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

COURT RECEIVER'S REPORT NO.12 OF 2023

IN

INTERIM APPLICATION (L) NO.16147 OF 2022

IN

COMS SUIT (L) NO.16141 OF 2022

Urmila Sanjay Didwania & Ors.

...Plaintiffs

Versus

Aspy Captain & Ors.

...Defendants

Anoshak Daver, Pankaj Kode and Ishita Pokle i/b. Sanjiv Sawant for the Plaintiffs.

Ajit Shinde with Santosh Salekar i/b. by Halai and Co. for Defendant No.1.

Ms. Tejashree Parab, for Defendant Nos.2 and 5.

Mr. E.B. Sivakumar, 1st Asstt. to Court Receiver is present.

CORAM : R.I. CHAGLA J

DATE : 16 January 2023

ORDER :

1. The Court Receiver's Report has been placed for seeking directions as to what steps the Court Receiver to take for appointing agent of Flat Nos.901, 902, 501, 502 and 1001 (excluding the

attached terrace) in respect of which the Court Receiver has taken a physical possession.

2. The Court Receiver has stated that pursuant to the order dated 6th December, 2022 passed by this Court by which the Court Receiver had been appointed with all powers under Order 40 Rule 1 of the Code of Civil Procedure, 1908, save and except the power of sale in respect of Flat Nos.901, 902, 501, 502 and 1001 (excluding the attached terrace) and 10 car parking spaces, in Roshni Building, the Court Receiver had taken physical possession of the flats on 2nd January, 2023. Physical possession of the 10 car parking spaces could not be taken in view of the car parking being a mechanical tower car parking.

3. By the said order dated 6th December, 2022, this Court had arrived at a prima facie finding that there was no dispute over the fact that the Plaintiffs have parted with entire consideration under the registered agreements for sale deed dated 28th August, 2014, 22nd December, 2015 and 9th August, 2016. Prima facie, there are clear and explicit acknowledgments of receipt of full and final consideration in respect of the properties agreed to be conveyed

under each of the Agreements for Sale. The learned Counsel for Defendant No.1 infact had fairly submitted that Defendant No.1 had received the consideration and this is not contested. Though there was submission with regard the Plaintiff being not genuine buyers but investors, Plaintiffs were held to be entitled to ad-interim relief. This Court had observed that the purpose for which the Plaintiffs agreed to purchase the suit flats and car parking spaces bears upon the jural relationship evidenced by the registered Agreements for Sale. Accordingly, finding is arrived at that since the Defendant No.1 having conceded to have received the entire consideration, it would not be just and equitable to allow Defendant No.1 to retain possession of the Suit flats and the car parking spaces.

4. The Court Receiver was accordingly appointed and directed to file appropriate report seeking the directions which they have now sought by the present report. The ad-interim relief granted is in operation till today.

5. In view of the Court Receiver has taken physical possession of the subject flats. The entire consideration under the registered Agreements for Sale dated 28th August, 2014, 22nd

December, 2015 and 9th August, 2016 has been paid towards the subject flats and subject car parking spaces and there are clear and explicit acknowledgments of receipt of full and final settlement in respect of the subject flats and subject car parking spaces agreed to be conveyed under each of the Agreements for Sale. Accordingly, it would be appropriate for the Plaintiff to be put in possession of the subject flats being 901, 902, 501, 502 and 1001 (excluding terrace) in Roshni Building.

6. In view thereof, the following order is passed:-

(i) The Court Receiver shall enter into Agency Agreement with the Plaintiff in respect of the subject Flat Nos.901, 902, 501, 502 & 1001 (excluding terrace).

(ii) The Agency Agreement will be on no royalty basis.

(iii) The Agency Agreements shall be executed by the Court Receiver with the Plaintiffs within a period of two weeks from the date of this Order.

(iv) The Plaintiff upon being put in possession of the subject flats will pay maintenance charges including the outstanding maintenance to the Defendant No.2 Condominium.

(v) The Plaintiff shall deposit Rs.5000/- towards the cost of this Report.

(vi) The Court Receiver's Report is accordingly disposed of.

(vii) The learned Counsel for the Defendant No.2 states on instructions that the terrace of Roshni Building cannot be sold. The statement is accepted.

[R.I. CHAGLA J.]