ORDER BELOW EXHIBIT 19 IN SPECIAL CIVIL SUIT NUMBER 200/2019

1. The present application is filed by the Learned Advocate for the defendants under Order VII Rule XI(d) of CPC with the contention that the suit is time barred and thus is not maintainable. The learned Advocate for the defendant had submitted in his oral argument that the alleged agreement to sell is of the year 2014 and the present suit is filed in the year 2019 and as per Article 54 of Limitation Act, suit is to be filed within 3 years from refusal or time limitation mentioned in agreement to sell. The learned Advocate for the defendant had submitted that the present suit is not filed within time limit and therefore by clever drafting the Learned Advocate for the plaintiff had tried to bring the suit within the frame of limitation by stating that compromise took place between the parties at the relevant time. It is submitted that but no facts of compromise had been

mentioned by the learned Advocate for the plaintiff in the suit and hence the said contentions cannot be taken into consideration by this Court. The learned Advocate for the defendant had relied upon the various authorities, which are as follows:--

1) ***Nusli Neville Wadia Vs. Ivory Properties & Ors.*** reported in **2019(0) (SC) 1107.**
2) ***Braj Bhushan Mittal Vs. Jeet Singh*** reported in **Second Appeal No. 1111/2019 in Hon'ble Allahabad High Court.**
3) ***Raghwebdra Sharan Singh Vs. Ram Prasanna Singh (Dead) by LRs*** reported in **AIR 2019 SC 1430.**
4) ***K. Akbar Ali Vs. K. Umar Khan & Ors.*** reported in **SLP No. 31844(2018) Supreme Court (SC)**.
5) ***Hanubhai Ladharabhai Bharwads Mina Legal Heirs Vs. Chimanbhai Jivabhai Patel Legal Heirs of Decd*.** reported in **2018(0) AIJEL-HC 240672.**

6) ***M/s. Sree Surya Developers and Promoters Vs. Shaileh Prasad and Ors.*** reported in **2022 LiveLaw SC 143**.

7) ***Surjeet Singh Sahni Vs. State of U. P. and Ors.*** reported in **SLP No. 3008 of 2002**.

2. The learned Advocate for the plaintiff had filed reply vide Exhibit 25 on record wherein he had negated the contentions and had stated that the present application is filed just not to perform their part of performance. The Learned Advocate had also submitted before this Court that the question of compromise is mixed question of fact and law and hence, the present application under Order VII Rule XI(d) is not tenable before this Court. Learned Advocate for the plaintiff had relied upon following authorities, which are as follows:--

1) ***Himanchu Madanlal Shah Vs. Dr. B. M. Poojari*** reported in **2005(3) GLH 385**.

2) ***Bahadurbhai Laljibhai Malhotra Vs. Ambalal Joitaram Heir of Joitaram Ranchhoddas*** reported in **2015 (3) GLR 2760.**

3) ***Habibbhai Yusufbhai Gugarkhan Vs. Promodbhai Rambhai Patel*** reported in **2015 AIJEL HC 0 233442**.

4) ***Sri Biswanath Banik & Anr. Vs. Smt. Sulanga Bose & Ors.*** reported in **Civil Appeal No. 1848(2022) SC**.

5) ***Sanjay Singh and Anr. Vs. Hindustan Unilever Limited*** reported in **AIR 2018 CL HC 61**.

6) ***Shakti Bhog Food Industries Ltd. Vs. Ballard Project Pvt Ltd***. reported in **AIR 2020 SC 2721**.

7) ***Shanabhai Popatbhai Bharwad Vs. Ballard Project Pvt Ltd***. reported in **AIR 2020 Guj 173**.

8) ***Bhupatsinh Vishaji Vaghela Vs. Shakuntalaben Durlabhjibhai Khokhar*** reported in **(2015) 0 Supreme(Guj) 296**.

3. This Court had duly heard the Learned Advocates on record and had also gone through the ratios produced. Before going into the merits of the present

application, this court is of the view that the law relating to rejection of plaint should be taken into consideration. Order VII Rule XI of CPC reads:

"11. Rejection of plaint.- *The plaint shall be rejected in the following cases:—*

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff."

Perusing the said law, it transpires that suit can be rejected under the given conditions as per Rule 11. Order VII Rule XI(d) provides that a suit can be rejected if it is barred by any other law. Therefore, the defendant had to specifically show *prima facie* that the suit is having bar of any other law. In the present situation at hand, the learned Advocate for defendant had submitted that the suit is barred by Law of Limitation and thus, has to show the said contention through plaint in order to succeed.

4. After gone through the ratios, it appears that both the learned Advocates had relied upon the ratios which are related to guidelines regarding Order VII Rule XI. This Court has gone though the ratios accordingly and had also adhered to the guidelines provided by the Hon'ble Courts and provision established by law. Perusing the application, the Learned Advocate for the defendant had come up with the statement that the present suit is filed on the

facts that the said agreement was executed in the year 2014 and the present suit filed in the year 2019, which is not within 3 years and hence the present suit is not maintainable. Now, the plaintiff had produced said agreement to sell vide Mark 3/5. Perusing the said agreement to sell, it appears that the agreement was executed on 21.05.2014 which was registered on 10.06.2014 wherein it is mentioned that out of Rs.37,35,000/- (Rupees Thirty Seven Lacs Thirty Five Thousand only), Rs.37,00,000/- (Rupees Thirty Seven Lacs only) was paid by the plaintiffs to the deceased Chandravadan Dahyabhai Barot and Rs.35,000/- (Rupees Thirty Five Thousand only) was to be paid within six months or when the ancestor of defendants i.e. Chandravadan Dahyabhai Barot shows his readiness and willingness to execute registered document in favour of the plaintiffs. Moreover, perusing the vide Mark 3/5, it appears that out of Rs.37,35,000/- (Rupees Thirty Seven Lacs Thirty

Five Thousand only), Rs.37,00,000/- (Rupees Thirty Seven Lacs only) were paid to deceased Chandravadan Dahyabhai Barot by plaintiffs which is *prima facie* corroborated by receipts produced on record vide Mark 3/7 to 3/27. Moreover, perusing the application of the defendants, they had stated that the deceased Chandravadan Dahyabhai Barot had denied the performance of contract on 21.5.2014 and and thus, suit for specific performance was to be filed within three years from 21.5.2014 i.e. within 22.5.2017. It is well settled principle of law that while deciding an application under Order VII Rule XI, the averments of the plaint must be taken into consideration and looking to the same, the plaintiff had stated they had issued notice on 5.11.2015 wherein compromise was met between plaintiffs and deceased Chandravadan Dahyabhai Barot wherein deceased Chandravadan Dahyabhai Barot had agreed to complete the construction within one and half years. As the said contrucation was not completed within stipulated time period, another notice was issued on 21.7.2018. Both the notices are brought on record by plaintiffs. Therefore, it is crystal clear from plaint and the application of the defendant that one notice was issued by the plaintiffs to deceased Chandravadan Dahyabhai Barot on 5.11.2015 stating that the plaintiffs are ready and willing to perform their part of the contract and had insisted late Chandravadan Dahyabhai Barot to perform his part of the contract. It is stated by the plaintiffs that afterwards with the interference of other respected members of the society, compromise was met between deceased Chandravadan Dahyabhai Barot wherein he had agreed to perform the part within one and half years and thus, no action had been taken by the plaintiff. As it is agreed by the defendants that one notice issued on

5.11.2015 and afterwards, another notice was issued on 21.7.2018 it seems important to peruse both the documents. The notice allegedly given on 5.11.2005 is produced on record vide Mark 3/29 whereas notice of 21.7.2018 had been produced on vide Mark 3/30. Perusing the both the documents, it is clear that the contentions of notice on 5.11.2015 and that the compromise met between the parties and that they had requested deceased Chandravadan Dahyabhai Barot for performing his part of the contract is apparently on record. Therefore, it appears to this Court that the said transactions are a part of continuous transaction. Whether the notice was served or not and any conciliation proceedings were taken between the plaintiff and late Chandravadan Dahyabhai Barot or not is matter of mixed facts and law which can be only decided after taking evidence in this matter. It is stated by the plaintiffs that the refusal was in the knowledge of plaintiff as on 21.5.2014 but perusing the notice given by the plaintiffs on 5.11.2015, it appears that there was no clear cut refusal on the part of deceased Chandravadan Dahyabhai Barot and that there was no specific denial taken by deceased Chandravadan Dahyabhai Barot. It is submitted by the plaintiffs that in order to hamper their rights over the suit property, the defendants were trying to make bogus documents of much prior date. It is not the say of the defendants that the notices are bogus and concocted. Therefore, it appears to this Court that as there was no specific refusal, Article 54 of the Limitation Act is not applicable *prima facie*. The issuance of notices clearly brings on record that the said facts can be brought on record through evidences but if suit will be rejected at this juncture without taking evidence then it will brings hardship upon the plaintiffs. It appears that the point of limitation as alleged by the defendants is mixed question of fact and law which can only be decided at the fag end of trial. Hence, the present application is not tenable before this Court. Therefore, following order:-

::ORDER::

- The present application is hereby rejected.
- No order as to costs.

18/04/2022
Surat.

(**Romit Anilkumar Agrawal**)

10th Additional Senior Civil Judge
Surat.**GJ0933**