ble Court that in the event of they failing to complete the construction and handing over the possession of the new premises to the Repetitions and Respondent Nos.6(a) on or before 31st July 2022 they would be liable and they shall pay to the Petitioners and Respondent Nos.6(a), 10% additional monthly compensation from the date of default i.e. 31st July,

2022 till the offering of the new premises duly complete with Part Occupation Certificate. Such compensation shall be annually enhanced by 10%;

8) The Parties hereby agree and undertake to this Hon'ble Court to register Agreement for Permanent Alternate Accommodation as per draft annexed hereto on or before 30th April 2022 either on the basis of plan submitted for approval or on the basis of sanctioned plan, as the case may be. The stamp duty and registration charges in respect of such Agreement for Permanent Alternate Accommodation shall be shared equally by the signing parties as per Clause 8 of the Consent Minutes of Order dated 26th September 2013;

9) Further agreed, recorded and undertaken by the Respondent Nos. 1 and 2 that they will not carry out any change in the plan submitted to the Corporation pertaining to the premises to be provided to the Petitioners and Respondent Nos.6(a) for approval without written consent from the Petitioner and Respondent Nos.6(a). However if the Planning Authority requires the Respondent Nos. 1 and 2 to modify the plan then the same shall be done under intimation to the Petitioner and Respondent Nos.6(a). In the event of modification to the plan affecting the premises allotted to the Petitioner and Respondent Nos.6(a) the Respondents Nos. 1 and 2 agree and undertake to this Hon'ble Court to take their prior consent and sign and execute a Supplemental Agreement / Corrigendum recording such modification and showing the modified premises on the sanctioned plan annexed to such documents of Corrigendum;

10) The Respondent Nos. 1 and 2 shall pay 1/3rd of the monthly compensation accrued from September 2020 till 31st October 2021 to the Petitioners and Respondent Nos. 6(a) in terms of the previous Consent Minutes of Order dated 26th September 2013 filed in Writ Petition [L] No. 1823 of 2013 on or before execution hereof, which 1/3rd will be inclusive

of rent which was paid by cheques on 25th August 2021 and the remaining 2/3rd Accrued rent along with rent/compensation for the months of November and December 2021 shall be paid by Respondent Nos. 1 and 2 by 15th January, 2022. A statement of the account due and payable by the Respondent Nos. 1 and 2 to the Petitioners and Respondent Nos.6(a) is annexed and marked **ANNEXURE – C** hereto. The Respondent Nos. 1 and 2 agree and undertake to pay monthly compensation as per Clause 6 of Consent Minutes of Order dated 26th September 2013 till the Part Occupation Certificate of the new premises for the Petitioners and Respondent Nos.6(a) is not obtained by the Respondent Nos. 1 and 2.

11) The Respondent Nos. 1 and 2 have issued post dated cheques in the name of Petitioners and Respondent No.6(a) in respect of 1/3rd of arrears of rent payable and the balance arrears of rent i.e. 2/3rd accrued rent / compensation payable as per Clause 10 hereinabove.

12) It is agreed, clarified and recorded that each of the units to be allotted to the Petitioners and Respondent Nos.6(a) shall have 4.2 metres height slab to slab and also a loft, if permissible without loss of FSI by the Planning Authority and frontage and access as reflected in the Plan Annexure 'B' hereto. The Respondent Nos. 1 and 2 shall ensure that the carpet area of each unit is not affected by any RCC Pillar coming anywhere in the middle of the premises and the RCC Pillar shall be always flushed with the wall, save where otherwise disclosed in the Plan Annexure 'B' hereto.

13) The Respondent Nos. 1 and 2 shall issued NOC for sale and transfer of Units allotted to the Petitioners and Respondent No6 (a) in pursuance of these Consent Terms, without any charge.

14) Save and except the modifications contained hereinabove, all other terms and conditions of the Consent Minutes of Order dated 26th September 2013, remain unaffected and unchanged and the present Petition stands disposed off in terms of the above.”

3 The undertakings given by the parties are accepted. Parties to comply by their respective undertakings, in particular, as set out in clauses (8) and (9) of the Consent Minutes of Order.

4 Petition is disposed of in terms of the Consent Minutes of Order.

5 All concerned to act on the authenticated copy of this order.

MADHAV J. JAMDAR, J.

REVATI MOHITE DERE, J.