

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 435 OF 2022

In the matter of:

- 1) Kishore D. Pendharkar
2) Smt. Mrunal K. Pendharkar Plaintiffs

Versus

- 1) M/s. Gio Properties
2) Mr. Girish Samant
3) Mr. Parikshit Girish Samant
4) Shree Anand CHS. Ltd.
5) Ramakant V. Desai (Chairman)
6) Ravikant V. Save
7) Mrs. Jaya Save Mandra
8) Vinay Limbachiya
9) Mrs. Sonal Limbachiya
10) Mrs. Charuta V. Kavishwar
11) Vikas S. Kavishwar
12) Veeranna D. Jolad (Treasurer)
13) Mrs. Sushma K. Shah
14) Shri Sagar Shivkumar Acharya
15) Mrs. Jamnaben A. Limbachiya
16) Amichand M. Limbachiya
17) Municipal Corporation of Greater Mumbai
18) The Executive Engineer Building
Proposal (P-North Ward), MCGM,
Kandivali (E.), Mumbai. Defendants



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CONSENT TERMS BETWEEN PLAINTIFFS
AND DEFENDANT NOS. 1 TO 4 HEREINABOVE

1. The Plaintiffs, the Defendant Nos. 1 to 3 and the Defendant No. 4 (together referred to as 'Parties') have mutually agreed to settle the present suit and have therefore executed these Consent Terms. Parties agree and undertake to unequivocally abide by these Consent Terms.
2. Parties agree that Defendant Nos. 5 to 18 shall be deleted as parties to the present suit and interim applications.
3. The Parties accept that Defendant No. 4 have executed these Consent Terms through Dr. Charuta Kavishwar (Chairman), who has been duly authorized to execute these Consent Terms by Resolution dated 04 May 2023 passed at a Special General Body meeting of members of Defendant No. 4 held on 04 May 2023. The Parties accept the validity of the resolutions passed at the meeting held on 04 May 2023 mentioned above, copy of which is enclosed hereto.
4. In view of the present Consent Terms, the Plaintiffs unequivocally agree and accept the validity and legality of registered Development Agreement dated 11.03.2016 and registered Supplementary Development Agreement dated 17.03.2021 and registered second Supplementary Development Agreement dated 24.09.2022 and registered Power of Attorney dated 11.03.2016 executed in favour of Defendant Nos.1 to 3 and further agree that these registered instruments bind the Plaintiffs or any of them and the terms thereof are deemed to be incorporated herein.
5. In view of the present Consent Terms, the Parties hereto unequivocally agree and accept the validity, legality of actions and/ or decisions taken by the Defendant Nos. 1 to 4 with regard to the redevelopment process of the existing building of Defendant No. 4.
6. In full and final settlement of all claims, allegations and prayers made by the Plaintiffs in the present suit and in all Affidavits filed therein, the Parties agree that, in lieu of Flat Nos. 101 and 102, which are to be allotted to the Plaintiff No. 1 and Plaintiff No. 2 respectively in the proposed new building by executing two Agreements for Permanent Alternate Accommodation, the Plaintiffs and Defendant Nos. 1 to 4 have agree that the aggregate Entitlement Area of 1353.21 sq. ft of the Plaintiffs, as provided under the second Supplementary Development Agreement dated 24.09.2022 ["Entitlement Area"] shall be provided to the Plaintiffs in three flats in the proposed

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new building viz. Flat No. 602, Flat No. 702 and Flat No. 203 [these three flats are hereinafter referred to as 'subject flats'] together with two parking spaces viz. Parking Space No. 7 to correspond with Flat No. 602, Parking Space No. 14 to correspond with Flat No. 702, by executing One/Single Permanent Alternate Accommodation Agreement, which would be executed by the Parties [hereinafter referred to as 'New PAA'] on or before 31.05.2023.

7. The Parties confirm that the areas of Flat No. 602, Flat No. 702 and Flat No. 203 i.e. the subject flats in the proposed new building are as follows :-

- a. Flat No. 602 admeasuring about 636.36 sq.ft. (carpet area as per DCR 1991) which is approximately equivalent to an area of 663.816 sq.ft. (carpet area as per provision of RERA) as per IOD dated 21.03.2023 in respect of the proposed new building;
- b. Flat No. 702 admeasures about 636.36 sq.ft. (carpet area as per DCR 1991) which is approximately equivalent to an area of 663.816 sq.ft. (carpet area as per provision of RERA) as per IOD dated 21.03.2023 in respect of the proposed new building;
- c. Flat No. 203 admeasures about 439.49 sq.ft. (carpet area as per DCR 1991) which is approximately equivalent to an area of 461.668 sq.ft. (carpet area as per provision of RERA) as per IOD dated 21.03.2023 in respect of the proposed new building;

And no dispute regarding the areas shall be raised by the Plaintiffs and these areas shall not undergo change except at the instance of the Planning Authority.

8. The Parties agree that the Entitlement Area of the Plaintiffs shall be provided to them by the Defendant Nos. 1 to 3 in the following manner :-

- a. Flat No. 602 admeasuring about 636.36 sq.ft. (carpet area as per DCR 1991) which is approximately equivalent to an area of 663.816 sq.ft. (carpet area as per provision of RERA) as per IOD dated 21.03.2023 in respect of the proposed new building;
- b. Flat No. 702 admeasures about 636.36 sq.ft. (carpet area as per DCR 1991) which is approximately equivalent to an area of 663.816 sq.ft. (carpet area as per provision of RERA) as per IOD dated 21.03.2023 in respect of the proposed new building;

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- c. An area of 81.21 sq. ft (Carpet area as per DCR 1991) comprised in Flat No. 203 which admeasures about 439.49 sq.ft. (carpet area as per DCR 1991) which is approximately equivalent to an area of 461.668 sq.ft. (carpet area as per provision of RERA) as per IOD dated 21.03.2023 in respect of the proposed new building;
9. In full and final settlement of all claims, allegations and prayers made by the Plaintiffs in the present suit and in all Affidavits filed therein, at the request of the Plaintiffs, the balance carpet area [as per provisions of DCR 1991] within Flat No. 203 in the proposed new building i.e. about an area of 359 sq. ft as per IOD dated 21.03.2023 [hereinafter referred to as "Extra Area"] shall be sold by Defendant No. 1 to the Plaintiffs, together with one parking space [bearing no. 2] on the cantilever parking in the proposed new building as per the sanctioned plans as per specifications set out in the registered Development Agreement dated 11.03.2016, for an agreed lumpsum consideration of Rs. 54,00,000/- [Rupees Fifty Four Lakhs only] which shall be paid by the Plaintiffs (jointly and severally) to the Defendant No. 1 in the following manner :
- a. Parties shall execute one/single New PAA [referred hereinabove] incorporating the terms agreed herein on or before 31.05.2023 in respect of the Entitlement Area and Extra Area as mentioned hereinabove.
 - b. Plaintiffs shall pay a sum of Rs. 19,46,000/- to the Defendant No. 1 at the time of execution of the new PAA and shall deposit a sum of Rs. 54,000/- towards TDS (i.e. 1% of Rs. 54,00,000/- being the lumpsum consideration) with the Income Tax Authorities to the credit of the Defendant No. 1 and the Plaintiffs shall pay the G.S.T amount (At applicable rate on Rs. 20,00,000/-) to the Defendant No. 1 simultaneous with the execution of the new PAA.
 - c. Plaintiffs shall pay a sum of Rs. 7,14,000/- [Rs. 6,80,000/- towards part payment of lumpsum consideration of Rs. 54,00,000/- and G.S.T amount of Rs. 34,000/- calculated on Rs. 6,80,000/-] to the Defendant No. 1 on or before 30.06.2023.
 - d. Plaintiffs shall pay a sum of Rs. 7,14,000/- [Rs. 6,80,000/- towards part payment of lumpsum consideration of Rs. 54,00,000/- and G.S.T amount of Rs. 34,000/- calculated on Rs. 6,80,000/-] to the Defendant No. 1 on or before 31.07.2023.

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- e. Plaintiffs shall pay a sum of Rs. 7,14,000/- [Rs. 6,80,000/- towards part payment of lumpsum consideration of Rs. 54,00,000/- and G.S.T amount of Rs. 34,000/- calculated on Rs. 6,80,000/-) to the Defendant No. 1 on or before 31.08.2023.
 - f. Plaintiffs shall pay a sum of Rs. 7,14,000/- [Rs. 6,80,000/- towards part payment of lumpsum consideration of Rs. 54,00,000/- and G.S.T amount of Rs. 34,000/- calculated on Rs. 6,80,000/-) to the Defendant No. 1 on or before 30.09.2023.
 - g. Plaintiffs shall pay a sum of Rs. 7,14,000/- [Rs. 6,80,000/- towards part payment of lumpsum consideration of Rs. 54,00,000/- and G.S.T amount of Rs. 34,000/- calculated on Rs. 6,80,000/-) to the Defendant No. 1 on or before 31.10.2023
10. Plaintiffs agree to issue TDS Certificate to the Defendant No. 1 by 15.07.2023 in respect of payment of TDS as per Clause 9(b) above.
 11. The Parties hereto record that post-dated cheques towards payments referred to in Clause 9(c) to (g) have been handed over to the Defendant No. 1 at the time of execution of these Consent Terms. The Plaintiffs agree and undertake to this Hon'ble Court that the Post-Dated Cheques handed over to the Defendant No. 1, would be cleared on the due date thereof and the Plaintiffs further agree and undertake that they shall not seek extension of time to pay the lumpsum consideration mentioned above or seek to replace the cheques, so issued.
 12. The Parties hereto agree that the Plaintiffs may by prior intimation to the Defendant No. 1, by email or letter, make prior payment by NEFT to Defendant No. 1 of the amounts mentioned in Clause 9(c) to (g) above, and only upon such payment being made by the Plaintiffs to the Defendant No. 1, the concerned Post-dated cheque will be returned by the Defendant No. 1 to the Plaintiffs.
 13. The Parties hereto agree and Plaintiffs undertake that TDS of Rs. 54,000/- which is deducted by the Plaintiffs (at 1%), shall be paid to Income Tax Authorities without fail.
 14. The Parties agree and Defendant No. 1 to 3 undertake that Flat Nos. 602, 702 and 203 in the proposed new building shall comprise of all the amenities as agreed under the Development Agreement dated 11.03.2016 read with First Supplementary Development Agreement dated 17.03.2021 and further read with Second

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Supplementary Development Agreement dated 24.09.2022, (which are together referred to as the "Redevelopment Documents").

15. The Parties agree that the Entire Stamp Duty and Registration Charges towards the Entitlement Area of the Plaintiffs i.e. 1353.21 sq. ft carpet area as per DCR 1991, has been paid by the Defendant No. 1 in view of the execution and registration of Redevelopment Documents and therefore all stamp duty, registration charges, GST, any other levy/charges towards the execution of the New PAA shall be borne by the Plaintiffs alone at the time of registration of the New PAA. The Defendant Nos. 1 to 3 shall provide such documents as may be required by the Plaintiffs, to ensure that the credit for stamp duty paid in respect of the Entitlement Areas of the Plaintiffs on the execution and registration of Redevelopment Documents, is made available to the Plaintiffs/stamp duty authorities/registration authorities.
16. The Plaintiffs, Defendant No. 1 to 3 and Defendant No. 4 [through its Authorized Representative] agree that the Defendant Nos.1 to 3 have disclosed all the plans as approved by Municipal Corporation of Greater Mumbai which have been approved pursuant to Intimation of Disapproval (IOD) dated 21.03.2023 to the Plaintiffs and the Plaintiffs have satisfied themselves that the areas of 3 (Three) flats mentioned above i.e., Flat Nos. 602, 702 and 203 are true and correct and that the Plaintiffs confirm the correctness thereof. It is hereby agreed that the Defendant Nos. 1 to 3 shall not be entitled to add, amend, modify, alter the size, location, lay-out or otherwise reduce and/ or curtail the area of the Flat Nos. 602, 702 and 203 referred above, except upon directions of the Planning Authority.
17. The Defendant Nos. 1 to 3 shall prepare the draft of New PAA incorporating therein the terms of the present Consent Terms and all the parties shall co-operate with each other to finalize the draft of the New PAA, which would record the terms set out herein and other terms as per the common draft PAA approved by the Defendant No.4 on 21.12.2022.
18. Parties agree that the New PAA and these Consent Terms (together with Order of this Hon'ble Court in respect of these Consent Terms) shall be considered as a valid document of title in respect each of the subject flats and car parking spaces.
19. The Parties unequivocally agree and undertake to abide by the terms of the Redevelopment documents, including in respect of payment of all amounts to the Plaintiffs, in the like manner as other members of the Defendant No. 4, regularly, as set out in the Redevelopment documents, and also to duly sign, execute and register

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the New PAA in respect of subject flats and three car parking spaces mentioned hereinabove and abide by the terms thereof when so executed in the manner as stipulated herein.

20. The Defendant Nos. 1 to 3 and the Defendant No. 4 through its Authorized Representative hereby agree and undertake to this Hon'ble Court that upon completion of the re-development project envisaged under the Registered Documents and after obtaining Occupation Certificate in respect of the proposed new building to be constructed by Defendant No. 1, possession of the subject Flats allotted to the Plaintiffs viz., Flat Nos. 602, 702 and 203 along with 3 (Three) car parking space referred above and agreed to be provided, including under the New PAA, will be duly handed over to the Plaintiffs, upon the Parties complying with the terms of the Registered Documents and the New PAA and these Consent Terms, all these documents being read together.
21. So long, as the Plaintiffs comply with the terms of these Consent Terms, the Defendant No. 1 shall not sell, transfer or create third party rights, in respect of the subject flats and parking space nos. 2, 7 and 14.
22. The Parties hereto agree, that in the event, the Plaintiffs commit any default in respect of making payment of the lumpsum consideration or any part thereof or fail to deposit the TDS amount as provided hereinabove, the Defendant No. 1 to 3 (by themselves or through their Advocate) shall give 7 (Seven) days written notice/email to the Plaintiffs' Advocate Ms. Shakti Deengar and/or to the Plaintiffs or any of them, recording such default on part of the Plaintiffs and if such default is not rectified upon issuance of such notice within the seven days, the New PAA, if executed shall be deemed to have terminated and/or cancelled and in view of such termination/cancellation, the Plaintiffs shall come forward to execute the PAA in respect of Flat Nos. 101 and 102, in the format as approved by the Defendant No. 4, within ten days.
23. Parties agree that upon the termination/cancellation, as set out above or in the event the New PAA is not executed by Plaintiffs on or before 31.05.2023, the Plaintiffs shall not be entitled to claim any right, title or interest in respect of Flat Nos. 602, 702 and 203 or any other area whatsoever or parking space no. 2, in the new proposed building and the only rights of the Plaintiffs shall be to accept the Entitlement Area of 1353.21 (carpet areas as per DCR 1991) in Flat Nos. 101 and 102 in the proposed new building, in the manner as set out in the Second Supplementary Development

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Agreement dated 24.09.2022 and car parking space nos. 7 and 14, without any demur and the Plaintiff No. 1 shall execute the PAA, which has been approved by the Defendant No. 4 prior to execution of these Consent Terms in respect of Flat No. 101 and the Plaintiff No. 2 shall execute the PAA, which has been approved by the Defendant No. 4 prior to execution of these Consent Terms in respect of Flat No. 102 for this purpose within ten days.

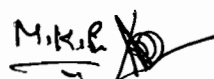
24. Parties agree that upon termination/cancellation, as set out above, the Defendant No. 1 shall be entitled to deduct a sum of 2% of the lumpsum consideration of Rs. 54,00,000/-, as liquidated damages and the balance amount, if paid by the Plaintiffs shall be returned to the Plaintiffs, within 3 (Three) days of such termination/cancellation without any interest.

25. In view of these Consent Terms, the Parties agree that all allegations, contentions and claims made by the Plaintiffs in

- a. the present suit [including all interim application therein and Affidavits filed therein]
- b. Dispute No. CC/12/IV/2021, filed before Hon'ble Co-operative Court, under provisions of Maharashtra Co-operative Societies Act, 1960, including all Interim Applications therein and Affidavits filed therein.
- c. Letter dated 14.09.2020 issued by Advocate Ms. Shakti Deengar, on behalf of Plaintiffs as referred to in Order dated 08.03.2021 [Exhibit K to the Plaint] and all further communication made by the Plaintiffs in pursuance thereof
- d. Letter dated 14.09.2020 issued by Advocate Ms. Shakti Deengar, on behalf of Plaintiffs as referred to in Order dated 06.08.2021 [Exhibit P to the Plaint] and all further communication made by the Plaintiffs in pursuance thereof
- e. All correspondence addressed by the Plaintiffs to the Defendant Nos. 1 to 4 or their Advocates, or Architects or employees prior to the execution of these Consent Terms

stand withdrawn and the Plaintiffs shall take such steps as are necessary to withdraw Dispute No. CC/12/IV/2021, filed before Hon'ble Co-operative Court, under provisions of Maharashtra Co-operative Societies Act, 1960, including all Interim Applications therein before 15.06.2023. Copy of any application for such withdrawal shall be sent to the Defendant No. 1 and Defendant No. 4 or their Advocates.

26. The Plaintiffs agree and undertake to apply/inform to the Deputy Registrar "P" Ward [authorised under the Maharashtra Co-operative Societies Act, 1960] seeking to

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- withdraw the proceedings/communication on the basis of which Order dated 08.03.2021 [Exhibit K to the Plaint] came to be passed, on the basis of these Consent Terms, before 15.06.2023. Copy of any such application filed by the Plaintiffs, shall be sent to the Defendant No. 1 and Defendant No. 4 or their Advocates.
27. The Plaintiffs agree and undertake to consent to the setting aside of Order dated 06.08.2021 [Exhibit K to the Plaint] in proceedings filed by Defendant Nos. 1 to 3 to challenge the said decision before the Divisional Joint Registrar, Co-operative Societies and Plaintiffs shall co-operate with the Defendant Nos. 1 to 4 for seeking setting aside of Order dated 06.08.2021 [Exhibit P to the Plaint], upon request in this regard being made by the Defendant Nos. 1 to 3 or their Advocates.
28. The Plaintiffs hereby accept the legality and validity of the Order dated 24.02.2023 passed by Maharashtra Real Estate Regulatory Authority, Mumbai in Source Complaint No. SC10002495 as valid, subsisting and binding upon the Plaintiffs.
29. All disputes, claims, allegations and contentions by and between the Plaintiffs and the Defendant Nos. 1 to 4 or members of Defendant No. 4, against each other raised in any correspondence, legal proceedings, shall stand withdrawn in view of the present Consent Terms. The parties shall, wherever required place the certified copy or authenticated copy of the present Consent Terms and Order passed thereon by this Hon'ble Court, before any Concerned Authority or Statutory Department, if so required and the same shall be accepted by all Parties.
30. The Defendant No. 4 agrees and undertakes that upon application/s being made in fulfilment of the Model Bye-Laws adopted by the Defendant No.4 in this behalf and subject to compliance of Maharashtra Co-operative Societies Act, 1960 together with Rules and Bye-laws framed thereunder (As amended from time to time) after receiving possession of the subject flats by the Plaintiffs, the Plaintiff No. 1 shall be issued one Share Certificate in respect of Flat No. 602 in the new proposed building, Plaintiff No. 2 shall be issued one Share Certificate in respect of Flat No. 702 in the new proposed building and the Plaintiffs shall jointly be issued Share Certificate in respect of Flat No. 203 in the proposed new building and thereupon existing Share Certificates standing in the name of Plaintiffs shall stand cancelled or shall be surrendered to Defendant No. 4, in the like manner as other members of the Defendant No. 4. It is agreed that for admitting the Plaintiffs as members in respect of Flat No. 203, the Defendant No. 4 shall not be entitled to charge any transfer fees or premium except Share allotment amount of Rs. 500/- for 10 (ten) fully paid-up shares

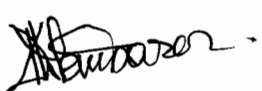
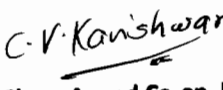
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of Rs. 50/- each, and Rs. 100/- for admission fees in respect of Flat No. 203 in the proposed new building.

31. The Plaintiffs agree to pay the maintenance charges and other outgoings to the Defendant No. 1 or Defendant No.4, as the case may be, in respect of flats which are in their possession, from the date on which Occupancy Certificate is granted by Planning Authority in respect thereof and the possession of the flats is offered to the Plaintiffs or any of them, in the manner as provided hereunder.
32. Parties agree that there shall be no order as to Costs and Parties record that no separate claim against Plaintiffs alone towards costs of any litigation or legal proceedings, shall be made by Defendant No. 4, including in maintenance charges/bills raised by Defendant No. 4 at any time, except as may be included in the maintenance bills raised equally on all members of the Defendant No. 4.
33. The undertaking given by the Parties are accepted by this Hon'ble Court.
34. The present Suit is decreed in terms of these Consent Terms and Interim Application No. 5089 of 2022 filed in the present Suit by the Plaintiffs against the Defendants shall stand disposed off in view of the present Consent Terms and all interim orders passed therein would stand vacated.

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Dated this 4th day of May 2023

		
Mr. Kishore Pendharkar - Plaintiff No. 1 For Gio Properties	Mrs. Mrunal K. Plaintiff No. 2	Ms. Shakti Deengar, Advocate for the Plaintiffs.
		
Mr. Girish Samant - Defendant No. 1	Mr. Girish Samant - Defendant No. 2	Mr. Parikshit Samant Defendant No. 3
		
Mr. Kunal M. Damle, Advocate for Defendant Nos. 1 to 3	For Shree Anand Co-op. Hsg. Socy. Ltd. Shree Anand CHS Ltd. Defendant No. 4 through its Chairman Secretary representative Dr. Charuta Kavishwar	Mr. Dayanand Shetty, Advocate for Defendant No. 4

Shree Anand Co-op. Housing Society Ltd.

Reg. No. BOM/W-P/HSG (TC)/4628/88-89

43, Jayprakash Nagar, Near Matrumandir Hall, Goregaon (East), Mumbai - 400 063.

Ref No:

Date: 04-May-2023

True Copy of the Resolution passed in Special General Body Meeting held on 04-May-2023 on zoom video all.

Resolution No 2:

It is hereby resolved to authorize Chairman / Secretary to appear before the Court / Tribunal / Registrar in the pending cases by and between Mr. Kishore D. Pendharkar and Mrs. Mrunal Kishore Pendharkar on one side and Society and developer, M/s GIO Properties on the other side and to sign / execute necessary applications / consent terms / settlement / agreement for and on behalf of the Society, with the assistance of advocates of the Society and further to authorize them to take necessary steps and comply with the terms and conditions of the consent terms / settlement.

Proposed by Jayesh A. Limbachiya

Seconded by Kalpak R. Desai

Thanking You,

For Shree Anand CHS Limited

C.V. Kaushwar
Chairman

Chairman



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO. 435 OF 2022

In the matter of:

Kishore D. Pendharkar and Another.... Plaintiffs

Versus

M/s. Gio Properties and Others Defendants

CONSENT TERMS EXECUTED BETWEEN PLAINTIFFS
AND DEFENDANT NOS. 1 TO 4

DATED THIS 04TH MAY OF 2023

Ms. Shakti Deengar, Advocate for Plaintiffs

Mr. Kunal M. Damle, Advocate for Def. Nos. 1 to 3

Mr. Dayanand Shetty, Advocate for Def. No. 4.