Commercial Suit No.45/2022
CNR NO.MHPU01-016314-2022

M/s. Dynamic Realty Ventures
Through Proprietor Rajeev Shivnath Sonkar
Vs.
M/s. Vendant Land Mark & Ors.

ORDER BELOW EXH.52

This is an application for temporary injunction. I have heard at length Ld. Counsels for the plaintiff and the defendants. Perused the application and documents filed by the parties.

2. Briefly stated necessary facts for deciding the instant application are that the plaintiff is owner of land survey No.39/7+11 area 1.27 H.R. situated at village Mohammadwadi, Tal. Haveli, Dist. Pune and a development agreement was executed between the parties for construction of residential and commercial premises by the defendants. The project was in two phases comprising phase I building Nos.B-1 and B-2 and phase II building Nos.A-1 and A-2.

3. The defendants were to complete the development by 04/12/2016 with additional grace period of three months agreed between the parties and in case of failure the defendant has to handover the possession of identified units obligation and without prejudice assured the plaintiff at his discretion to receive rent of Rs.10,000/- for 2BHK flats and office units and Rs.15,000/- for 3BHK flats and shops as liquidated damages of each month delay. Thereafter, on 06/06/2017, there was registered supplementary agreement between the parties permitting the defendants to mortgage the suit property in favour of any bank to raise Rs.10 crore loan amount which was represented entire estimated cost of balance

construction and was to be utilised for said purpose. The defendants have committed breach and diverted some funds and even after forty months delay, the project is far from being completed. Buildings B-1 and B-2 delayed by 709 days as per supplementary agreement and buildings A-1 and A-2 by 1745 days by supplementary agreement and due to inordinate delay, the plaintiff was constrained to face unnecessary humiliation and damage to reputation on account of several complaints filed against the plaintiff with MAHARERA, Mumbai for which the defendants were solely responsible. The defendants apart from other breaches intentionally attempted to arm twist the plaintiff to succumb to their unruly, illegal and baseless demands which is evident from the communication between the parties. Contrary to the terms of principal and supplementary agreements, the defendants have demanded Rs.5,08,40,753/- from the plaintiff for additional FSI/FAR which was exclusive responsibility of the defendants. When the plaintiff was merely liable to procure TDR for additional three floors of building A-1 comprising of only six flats. The cost of that TDR was approximately Rs.88,63,748/- only. According to the plaintiff, the defendants have committed following breaches mentioned below in nutshell :

a) Failure to complete the construction of the said Project, in all respect on or before October 2018.

b) Handing over of timely possession of residential and commercial units coming to entitlements of the Plaintiff.

c) Failure to keep the Plaintiff indemnified against all the actions, claims, demands, disputes, civil and/or criminal proceedings, etc.

d) *Failure to secure compliance with statutory obligation of construction of Social Housing Component and defrauding the statutory authorities.*

e) *Failure to bear and pay liquidated damages as prescribed under relevant terms of the said Principal Agreement read with Supplementary Agreement.*

f) *Failure to ensure strict compliance and observance of the relevant terms of the said Principal Agreement read with Supplementary Agreement.*

g) *Non-tenable and complete baseless claim of a sum of Rs.5,08,40,753/- (Rupees Five Crores Eight Lakhs Forty Thousand Seven Hundred and Fifty Three Only) for additional FSI/Premium/Ancillary FSI, contrary to agreed in terms whereof, the Plaintiff are only liable to procure TDR for additional Three Floors (03) number of floors of Building A-1, in lieu of which of six (06) additional flats are to come to entitlements of the Plaintiff.*

4. The plaintiff has issued legal notice dated 25/11/2021 and also issued public notice in daily Prabhat cautioning the people at large with respect to the breaches committed by the defendants. The defendants have given illusory and baseless interim reply dated 18/12/2021 to the notice and as per reply on 17/01/2022 raised completely false and frivolous contentions. According to the plaintiff, since inception the defendants with ill intent to defraud and defeat interest of the plaintiff made the plaintiff to mortgage the project with HDFC Bank coerced and misrepresented the plaintiff in duly executing Form B to be filled with MAHARERA. A complaint was also filed by the unit purchasers with police for non compliance with statutory and contractual obligations. The plaintiff also paid

Rs.1.45 crores for 34 units in respect of the units coming to his entitlement out of building Nos.B-1 and B-2 and also towards other charges. Even after getting the money, the defendants failed to even provide the facilities and amenities in respect of the unit purchasers in first phase of said phase wise development and the defendants may have collected Rs.5 crores from the purchasers of about 124 units and those purchasers now threatened to initiate criminal and other proceeding in terms of MOFA and RERA against the plaintiff and the defendants. Therefore, the plaintiff feels apprehension of injury and irreparable loss to his reputation and goodwill. The plaintiff has terminated the contract as per legal notice dated 04/05/2022 which was also published in newspaper Prabhat and also terminated the power of attorney dated 15/04/2025 and requested the Municipal Corporation, Pune to refrain from acting on any submission of application by the defendants. Therefore, the plaintiff in the application sought temporary injunction as per para Nos.31-a to 31-k.

5. However, at the time of hearing of the application, Ld. Counsel for the plaintiff has submitted praecipe Exh.94 that now, the plaintiff is only seeking the temporary injunction relief as per prayer clause (f) to the extent that the defendants should not proceed further with construction of building No.A-1 in the said project and as per prayer (h) to direct the defendants to secure an amount of Rs.5,26,24,240/- by furnishing bank guarantee and/or reserving unsold units coming to the entitlement of the defendants under said project sufficient to secure the said amount.

6. The defendants have vehemently opposed the application

denied all the averments against them made by the plaintiff and mainly submitted that the suit as well as the application for temporary injunction are liable to be dismissed because the defendants have performed their part of contract. The project comprising of four buildings out of which three buildings have been completed and 42% share of the plaintiff out of those buildings has been already allotted and the plaintiff has sold all his flats. As per the supplementary agreement, the plaintiff is required to purchase the FSI/TDR/Ancillary FSI required for completion of A-1 building and the plaintiff has not performed his part of the contract. The defendant has interest created in the project and when most of the project is complete, the plaintiff cannot illegally terminate the contract. Further it is submitted that the plaintiff will not suffer any irreparable loss and when the plaintiff himself is at fault, he cannot seek injunction against the defendant. There are contradictory pleadings of the plaintiff and as was the conduct of the parties, time was not essence because there was first agreement then supplementary agreement and the delay cannot be solely attributable to the defendant but it was contributory and because of the action on the part of the plaintiff, the project has been stalled.

7. The defendants have already completed almost some part of the remaining project and when the termination of the agreement itself is illegal which is done by the plaintiff to avoid payment towards purchase of paid FSI and TDR and when the plaintiff being a promissor has failed to perform his part of contract, he cannot insist on performance of reciprocal promise by the defendants. The defendants also submitted second supplementary agreement

executed in the year 2017. The plaintiff has not sought any relief in respect of that agreement and when the plaintiff himself is at fault he cannot take a plea of time is essence of contract and attributed delay on the part of the defendants.

8. Therefore, according to the defendants, the plaintiff does not have any prima facie case, no irreparable loss will cause to him and balance of convenience is also not in his favour.

9. Based on the submissions and pleadings of the plaintiff and reply of the defendants following points arise for consideration and findings of this Court thereon are for the reasons stated thereto :

Sr. No.	POINTS	FINDINGS
1.	Whether the plaintiff made out prima-facie case ?	**No.**
2.	Is the balance of convenience lies in favour of the plaintiff ?	**No.**
3.	Whether the plaintiff will suffer irreparable loss, if injunction is refused ?	**No.**
4.	What order ?	**Application is Rejected.**

REASONS

AS TO POINT NOS.1 TO 4 :

10. Ld. Counsel for the plaintiff as well as the defendants have argued extensively but by the time Ld. Counsels started their argument, the situation has been changed which is apparent when the plaintiff has filed praecipe Exh.94 and almost gave up 90% of prayers in the application for temporary injunction and pressing for

prayer clause 31(f) and first part of prayer clause 31(h). So this Court will have to see whether the plaintiff has prima facie made out the case for restraining the defendants not to proceed further with the construction of building A-1 in the project except for securing statutory obligation to complete MHADA building, club house, amenities and obtaining completion certificate from the Municipal Corporation, Pune in respect of the construction already undertaken and no activity permissions approvals and all the construction shall be carried out by the defendants in respect of the proposed residential building A-1 and also directions to the defendants to secure an amount of Rs.5,26,24,240/- by furnishing bank guarantee and/or reserving unsold units coming to the entitlement of the defendants in the said project.

11. Considering the above aspects, arguments of both the parties are considered qua above restricted prayers made by the plaintiff.

12. As per the Ld. Counsel for the plaintiff, the defendants were supposed to bear the costs and expenses of the development and they were to duly indemnify the plaintiff as per clause 5 of the principal agreement. As per clause 18, the plaintiff was entitle to get benefit of additional FAR in respect of residential and commercial units. Once the agreement has been terminated, the power of attorney executed in favour of the defendants also came to an end as per clause in the agreement. The defendants have ingeniously started to claim for paid FSI purchased and loaded in B-1 and B-2 buildings and also additional TDR and in fact as against the claim of Rs.6,24,50,059/- allegedly required for additional TDR/paid FSI, the

defendants merely paid Rs.50 lakhs and the defendants have given cheques in four installments but the plaintiff came to know that those cheques also dishonoured and the plaintiff has waited for completion of the project, but because of serious illegalities and breaches committed by the defendants, he has to terminate the principal agreement and supplementary agreements and the main thrust of the argument of the Ld. Counsel for the plaintiff is that once the agreement has been terminated, the defendants cannot carry out any construction and in fact the defendants have committed breach because till the time, the plaintiff has given notice of termination of the contract, there was no progress in further construction but suddenly within two years time, the defendants have carried out lot of construction which they ought not to have done and this conduct of the defendants is against the terms and conditions of the contract. It is also submitted that the plaintiff has rightly terminated the contract without intervention of the Court which he can do and the defendants cannot contain and challenge the validity or enforceability of the termination and they cannot further act on the basis of the power of attorney once the agreement has been terminated and the plaintiff has terminated the contract as per the terms and conditions and when the agreement is determinable in nature, the plaintiff has rightly terminated it and to support his argument, he relied on the Judgments in **Indian Oil Corporation Ltd. v. Amritsar Gas Services and Others – (1991) 1 SCC 533**, **I.S. Sikandar (Dead) By Lrs. v. K. Subramani and Others – (2013) 15 SCC 27** and **Thangam and Another v. Navamani Ammal – (2024) 4 SCC 247**.

13. Further Ld. Counsel would say that the breaches have been committed by the defendants are highlighted in the pleadings and therefore, there is break down of confidence and there is only distrust and they are sufficient to terminate the contract and for this purpose, he has relied on the Judgments in **Swashray Co.op. Housing Society Ltd. and Others v. Shanti Enterprises – 2023 SCC OnLine Bom 3361** and **Rajawadi Arunodaya Co.op. Hsg Soc Ltd. v. Value Projects Pvt. Ltd., through its directors Mimit Ajit Bhuta, Jayashree Ajit Bhuta and Sonal Mimit Bhuta – 2021 SCC OnLine Bom 9572**.

14. It is also argued that the agreement already terminated/determined even by the efflux of time and therefore, the plaintiff can revoke contractual license and the defendants cannot claim that they are possessing irrevocable license and the defendants cannot be allowed to adhere to some of the stipulations which are favourable to them only and repudiate other terms of the contract which are disadvantageous to them as is observed in the Judgments in **Mumbai International Airport Private Limited v. Golden Chariot Airport and Another – (2010) 10 SCC 422** and **Navyauga Machilipatnam Port Limited v. The State of Andhra Pradesh and Ors. – MANU/AP/1362/2022**.

15. It is also submitted that it is specifically clear from the agreement and it was throughout intention of the plaintiff that time is essence of the contract and the defendants ought to have completed development within stipulated time and the plaintiff on account of the failure on the part of the defendants, has unfetter and absolute right to determine the agreement unilaterally without assigning any reason and obtain substituted performance at the costs

of the defendants. To press this submissions, Ld. Counsel relied on the Judgments in **Desh Raj and Others v. Rohtash Singh** - **(2023) 3 SCC 714**, **Saradamani Kandappan v. S. Rajalakshmi and Others - (2011) 12 SCC 18** and **Siddamsetty Infra Projects Private Limited v. Katta Sujatha Reddy and Others - (2024) 20 SCC 140**.

16. On the point that agency terminates with termination of the agreements, Ld. Counsel relied on the Judgments in **Barses J. A. D'Douza v. Municipal Corporation of Gr. Brihan Mumbai and Others – 2003(4) Mh.L.J. 451** and **B. S. Nagendra v. Y. S. Suresh and Others – 2020 SCC OnLine Kar 5544**.

17. Therefore, according to Ld. Counsel for the plaintiff, the plaintiff has made out a prima facie case, balance of convenience is in his favour and plaintiff will suffer irreparable loss and the breaches committed by the defendants would expose the plaintiff to severe civil and criminal liability under MHADA and Rera and the loss cannot be quantifiable and beyond repair. To press these three points, Ld. Counsel relied on the Judgments in **Maharwal Khewaji Trust (Regd.), Faridkot v. Baldev Dass – (2004) 8 SCC 488** and **Gangubai Bablya Chaudhary and Others v. Sitaram Bhalchandra Sukhtankar and Others – (1983) 4 SCC 31**.

18. On the other hand, Ld. Counsel for the defendants while reiterating the contentions and also countering all the argument of Ld. Counsel for the plaintiff, would say that the suit itself is false, frivolous and is not maintainable at law. The suit suffers from incorrect description of the suit property under Order VII Rule 3 of the Code of Civil Procedure (for short C.P.C.) because the suit

property as mentioned in para No.1 does not exist. The defendants have performed their part of the contract almost to the whole extent and the plaintiff has not performed his part of the contract and the defendants are further ready and willing to perform minor construction of the building No.A-1 and therefore, no injunction can be granted.

19. The termination of the agreement itself is illegal and the prayers of the plaintiff are nothing but seeking attachment before Judgment for alleged monetary claim of more than Rs.5,26,24,240/-. The plaintiff at one hand talks of termination of contract and on the other seek specific performance of the agreement to some extent on the part of defendants with respect to certain construction like MHADA flats, club house etc. and therefore, the suit itself is meritless and no injunction can be granted.

20. As per the agreement, the plaintiff was supposed to purchase FSI and TDR but without doing it he has illegally terminated the contract and when the termination itself is questionable and that aspect will have to be decided in trial, no injunction can be granted. Ld. Counsel for the defendants also referred to the correspondence between the parties and submitted that the successive supplementary agreements clearly show that the time line was by conduct extended and the delay was not attributable to the defendants alone but because of non-compliance of certain terms and conditions by the plaintiff and due to conduct of the plaintiff, delay was caused and in such circumstances it cannot be construed that the agreement between the parties had time as essence of the contract.

21. The plaintiff has not come up with clean hands and when the plaintiff is claiming monetary relief which indicate that there is no irreparable loss and as such three ingredients for temporary injunction are not made out. In support of the argument, Ld. Counsel relied on the Judgments in **Manisha w/o Balkrushna Kode v. Madanlal s/o Uttamchand Desarda – 2023(6) Mh.L.J. 595**, **Batliboi Environmental Engineers Limited v. Hindustan Petroleum Corporation Limited and Anr. – AIR 2023 SUPREME COURT 4990** and **Smt. Swarnam Ramachandran & Anr. v. Aravacode Chakungal Jayapalan – 2004 8 SCC 689**.

22. The basic question which needs first and foremost consideration by this Court while deciding grant of equitable discretionary relief is based on the above first three points.

23. From the submissions of both the parties, it is clear that the entire project was comprising A-1, A-2, B-1 and B-2 buildings and also surrounding amenities to be constructed for better enjoyment of the tenements/flats to be sold to the buyers. Not only that it came from the parties that there was statutory obligation in this project to provide some flats to MHADA which are to be allotted by MHADA to the economically weaker section of the society to provide social housing components to such section of the society and that was obviously is not being fulfilled and therefore, this Court has specifically directed the parties to file their stand as to what would be the effect on the statutory obligation if the parties after completion of more than 75% project have sold flats and encashed their money by selling them to the people, who are not MHADA allottees and what would happen to those persons.

24. The plaintiff has filed affidavit Exh.95 in light of that direction. As per the said affidavit in A-1 Wing 56 flats were to be constructed for allotment by MHADA and as per the plaintiff he had issued notice to the defendants to complete MHADA building first but the defendants completed B-1, B-2 and A-2 buildings first and first notice was dated 25/11/2021 and he also wrote letter dated 12/04/2022 to legal department of Pune Municipal Corporation. Then according to the plaintiff, the defendants obtained revised sanction plan for A-1 and B-2 Wings in December 2021 and in that in A-1 Wing 42 flats were to be for MHADA but this according to the plaintiff is illegally obtained revised sanction plan. Then, the plaintiff submitted that as the defendants have not complied with the statutory obligation, the Municipal Corporation, Pune issued a conditional stop work notice dated 01/12/2021 and subsequent to the termination, the defendants have obtained completion of 36 units out of 56 units of MHADA, but till date has not set up lift for MHADA unit holders despite giving undertaking to the Municipal Corporation, Pune for completing the same within two months and therefore, the plaintiff has amended his prayer as mentioned hereinabove in clause (f). So from the plaintiff's affidavit it is apparent that out of 56 units only 36 units are constructed and necessary facility of lift is not yet provided.

25. Similarly, as per directions of this Court, the defendants filed undertaking Exh.97 stating therein that if any land under development is more than 4000 sq.mtrs. then 20% of the construction is to be allotted to the MHADA as per construction norms and they were bound to allot 44 flats to MHADA. They have

completed the construction up to three floors in A-1 building wherein 36 MHADA flats are there and produced part completion certificate dated 19/07/2022 but according to the defendants since this Court has passed status-quo order Exh.60 in this matter, they could not carry out further construction of flat Nos.211, 303 and 404 and as per the defendants, they have completed construction of 44 flats out of which Pune Municipal Corporation has given completion for 36 flats and they have began process of obtaining completion certificate in respect of 8 flats and they are making payment also to Pune Municipal Corporation for vacating stop work order and because of status-quo order, the work for obtaining completion certificate of 8 MHADA flats is also held up.

26. It is clear from the above facts submitted by the parties that in the instant case, the project in question is not limited to the plaintiff and the defendants. It is an infrastructure project and the parties were bound to construct the flats for economically weaker section of the society to be allotted by MHADA and the net sufferers are the MHADA allottees. They are not made party, MHADA is also not made party to the suit and in such circumstances, obviously the plaintiff has not come with the clean hands and if the injunction to such infrastructure project at the stage when the plaintiff and defendants have handsomely encashed their interest and now sufferers are MHADA allottees, the grant of injunction would affect the statutory body and the allottees who would be the sufferers.

27. Then so far as the dispute between the parties, now as per the plaintiff the contract has been terminated and therefore, the defendants cannot proceed with the further construction and that too

partly because the plaintiff does not seek injunction against the defendant from carrying out the construction in respect of the MHADA flats and other amenities and that factor at his stage is not clearly distinct and distinguishable.

28. Then the agreement between the parties indicate that there was a clause for paying monthly amount for delay and non-completion in time of some flats and shops. So the plaintiff if does not get possession of flats of his share, the parties have monetised damages and looking from that angle, it cannot be said that the plaintiff would suffer irreparable loss not ascertainable in money.

29. Other grounds which are made by the plaintiff are about the plaintiffs right to terminate the contract which is challenged by the defendants and it will be a matter of trial whether the termination is legal or illegal and thereafter, even if the defendants carried out further construction, the construction of flats or shops on completion will be ascertainable in money and already from the pleadings of the parties it appears that they are maintaining accounts and record, therefore, when the project is completed in respect of three buildings and the forth building is also partly constructed up to three-four floors and the amenities to be made available are not installed and that is causing hardship to the flats owners who are MHADA allottees then grant of injunction will not serve the purpose of further completion of the project and in particular the MHADA allottees who have been apparently given last priority by the parties as the first three buildings have been constructed and flats have been sold out. The forth buildings is now incomplete because of the fight between the parties. Considering all these aspects, it cannot be said that the

plaintiff has made out prima facie case, balance of convenience is in his favour and the plaintiff will suffer irreparable loss, if injunction is not granted. Therefore, the application is liable to be rejected and points are answered accordingly. Hence, I pass following order :

ORDER

1. The application is hereby rejected. Status-quo order below Exh.60 now does not survive.
2. Costs in cause.

(Dictated and pronounced in Open Court).

Digitally signed by PRADIP YESHWANT LADEKAR
Date: 2026.07.02 18:33:43 +0530

(P. Y. Ladekar)
District Judge-2 and
Commercial Court, Pune.

Pune.
Date : 02/07/2026

CERTIFICATE

I affirms that the contents of this P.D.F. file Order are same word for word as per original Order.

Court Name	:	P. Y. Ladekar, District Judge – 2 and Commercial Court, Pune.
Name of Steno	:	Abhishek Arun Gite (Stenographer Grade - I)
Date of Order	:	02/07/2026
Order signed by Presiding Officer on	:	02/07/2026
Order PDF and Uploaded on	:	02/07/2026