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

INTERIM APPLICATION NO.5252 OF 2022

IN

SUIT NO.198 OF 2022

Pravina Kiran Jain & Anr.

...Applicants /
Plaintiffs

Versus

Lokhandwala Kataria Construction Pvt. Ltd. & ...Defendants
Ors.

Mr. Karl Tamboly, Mr. Aditya Pimple and Ms. Radha Ved with Mr.
Dipen Furia i/b. Mrs. Leena Shah for the Plaintiffs / Applicants.

Vibhav Krishna with Tahil Prande, Anmol Bortalia and Aastha
Golecha for Defendant / Respondent and Applicant in IA (L)
No.33912 of 2022.

CORAM : R.I. CHAGLA J

DATE : 14 February 2023

ORDER :

1. By this Interim Application, the Applicant is seeking
permission to amend the original Plaint and Interim Application
No.3066 of 2022 as per schedule I and Schedule II annexed at
Exhibit A and B to the Interim Application and consequential

amendments in the body of Complaint and Interim Application.

2. The Applicant has stated that as per the original allotment letter dated 4th November, 2010, the total area of the flat sold to the Applicants is 5680 sq.ft i.e. 42300 sq.ft carpet area within the flat and 1480 sq.ft balcony / terrace area. However, due to inadvertent error and oversight, the balcony / terrace area of the flat remained to be mentioned in the Complaint as well as in the Interim Application. Accordingly, the present Interim Application has been taken out to correct the inadvertent error.

3. There is a proposed prayer which has been sought to be included by way of amendment in view of the difference in the area of the flats which are being allotted to the Applicant / Plaintiff. This Court had by order dated 10th May, 2022 directed the Respondent to file comprehensive Affidavit explaining in detail the difference in area of the flats. The Applicant has stated that though the Affidavit in Reply dated 6th June, 2022 has been filed in Interim Application No.3066 of 2022, the Respondents have not complied with the directions of this Court in order dated 10th May, 2022. The Respondents have not till date not explained the basis of the

calculations of the area of the flats.

4. There is an apprehension expressed by the Applicant that the Respondents have sold all other flats on the 71st and 72nd floors or may have also changed the area and / or made further alterations to the Applicants' flats without their knowledge causing prejudice to the Applicants by preventing them for applying for ad-interim relief to secure the additional flat on the same floor to cover the deficit in the area of the flat constructed. Accordingly, the prayer is for Court Commissioner to visit the project at site to verify and measure the area of Suit flats and further verify and demarcate at site the Suit flat Nos.7101/7201 on 71st and 72nd floor, A-1 wing of Minerva building and to submit its report before this Court.

5. Mr. Karl Tamboly has submitted that the prayer which is sought by way of amendment is required to be granted in order for the Court Commissioner to visit the subject flats in order to carry out the aforementioned exercise sought for before there any further alterations in the flats.

6. Mr. Vibhav Krishna, learned Counsel for the Defendants /

Respondents has not objected to the amendment being carried out but objects to any relief being granted till the Defendants files their Affidavit in Reply to the amended Interim Application as well as supplementary Written Statement dealing with amended Plaintiff.

7. Having considered the averments in the Interim Application as well as the nature of amendment which is proposed in the Plaintiff and the Interim Application which is for incorporating the balcony / terrace area of the flat which inadvertently remained to be mentioned in the Suit as well as in the Interim Application and is in line with the original allotment letter dated 4th November, 2019 totalling an area of 5680 sq.ft, amendment is accordingly allowed to be carried out. This would also include the prayer for appointment of Court Commissioner which is now being incorporated in the Plaintiff and Interim Application. Ad-interim relief will be considered once the amendment is carried out. Liberty has been granted to the Defendants to file their say to the amended Plaintiff and amended Interim Application as well as by separate order bearing today's date. Hence, the following order:-

(i) The Applicant is permitted to amend the original Plaintiff and

Interim Application No.3066 of 2022 in Suit No.198 of 2022 as per the schedule I and Schedule II which is annexed at Exhibit A and B to the Interim Application and other consequential amendments in the body of the Complaint and Interim Application.

(ii) The Applicant shall carry out amendment within a period of one week from the date of this Order.

(iii) Re-verification is dispensed with.

(iv) The Interim Application is accordingly disposed of.

[R.I. CHAGLA J.]