

**IN THE HIGH Court OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.382 OF 2017
IN
SUIT NO.121 OF 2017**

1. Mrs. Leena Gupta & Mr. Raja Gupta,
residing at Flat No.604, Drishti Heights,
Pump House, Vijay Raut Marg,
Andheri (E), Mumbai – 99.
2. Ms. Deepali Vijay Hate
3. Mr. Bhimrao Shamu Dandavate
4. Mr. Rajesh G. Sawardekar
5. Mr. Anant Bile
6. Mr. Anil G Sawardekar
7. Mr. Manish Vilas Vaghode
8. Mrs. Akankasha Arun Gosavi &
Mr. Arun G Gosavi
9. Mr. Swapnil P Desai & Mrs.
Ratnaprabha P Desai
10. Mr. Prashant K Gadade &
Mrs. Shilpa P Gadade
11. Mrs. Vidya V Shetty
12. Mr. Siddhesh Mahendra Prabhu
13. Mrs. Jayshree Praveen Dongre
14. Mrs. Nayna B Birmole &
Mr. Baban K Birmole
15. Mr. Shailesh U Bore &

- Mrs. Pravina S Bore
16. Mrs. Dipti Ajay Chaubal
17. Mr. Lalit G Dukhande &
Mrs. Snehal L Dukhande
18. Mr. Santosh Parab
19. Mr. Ashok G Sawant
20. Mr. Sandeep J Pachupate
21. Mrs. Sindhu Vinoj Kumar &
Mr. K.S. Vinoj Kumar
22. Mr. Shrirang L Tari &
Mrs. Rekha S Tari
23. Mrs. Vidula Nitin Darekar
24. Mrs. Sachin S Mulik &
Mrs. Gauri S Mulik
25. Mrs. Rafat Mumtaz S Shaikh &
Mr. Shafiq A Shaikh
26. Mrs. Vidya N Mutal &
Mr. Nilesh N Mutal
27. Mr. Ravindranath V Naik
Mrs. Rashmi R Naik
28. Mr. Mukesh Jain
29. Mr. Niwas Gharge &
Mrs. Madhuri N Gharge
30. Mr. Tushar Subhash Deshmukh
31. Mrs. Nirmala S Varma &
Mr. Kalpesh S Varma
32. Mrs. Arati B Rane &
Mr. Balaji A Rane
33. Mr. Kishor B Poojari

34. Mr. Santosh Vishnu Shinde &
Mr. Vivek Vishnu Shinde
35. Mrs. Shobha S Dalvi &
Mr. Shrikant N Dalvi
36. Mr. Narayan S Poojary &
Mrs. Shyamala N Poojary
37. Mr. Kiran D Shirude &
Mrs. Pooja K Sharma
38. Mr. Mandar A Khetle &
Mr. Abhishek A Khetle
39. Mrs. Prasanna U Suvarna &
Mr. Uday M Suvarna
40. Mr. Ajay Ganpat Kadam
41. Mrs. Piyushdhara V Saran &
Mr. Vinod Saran
42. Mr. Sanjay P Worlikar &
Mrs. Darshana S Worlikar
43. Mr. Dinesh S Khatate &
Mrs. Madhuri D. Khatate
44. Mr. Ashapal K Gupta &
Mrs. Kanchan A Gupta
45. Mrs. Anuradha V Sinalkar &
Mr. Vasant N Sinalkar
46. Mr. Vikas Suryakant Adhatrao
47. Mr. Paresh S Jathar &
Mrs. Pooja P Jathar
48. Mr. Nilesh Desai
49. Ms. Leena Vijay Hate
50. Mr. Nishikant Y Bagwe &
Mrs. Shraddha N Bagwe

51. Mrs. Thirupura Sundari Sainath &
Mr. Krishnan Sainath
52. Mr. Nilesh Y Deodhar &
Mrs. Pratima Y. Deodhar
53. Mr. Nagesh T Sadaye &
Mrs. Aruna N Sadaye
54. Mr. Vinesh V Tatkare &
Mrs. Tejal V Tatkare
55. Mr. Pramod Mathankar &
Mrs. Suchita P Mathankar
56. Mr. Rajesh S Pathare &
Mrs. Vaishali R Pathare
57. Mr. Justin Jose &
Mrs. Thresiamma Jose
58. Mr. Vijay P Khilari &
Mrs. Neelam V Khilari
59. Mr. Ashish K Bendale &
Mrs. Prachi A Bendale
60. Mr. Mahendra P Khandagle
61. Mr. Vighneshvar Rama Naivatye
62. Mr. Vivek Mahadev Mhaske
63. Mr. Sagar N Bogwad
64. Mr. Sandeep G Ambre &
Mrs. Samruddhee S Ambre
65. Mr. Anit B Chougule &
Mrs. Neeta A Chougule
66. Mr. Ravindra R Parkar &
Mrs. Rashmika R Parkar
67. Mr. Sachin y Bane &
Mrs. Sadhana S Bane

68. Mr. Suresh J Kadam &
Mrs. Vaibhavi S Kadam
69. Mr. Harish Devidas Pawar &
Mr. Devidas Dinkar Pawar
70. Mr. Dhiraj Vats &
Mrs. Pankhuri Vats
71. Mr. Prasad A Gore &
Ms. Rashmi R Bhosale
72. Mr. Bhupal Padhye &
Mrs. Dhanashree Padhye
73. Mr. Sombuddha Mukherjee &
Mrs. Amita Mukherjee
74. Mrs. Dhanashree Mawalankar &
Mr. Kshitij Jadhav
75. Mr. Nikhil M. Mungekar &
Mr. Mukund R Mungekar
76. Mr. Jeevan Vasu Kuckian &
Mrs. Rajani J Kuckian
77. Mr. Sachin N Babar &
Mr. Ramesh N Babar
78. Mr. Nitin V Bargaje &
Mrs. Shital N Bargaje
79. Mr. Vipul D Vaity
80. Mr. Vaibhav V Kinare &
Mrs. Vanita V Kinare
81. Mr. Sunil G Sawardekar
82. Mrs. Savita A Sawant &
Mr. Anil S Sawant
83. Mrs. Nisha Mawalankar &
Mr. Shrikrishna Mawalankar

Through their constituted Power of
Attorney holders :

1. Mr. Yeshwant K Deodhar
2. Mr. Mayur Nagesh Sadaye
3. Mr. Sombuddha Mukherjee
4. Mr. Pramod Mathankar

...Plaintiffs

IN THE MATTER BETWEEN

1. Mrs. Leena Gupta &
Mr. Raja Gupta
2. Ms. Deepali Vijay Hate
3. Mr. Bhimrao Shamu Dandavate
4. Mr. Rajesh G Sawardekar
5. Mr. Anant Bile
6. Mr. Anil G Sawardekar
7. Mr. Manish Vilas Vaghode
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81. Mr. Sunil G Sawardekar
82. Mrs. Savita A Sawant &
Mr. Anil S Sawant
83. Mrs. Nisha Mawalankar &
Mr. Shrikrishna Mawalankar

Versus

1. Saga Infra Projects Pvt. Ltd.
- 1A. The Official Liquidator, Bombay
2. Mr. Uday Surve
3. Nitin Nathaji Chavan
4. Mrs. Shilpa Surve
5. Mr. Sunil Dahale
6. Shree Naminath Infraprojects Pvt. Ltd.
7. Mr. Hitendra V Shah
8. Mr. Shantilal Himmatmalji Shah
9. Mrs. Alka Hitendra Shah
10. Mr. Shailesh Jain
11. Mr. Amit Vasani
12. Naminath & Regal Infra Project LLP
13. Mr. Jitendra Amratlal Haria
14. Mr. Suresh Dhanraj Jain
15. Shree Gurudatta Police
Co-operative Housing Society Ltd. Defendants

**WITH
INTERIM APPLICATION NO.1995 OF 2024
IN
SUIT NO.121 OF 2017**

Ms. Pooja Thorat, i/by Adv. Laxmi Murali and Associates for the Plaintiff.

Mr. Karan G.J., a /w Mr. Uday Surve for Defendant No.2.

Mr. Anirudh Hariani for Official Liquidator and Mr. Anil Bhagure, Deputy Official Liquidator, present.

Mr. Aseem Naphade, a/w Mr. Sahil Salvi, Mr. Manohar Shelar and Mr. Omar Khaiyam Shaikh for Defendant No.15.

CORAM : KAMAL KHATA, J.
RESERVED ON : 23rd September 2025.
PRONOUNCED ON : 23rd December 2025.

JUDGMENT:

1. The present suit pertains to a development project at village Bhandup, Taluka Kurla in the suburban district of Mumbai. The Plaintiffs claim to be purchasers of flats in the project known as 'Arihant' developed by Saga Infra Projects Pvt. Ltd. (Defendant No.1) ('Saga'). The project land belongs to Shree Gurudatta Police Co-operative Housing Society Ltd., (Defendant No.15) ('Police Society'). Under the Development Agreement dated 10th April 2008 the Police Society granted development rights in respect of the said land to Saga.

2. Saga has pre-sold several flats in the project even before fulfilling its obligations under the Development Agreement executed with the Police Society. The Police Society has thereafter terminated the Development Agreement with Saga for non-compliance with the terms and conditions. Consequently, the third-party purchasers of flats in the project have filed the present suit against Saga and the Police Society.

3. By this Notice of Motion, the Plaintiffs seek appointment of the Court Receiver, High Court, Bombay, as Receiver of the suit property, with a direction to appoint the Plaintiffs as agents without payment of compensation or security. Furthermore, in their capacity as agents of the Court Receiver, the Plaintiffs seek permission-

- (i) to construct and complete the building;
- (ii) to supervise the construction on the suit plot;
- (iii) to attend the meetings convened by the members of the Plaintiffs society for the purpose of appointing project management consultants, architects, RCC consultants, developers and other agencies from time to time;
- (iv) to supervise the construction work until the possession of the suit flats are handed over to the purchasers; and
- (v) to monitor the society's fund flow and expenditure and to receive audited accounts of the Plaintiffs from time to time until completion of the project.

4. The Plaintiffs also seek that the Defendants be directed to:

- (i) deposit all monies received by them from the purchasers of Arihant Bhandup in this Court, with liberty to the Plaintiff to utilize the said funds for the construction of the building under supervision of the Court receiver; and
- (ii) execute and sign, from time to time, all necessary papers, documents, affidavits, writings as may be necessary and expedient for commencement and completion of the project.

5. Additionally, the Plaintiffs seek that the Defendants and all persons claiming through or under them be restrained by an order and injunction of this Court from, in any manner whatsoever, directly or indirectly selling, parting with possession or encumbering or creating any third party rights or authorizing or empowering any third party to deal with and/or sell or transfer the free sale area

component sold to the Plaintiffs herein.

Development Agreement with Society and steps taken by Saga

6. Ms. Murali learned Advocate for the Plaintiff submits that pursuant to Development Agreement executed on 10th April 2008, Saga undertook the following steps:

- (i) Obtained Intimation of Disapproval (IoD) from the MCGM on 9th October 2009;
- (ii) Secured a Commencement Certificate (CC) on 26th February 2010 from MCGM;
- (iii) Obtained an NOC on 7th April 2010 from Tata Electric Company for shifting the high-tension cables (pylons);
- (iv) Between 2010 and 2011, the substations and high-tension cables and pylons were shifted out of the site;
- (v) Obtained release of reservation at his own cost and expenses by shifting the MSEV Power Station and High-Tension Cables (pylons).
- (vi) Obtained NOC from Chief Fire Officer on 8th August 2013, for construction permission upto the 16th floor.
- (vii) Obtained the parking layout / traffic NOC from MCGM on 3rd September 2013 for construction permission up to the 16th floor,
- (viii) constructed four floors of A, B and C wings by 2014,

Despite undertaking the above steps towards development, on 10th January 2015, the Police Society terminated the Agreement with Saga on the ground of delay in construction.

7. Ms. Murali further submits that Saga, by its reply dated 27th

January 2015 to the termination notice claimed entitlement to 4,087.74 square meters of FSI, contending that the same had been released against payments made by it in terms of paragraph (K) of paragraph 3 of the Development Agreement, and that the consideration paid to the parent society entitled Saga to rights in the said land.

8. Ms. Murali further relied on the Development Agreement to submit that the developer was expressly authorized to:

- (i) demolish the existing structure;
- (ii) secure release of reservations;
- (iii) obtain approvals and undertake construction;
- (iv) utilize the enhanced FSI;
- (v) permit purchasers to mortgage their flats; and
- (vi) enter into an agreement for sale.

9. She submitted that Saga had released and loaded 4,087.74 square meters of FSI on the land admeasuring 4370.74 square meters held by the Police Society after shifting the high-tension cable wires and MSEV power stations. She further submitted that while the society members paid part consideration for the land, the balance was paid by Saga, which had collected monies from the Plaintiffs. Accordingly, she contends that the Plaintiffs are entitled to claim rights in respect of the Police Society's land and its development.

10. Mr. Aseem Naphade, learned Counsel for the Police Society, submits that there is no privity of contract between the Police Society

and the third-party purchasers, namely, the Plaintiffs. The flat purchase agreements are executed solely with Saga and not with the Police Society. In the absence of such contractual relationship, the Plaintiffs cannot seek specific performance against the Police Society and have no locus to enforce any rights they may have against Saga. Pertinently, the Development Agreement with Saga stands validly terminated by the Police Society which termination has not been challenged and has attained finality.

11. I agree with Mr. Naphade the third-party purchasers cannot claim equities or benefits arising out of the acts or omissions of Saga. They cannot set aside the termination of the Development Agreement in absence of privity of contract. Accordingly, reliance upon clauses in the agreement and steps taken by Saga is wholly misconceived in so far as the Plaintiffs are concerned. They cannot step into the shoes of Saga once the Agreement stands terminated. This position is settled by the decisions in *Vaidehi Akash* (supra) and reaffirmed by the Division Bench in *Deepak Thakoor* (supra) where it was held that once a development agreement is terminated, the purchasers through the developer have no remedy against the society.

Comparison of clauses

12. Ms. Murali attempts to compare various clauses in the agreements of the present case with that in the case of Goregaon Pearl to submit that the apex court had upheld the decision of NCDRC

in *Goregaon Pearl Co-operative Housing Society Limited Vs. Sandeep Grover & Ors.*¹ and directed the society to compensate / provide for the purchasers.

13. Mr Naphade submits that the references to paragraph (K) and clause 6 of the Development Agreement are entirely irrelevant, as they merely describe the property and the basis of the Police Society's rights therein. The clauses 11, 16, 19 and 47 relied upon by the Plaintiffs merely outline the modalities for the proposed development -which, as a matter of fact, was never carried out.

14. He relies upon clause 14 of the sale agreement with the purchaser to show that, in the event of there being a delay on the part of Saga in handing over the possession of the flats, the Plaintiffs are entitled only to a refund of their money with interest from Saga.

15. Additionally, he submits that the Plaintiffs have not paid the full consideration for their flats. Referring to the Affidavit dated 26th October 2021, he points out that the Plaintiffs have paid only minuscule portion of the total price. Accordingly, no case is made out for interim relief.

16. He submits that clauses 24 and 42 of the development agreement would have been applicable only if Saga had complied with its obligations and completed construction. However, since Saga has failed and neglected to perform its obligations, the Police Society has validly terminated the Development Agreement and such

¹ Civil Appeal No.5188 of 2023

termination has attained finality, there being no challenge thereto.

17. Referring to clauses 46 and 27 of the Development Agreement, he submits that these clauses clearly demonstrate that the purchase consideration received by Saga from the Plaintiffs did not inure to the benefit of the Police Society.

18. He therefore contends that the Police Society cannot be saddled with third-party rights created by Saga - a defaulting developer. Once again relying upon clause 14 of the purchaser's agreements, he emphasizes that in case of delay in possession, the remedy available to purchasers is refund from Saga.

Case law

19. Ms. Murali submits that the present case is distinctly different from *Vaidehi Akash Housing Pvt. Ltd. Vs. New D.N. Nagar Co-op. Housing Society Union Ltd. & Ors.*² in terms of facts as well as in law. She submits that in the present case, the society has granted power to the developer. Not only to sell the additional area but also to permit the purchasers to mortgage their flats.

20. Mr. Naphade repels the contention that the present case is distinct from *Vaidehi Akash* (supra). He further distinguishes *Sandeep Grover V/s. Sai Siddhi*³, pointing out that in that case - (i) the flats were admittedly ready; and (ii) it was undisputed that the sale proceeds of the flat purchases were utilized to construct the new

² 2014 SCC OnLine Bom 5068

³ SCC OnLine 1710 of 2016.

building.

21. In the present case, however -

- (i) it is not established that the purchase consideration paid by the Plaintiff was utilized for redevelopment; the Society disputes this assertion, which can be adjudicated only at trial;
- (ii) the building is incomplete and the project remains far from completion; and
- (iii) the Society has derived no benefit from any funds allegedly paid by the Plaintiffs to Saga

He submits that the judgement relied upon by the Plaintiffs merely directed refund of money to the flat purchasers and did not grant specific performance of their agreements. Accordingly, the Plaintiffs are not entitled to specific performance against the Police Society.

In these circumstances, he submits that the present case is squarely covered by the judgments of *Vaidehi Akash* (supra), *Goregaon Pearl CHSL v/s. Dr. Seema Mahadev*⁴, *Deepak Prabhakar Thakoor V/s. MHADA*⁵.

Reasons and Conclusion:

22. Having heard the rival submissions and upon perusal of the record, I find considerable merit in the submission advanced by Mr. Naphade. The clauses relied upon by the Plaintiffs primarily govern

⁴ Order dated 14.10.2019 in Appeal from Order (st) No.22143
⁵ 2023 SCC OnLine Bom 2234

the scope of authority conferred upon the developer and the manner in which development was to be carried out. None of them create privity of contract or confer proprietary or possessory rights upon flat purchasers vis-à-vis the Society. The relevant material clauses of the Development Agreement relied upon by both Counsel which determine the rights of the Saga vis-à-vis the Police society are reproduced herein for ready reference.

Para K

In the circumstance the Party of the first part (Police Society) thus became seized and possessed of the well and sufficiently entitle to the Total built up area of 1,00,000 sq.ft out of which area of (4370.74) sq. mtrs. is already available and usable and the balance area of (4087.74) sq. mtrs. is granted under the said Conveyance dated 9th February 2005 in the following manner.

- i) the sub-divided plot B-3 admeasuring 1948.64 sq. mtrs. presently occupied by MSEB sub-station demarcated and shown in GREEN colored boundary lines in the layout put up for the approval.
- ii) Advantage of area under 44' wide D.P. Road admeasuring 1191.16 sq. mtrs. demarcated as sub-divided plot D-1 and shown BLACK WASH colored boundary lines in the lay out plan put up for the approval.
- iii) Advantage of area under 90' wide D.P. Road admeasuring 947. 36 sq. mtrs. demarcated as sub divided plot D and shown in BURNT SIENNA colored boundary lines in the layout plan put up for the approval.

Thus totally admeasuring 8458.50 mtrs of FSI aggregating one lac sq.ft. of built up area including stair case and balcony area (more particularly described firstly, secondly, and thirdly in the third schedule hereunder written) The area as described in the third schedule hereunder written and Plot-B admeasuring 4370.74 sq. mtrs. described in the second schedule are hereinafter collectively referred in the "SAID PROPERTY".

Clause 2

The Police Society hereby agrees to grant development and all other ancillary and incidental rights in respect of the said property more particularly described in the second and third schedule hereunder written, unto the Developers and the Developers and the Developers hereby agree to acquire the said development rights from the Police Society for redevelopment of the said property after demolishing the existing building and by utilizing maximum permissible FSI available thereon as also to avail the additional/enhanced FSI procured by way of the T.D.R and/or by claiming any advantage, set back area or otherwise in any format as may be permitted as per the prevailing rules and regulations and load the same

on the said property, treating the said property as a recipient Plot, (More particularly described in the second and third schedule hereunder written), for consideration and on the terms and conditions hereinafter appearing.

Clause 5

The Police society doth hereby appoint and entrust upon the Developers the works of development of the said proper ____ particularly described in the second and third SCHEDULE hereunder written by constructing new multi-storeyed Buildings and to carry out said development works on terms and conditions hereinafter appearing and for that purposes the Development shall have license to enter upon the said property from the date of execution of this Agreement.

Clause 6:

The Police society hereby declares and confirms that as per the terms and provisions of terms of the said Deed of Conveyance dated 9 February 2005, the said M/s. Lokpriya Housing Development Pvt. Ltd. transferred and conveyed all their rights, title and interests in the said Property and have granted total area admeasuring 8458.50 mtrs to the Police Society for a consideration to be paid at the rate of Rs.80/- per square feet which worked out to be Rs.80,00,000/- (Rupees eighty lacs only) for 9290.22 square meters thereunder granted. Out the total Consideration of Rs. 80,00,000/- a sum of Rs.32,00,000/- (Rupees Thirty two lacs only) has already been paid by the Police Society to the Lokpriya Society and a balance sum of Rs. 48,00,000/- (Rupees forty eight lacs only) is agreed to be paid by the Developers (through the Police society) to the Lokpriya Society proportionately from time to time as and when the F.S.I. mentioned in clause 3 is made available to the Developer for the proposed development as provided in the previous writings mentioned hereinabove.

Clause 11

The Police Society will allow the Developers to demolish existing, building of the Police Society and to construct new Building for residential and commercial purposes and to sell Flats and Shops in open market to recover its costs and profits thereof except the aforesaid 168 flat, required for the society members. The Flats/ Shops/galas in the newly constructed building/s will not be sold for the purpose of making hospital and/or for the use as lodging, boarding.

Clause 16

It is mutually agreed by and between the parties that the developer are entitled to construct commercial premises and residential flats and to dispose off the same in open market to the intending buyer and receive the consideration thereof and the Police Society will have no objection to the same. After the virtual completion of the building the Developers can put the purchasers of the flats/shops/units in possession of their respective flats/shops/units provided 168 flats to be given to the 168 members of the party of the First Part are made ready and available. The Flat Sale Agreements to be executed between the Developers and intending Flat Purchasers shall include a clause stating the covenant that the flat purchasers will be handed over possession of their flats only after the developers have offered the possession of the said flats to the existing members.

Clause 17

It is mutually agreed by and between the parties hereto that on virtual completion of the construction work the Developers shall earmark and offer possession of their respective flats in the newly constructed building to the existing 168 members prior to handing over possession to the new intending Flat purchasers.

Clause 19

It is clearly agreed and understood that the Developers have undertaken certain obligation i.e. to bring required N.O.C/s and permission/s from various authorities for Development which require to spend considerable amount and the said process takes approximately six months and reasonable extension of time of six months and the Owner shall not terminate this agreement on the ground of reasonable delay. Time being the essence of the contract. The police society hereby undertakes to extents its full support and complete co-operation in all respects to the Developers in fulfilling their obligations.

Clause 20

Without prejudice to the developers right for the specific performance and/or termination of this Agreement, in the event of termination of this agreement, Developers shall be entitled to the immediate refund of the amounts paid by the Developer to the said Police Society, MCGM or any other Authority.

Clause 21

In the event of the termination of this Agreement, the Arbitrator shall be appointed under The Arbitration and Conciliation Act, 1996 by the parties by mutual consent and the amounts and the expenses actually incurred by the Developers on the said property till the date of termination and the amounts to be recovered by way of damages with interest at the rate to be decided by the Arbitrator so appointed.

Clause 24

The Police Society shall admit the Purchasers of the Flats/units/garages in new Building as its members on receiving, intimation from Developers. The Police Society is entitled to collect proportionate contribution to the corpus fund of Rs.25,000/- (Rupees Twenty Five thousand only) from each newly admitted member, in addition to the payment of Entrance fees, Share amount and Membership fees as per Bye-laws of the Co-op Society in force.

Clause 27

The building in which the members are to be accommodated shall be completed within 18 months, in phase wise manner, from the date of IOD and Commencement Certificate. On virtual completion of the permanent accommodation portion/building, the Developers shall forth with obtain part occupation certificate in respect of the permanent accommodation portion/building.

Clause 30

It is expressly agreed by and between the parties that the Plot of land under reference and the Building/structures constructed thereon i.e. residential and commercial premises shall be on completion be the property of the Police Society and it is obligatory and mandatory on the part of the Police Society to admit and enrol the residential flats purchasers and commercial premises purchasers as members of the Police

Society after completing all the required formalities to do so.

Clause 31

It is mutually agreed by and between the parties that the Developers shall carry out development works at their own costs and the development of the said property shall be in the manner set out herein above, strictly in accordance with the plans as may be duly sanctioned by the M.C.G.M. and other concerned authorities and in accordance with the Development Control Regulations and all other relevant provisions of law. The Developer hereby agrees to indemnify and keep duly indemnified, the Police Society, from and against any loss or damage or costs, charges and expenses which the Owner may suffer or incur by reasons of any hereon or violation on the part of the Developer of the Building plans and specification for construction and other claims, damages arising out of the process of development of the said property.

Clause 42:

For the purposes aforesaid, in the police society hereby authorize the Developer to do in the name of the Police society all such acts, deeds, things and applications and in particular.

- a) To have prepared the layout for the primary development of the said property and to have the same sanctioned by the local Municipal Authorities.
- b) To have the plans of the proposed buildings to be constructed on the said property prepared in accordance with the rules and regulations of the Municipal Authorities and Town Planning Authorities and to submit the said plans to the Municipal Authorities and other concerned Authorities with the applications for their approval and sanction and to do and sign all writings and undertakings as may be necessary in connection with the approval and sanction of such plans.
- c) To make necessary applications and/or revise or modify applications to the concerned authorities for the change of use of the said property.
- d) To make applications to concerned authorities for obtaining Water and Electricity connections and permit or permits of quota or quotas for Cement steel and other controlled Building materials.
- e) To accept the service of any writ, summons or other legal process or notice and appear and represent the Owner in any Court and before Magistrate, Judicial Tribunal and other Tribunal in connection with the said property and to commence or file suits actions or other proceedings in any court or before any Public Officer or Tribunal for the recovery and encroachment of the possession and / or change of user of the said property or part or parts thereof and for any of the purposes aforesaid to sign, execute and deliver or file all necessary Vakalatnamas, Warrants or Claims, Plaints, Orders, Applications, Defenses, Statement of Account, Declarations, Affidavits and other documents, papers and filings in consultation with the Police society from time to time.

f) to demolish the existing structure, on the said property and construct new building thereon and to enter into Agreement for sale or otherwise allot extra tenements in the said Building to the new purchasers thereof.

g) The tenement purchasers shall become the members of the Society and the Police Society shall allow such tenement purchasers to mortgage their respective tenements with their Financers or with the Financing Institute.

h) to use the entire available F.S.I and the F.S.I. to be generated from the said property after complying with certain requisites and in addition to that the developers may at its own option, procure T.D.R. from outside and load it on the said property treating the same as the base land (more particularly described in the second and third schedule hereunder written.) the Developers shall be solely entitled to the benefits, enhanced, F.S.I as may become available in future due to change in any law, policy of the Government and any other concerned authority till the full and final completion of the project and police society shall always extend the required cooperation to the Developers for availing such benefits arising from the said property.

o) To Mortgage the said Premises coming to the disposal of the Developers in favour of financial Institution/Banks providing loans to the Purchasers.

Clause 47

The Developers shall after obtaining required permissions and order to shift structure of (MSEB) Power House standing on the portion of the said society at their own cost demolish the existing building and construct building or buildings on the said property and they shall be entitled to entrust the building construction work to such persons as they may think fit and proper and all the payments and expenditure in respect thereof shall be made by the Developers. The Developers shall be at liberty to allot the dwelling units and the Flats/shops/garages/units in the building or building to be constructed on the said property and to allot the same to such party or parties as they may think fit and proper at their own discretion and likewise the developer shall entitle to fix the price and receive and realize the same in respect of the allotment or sale of the flats and appropriate the same, subjects to the flats agreed to be given to the Original Member of the Owner Society as per the terms of this agreements on priority.

Clause 58

The Police Society hereby authorize the Developers to have prepared the layout for the primary development on the said property and the Developers shall not mortgage the said property in favour of any financial Institution/Bank, however the Police Society shall give their written N.O.C. simultaneously on execution hereof to the intending purchasers for the Mortgage of their respective Flats/units/shops etc. with any financial Institution/Bank for raising loans.

23. The clause 16 and 17 expressly stipulate that possession to new

purchasers could be offered only after completion of construction and after possession was first offered to the 168 existing members of the Police Society. Until such stage, the purchasers acquired no independent or enforceable right against the Society. The mandatory covenant requiring inclusion of this condition in the sale agreements reinforces the absence of any direct obligation owed by the Society to the purchasers. The purchasers consciously contracted subject to the developer first fulfilling its obligations to the Society.

24. The Clause 20 of Development Agreement itself provides a complete contractual mechanism in the event of termination, under which the developer's remedies are limited to refund and/or reimbursement of expenses, as may be determined through arbitration.

25. Further, Clause 21 stipulates that, upon reference to arbitration, the Arbitrator may determine the actual expenses incurred by the developers till the date of termination, which could be recovered as damages with interest at a rate to be decided by the Arbitrator.

26. Significantly, none of the clauses of the Development Agreement or Agreement for sale confer any vested right upon flat purchasers merely by virtue of payments made to the developer. Membership of the Society and possession of flats are expressly post-construction events, contingent upon performance by the developer.

27. I find merit in the contention of Mr. Naphade and his reliance

on the decision in *Dalpat Kumar V/s. Prahlad Singh*⁶ that the prima facie case favours the Society, and that if the injunction is not vacated, irreparable injury would be caused to the members of the Society, who have been awaiting completion of construction since 2010.

28. I also find that the distinction sought to be drawn by the Plaintiffs are illusory, artificial and contrary to settled law. The contention that the Society's title is incomplete is wholly misconceived. The Plaintiffs, who seek specific performance of their agreements with Saga who in turn derive their rights, if any, only through Police Society cannot question their title.

29. I find no merit in the Plaintiffs contention that the Society granted irrevocable Power of Attorney in favour of Saga, enabling it to act beyond its authority. The mere absence of payment of transit rent or corpus to the Police society does not confer any enforceable rights upon the third-party purchasers to assert claims against the Police society.

30. The Plaintiffs have failed to address the fundamental issue of privity of contract between them and the Society. It is undisputed that the Police Society neither entered into any agreement with the Plaintiffs nor received any consideration from them. Even assuming that monies were paid by the Plaintiffs to Saga, any contention that such monies were utilized for the project is a matter for trial since

⁶ (1992) 1 SCC 719 paragraphs 4 & 5.

disputed and, in any event, cannot create or enlarge contractual rights against the Society. At best, the Plaintiffs have a restitutionary/monetary claim against Saga in terms of their agreement.

31. The attempt to compare clauses in the present agreement with those in the other matters is misconceived. The principles laid down in *Vaidehi Akash* and *Goregaon Pearl* reaffirmed by the Division Bench of this Court bind this Court. The reliance placed on the decision in *Sandeep Grover v Sai Siddhi Developers* (supra), upheld by the Hon'ble Supreme Court, is misplaced, the facts being entirely distinguishable. In that case the Society had acknowledged the payment made by the third-party purchasers for the construction of the building; further the developer had constructed the building of the society and the society had also allotted possession of the flats to its members. In the present case, the project is far from completion, the Society's members have, on record, incurred expenditure, and the Society has not acknowledged that any monies received by Saga from the purchasers were deployed for the Society's benefit. Thus, the two are clearly distinguishable.

32. The contention linking the release of reserved land (4087.74 square meters) to creation of ownership rights is misconceived, as at best, under the agreement and upon arbitral determination, the developer may be entitled only to reimbursement of the costs incurred along with interest, and not to ownership or proprietary

rights.

33. I therefore find no substance in the submission that the land released by the developer at his own costs became the asset of the company. Merely because the developer paid part consideration for the land does not create ownership rights; at most, the developer would be entitled to reimbursement of amount with interest, as may be determined by the Arbitrator.

34. Consequently, the reliance on NCDRC decision in *Mahendra Bansidhar Vs Goregaon Pearl* and in *Akshay Vs Aditya* (supra) upheld by Apex Court does not assist the Plaintiffs, as both are distinguishable on facts. In the present case the Police Society has derived no benefit from the developers actions, and, in any event, the contract contemplates reimbursement of expenses, if proved, before the Arbitral Tribunal.

35. Accordingly, the Notice of Motion 382 of 2017 is dismissed. The Interim Application No.1995 of 2024 is allowed in terms of prayer clause (a) which reads as follows:

“(a) That this Hon’ble Court be pleased to pass an order vacating the stay granted by order dated 22 March 2017 passed by this Hon’ble Court.”

36. List the Suit on 20th January 2025 under the caption ‘for directions’.

(KAMAL KHATA, J..)

37. At this stage, learned Advocate for the Plaintiff requested for stay. In view of the aforestated reasons, the request for stay is rejected.

(KAMAL KHATA, J..)