

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

**SUIT NO.794 OF 2013
WITH
INTERIM APPLICATION NO.2844 OF 2021**

VISHAL
SUBHASH
PAREKAR

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Date: 2023.02.27
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Matra Infra Project Private Limited ...Plaintiff

vs.

Oshiwara Mhada Gaondevi Complex
Co.Op.Housing Association Ltd. and Others ...Defendants

Mr. Sahil Mahajan, for the Plaintiff.

Mr. Sandeep Bhagwat, for Defendant No.1.

Ms. Vaishali Sanghavi a/w. Mr. Mihir Aswani, Mr. Ameet Mehta i/b.
Solicis Lex, for Defendant Nos. 2 to 4.

Ms. Anuprita Nalawade a/w. Mr. Harsh Mehta i/b. Malvi
Ranchoddas & Co., for Defendant No. 5.

Ms. Shraddha Jadhav i/b. Mr. S.M. Suryawanshi, for Defdt. No. 6.

Ms. Sayli Apte a/w. Ms. Shreya Shah i/b. Mr. P.G. Lad, for Defendant
No. 7.

CORAM : N. J. JAMADAR, J.

DATE : FEBRUARY 22, 2023

P.C.:

1. Heard the learned counsel for the parties.

2. In view of the opposition to the recording of the consent terms by an order dated 6th February, 2023 this Court had directed the authorized officer of defendant No. 5- society to convene and hold a Special General Body Meeting of defendant No. 5 -society for taking a decision on the subject as to whether the consent terms executed between the plaintiff and defendant Nos. 1 to 6 be approved and given effect to. The Court had also directed the authorized officer to

submit a report to the Court about the conduct, proceeding and outcome of the Special General Body Meeting.

3. The authorized officer Mr. Madhavrao Parashram Desai is present in Court. He seeks leave to tender an affidavit. Paragraphs 4 to 7 of the affidavit read as under:-

4] I submit that the attendance for Special General Body Meeting held on 19th February, 2023 was 35 members at 1.00 p.m. Hereto annexed and marked as Exh.C a photocopy of attendance from the annual/special general body minutes book.

5] I submit that the entire procedure of conduct of special general body meeting is recorded in the book of annual/special general body minutes. Hereto annexed and marked as Exhibit D a certified copy of minutes of special general body meeting held on 19th February, 2023.

6] I submit that the result on decision on approval of consent terms Mantra Infra Project Pvt. Ltd. and societies in the Court is as follows:

12 members not approved,
21 members approved,
2 members did not raise hands.

Resolution : Consent terms approved society.

7] I submit that the proceedings of special general body meeting held on 19th February, 2023 was recorded in video. Hereto enclosed marked as Exh.F a pen drive of video recordings of special general body meeting held on 19th February, 2023.

4. The resolution passed by the Special General Body Meeting on 19th February, 2023 is annexed to the affidavit at Exhibit D.

5. Perused the minutes of the Special General Body Meeting. It seems that 35 members attended the said meeting and the resolution to approve the consent terms signed between Matra Infra Project Private Limited and the society was approved by 21:12. Two members abstained from casting the vote.

6. In view of the aforesaid resolution passed in the Special General Body Meeting of defendant No. 5 society, now there is no impediment in accepting the consent terms executed between the plaintiff and defendant No. 5.

7. The consent terms are tendered.

8. Mr. Manish Shah, the Director of the plaintiff and Mr. Shekhar Satoskar, the Secretary of defendant No.1, Mr. Subhash Patel, the Secretary of defendant No.3, Mr. Kamaldeo Ahuja, the Secretary of defendant No. 4, Mr. Madhavrao Desai, the authorized officer appointed on behalf of defendant No. 5, Mr. Shekhar Satoskar, the Secretary of defendant No. 6 are present before the Court.

9. They admit the contents of the consent terms and execution

thereof. The consent terms, inter alia, provide for execution of a New Development Agreement between the plaintiff and defendant Nos. 1 to 6 upon the principal terms set out in paragraph 9 of the consent terms, which read as under:-

9] Some of the main terms of the proposed development agreement are set out hereunder:

a] The parties hereto agree and confirm that each member shall now receive (a) flat admeasuring 585 sq.ft. MOFA carpet area; (b) Hardship compensation of Rs. 7 lakhs per member (inclusive of sums paid towards the hardship compensation by the plaintiff till date); (c) Monthly displacement compensation of Rs. 25,000/- for transit accommodation; (d) Rs. 25,000/- towards brokerage after every 11 months; (e) Rs. 10,000/- for one time shifting charges and (f) one free car parking for each flat.

b] The parties hereto agree and confirm that the area offered to all the members is in line with the MHADA provisions and rules. Defendant Nos. 1 to 6 further agree and confirm that save and except the agreed area offered by the plaintiff to the tune of 585 sq. ft. MOFA carpet area, the balance FSI and or any future FSI potentially available on the said property in future shall exclusively belong to the plaintiff and shall be dealt by them in such manner as they deem fit.

c] The plaintiff shall further pay premium or share area with MHADA as and when applicable, to procure full development potential as per provisions and rules and regulations MHADA.

d] Defendant Nos. 1 to 6 agree, confirm and declare that the plaintiff shall remain appointed as the Developer with respect to the said property till completion of the redevelopment project and till obtainment of the Occupation Certificate.

e] The parties hereto agree, confirm and declare that as regard to the revised offer of new flat for an area of 585 sq.ft. MOFA carpet area offered by the plaintiff to all the members of the defendants, the plaintiff shall

register the project as per the provisions of Maharashtra Real Estate Regulatory Authority (MahaRERA) and shall prepare the plans as they deem fit in consultation with defendant No. 1 and the same shall be put for approval by the plaintiff to obtain permission/ approval from various authorities such as MHADA, MCGM and such other competent authority as and when required for redevelopment of the said property.

10. The suit was instituted by the plaintiff seeking declaration that the Development Agreement which was executed between the plaintiff and defendant Nos. 1 to 6 was valid, binding and subsisting on the parties and termination thereof by the defendant No. 1 was unlawful.

11. It seems that in the intervening period, the plaintiff and defendant Nos. 1 to 6 have entered into the negotiations and the consent terms have been executed. The consent terms seem to have been executed voluntarily and there does not appear any coercion and duress. The parties seem to have arrived at a comprehensive settlement. Since the resolutions to enter into the consent terms seem to have been passed by the respective defendant-societies, I am inclined to accept the consent terms.

12. It is however clarified that the acceptance of the consent terms will not prejudice the rights and contentions of the parties

who desire to challenge the passing of the resolution by defendant Nos. 1 to 6 in an appropriate proceeding before the appropriate forum.

13. With the aforesaid clarification, the consent terms are accepted, taken on record and marked X.

14. The suit stands decreed in accordance with the consent terms (X).

15. The undertakings given in the consent terms are accepted as undertakings to the Court.

16. The consent terms shall form part and parcel of the decree.

17. The plaintiff is entitled to refund of the Court fees in accordance with the rules.

18. Parties shall bear their respective costs.

19. Decree be drawn accordingly.

(N. J. JAMADAR, J.)