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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 833 OF 2024

Nilesh Omprakash Saini & Ors	...Petitioner
<i>Versus</i>	
State of Maharashtra & Ors	...Respondent

Mr Dharam Jumanj, *with Shivani Varade i/b MDP & Partners, for the Petitioners.*

Ms Manisha Jagtap, *for the Respondent-MHADA.*

Mr Sharique Nacham, *with Khuram i/b Judicare Law Associates, for Respondent No. 4.*

Mr Milind More, Addl GP, *with Vaishali Kabare, AGP, for the Respondent-State.*

**CORAM G.S. Patel &
 Kamal Khata, JJ.**

DATED: 29th February 2024

PC:-

1. Although the Developer, Respondent No 4, claims that he or it have applied for an Occupancy Certificate, this was only as recently as on 7th February 2024. There are admittedly arrears of transit rent. We were earlier told that this transit rent would be cleared in stages starting from November 2023. Nothing has been done. There may be disputes regarding which of the tenants are entitled to receive transit rent and which are not. For instance, if any person has taken up physical possession even without an Occupancy

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Certificate, we will not let that tenant claim transit rent from the date of such possession, but this does not mean that others who are out of possession are not entitled to claim transit rent. We will also not enter into a controversy about whether the Petitioners are entitled to an increased amount of transit rent. That dispute may well have to be resolved in other proceedings.

2. But we also reject any application the Developer may have made or requested may have made for a deduction for ‘Covid exclusion’, whatever that is supposed to mean. In this Court we are all too familiar with this oft-repeated heart-rending pseudo-tragedy of developers, as if to suggest that the Covid-19 pandemic only affected the developer and builders industry in this city and left everybody else unaffected. We trust our meaning is clear. Our sympathy for the Covid period are emphatically not with developers

3. We say this because there is an astonishing communication of 5th January 2023 from the Developer. He now says that arrears of rent would be paid in one year commencing from *February 2024* but also says that an occupancy certificate would be sought *only in February 2024*. That is some sort of transit-rent arrears holiday that the Developer gives himself. These arrears were to be paid in full instalments without specifying how many. There is then an assertion that there would be no increment after March 2020 (meaning that there *were* increments before that date and clearly there are arrears) and also that the period of Covid 19 would be a rent-free period. We are not agreeable to this at all ourselves and we will make no such order in favour of the developer.

4. An amount of Rs 3.25 crores is to be deposit by Monday, 4th March 2024 in this Court. We will then decide on what steps are to be taken by the Municipal Corporation or other authorities against the developer if there is continued default.
5. List the matter on Thursday, 7th March 2024 high on board.

(Kamal Khata, J)

(G. S. Patel, J)