

**IN THE CITY CIVIL COURT AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI**

**NOTICE OF MOTION NO.2623 OF 2015
IN
S.C. SUIT NO.2495 OF 2015**

Mr.Jasmit Singh Bagga ..Plaintiff

Vs.

M/s.Shubh Enterprises & Ors. ..Defendants

**Mr.Anil Mishra, Advocate for Plaintiff.
Mr.Chodankar, Advocate for Deft.Nos.1 to 3.
Mr.Singh, Advocate for Defendant No.5.
Mr.Bhadang, Advocate for Defendant No.6.**

**Coram : His Honour Judge
Shri S. C. Khatri
(Court Room No.1)
Date : 26th April, 2018**

ORAL ORDER

1. The plaintiff has filed the present Notice of Motion seeking various reliefs viz. the defendants be ordered to and execute the Agreement of Sale in respect of Flat No.1606, admeasuring about 1500 sq.ft. situated on 16th floor, B-Wing, Samudra Darshan at D.N. Nagar, Andheri (West), Mumbai (hereinafter referred to as 'suit flat') and also be directed to reserve and allot one flat on 16th floor and further to appoint Court Receiver and restrain the defendants from

dealing or disposing off or creating any encumbering in any manner over the suit flat.

2. It is the case of the plaintiff that he had filed the present suit seeking enforcement of his statutory rights under Maharashtra Ownership of Flats Act. Defendant no.1 is partnership firm, defendant nos.2,3 & 4 are the partners. Defendant no.5 is subsequently appointed as developer and defendant no.6 is a society. It is plaintiff's case that defendant no.6-society had gone for redevelopment and defendant nos.1 to 4 were earlier appointed as developer for carrying out the redevelopment of the building namely 'Samudra Darshan' situated on the plot of land bearing Survey No.106-A, City Survey No.195(part), situated at D.N. Nagar, Andheri (W), Mumbai.

3. It is the case of the plaintiff that defendant nos.1 to 4 alongwith defendant no.6 had duly advertised the said project of redevelopment. It is the case of the plaintiff that he had accordingly visited the site office along with his broker Mr.Doshi who is in the real estate business. It is the case of the plaintiff that defendant no.1 through its partners represented that they have acquired the rights of redevelopment in respect of property from the defendant no.6 and have entered into a re-development agreement dated 8.7.2005 which is registered with the Sub-

Registrar of Assurance. In view of above, the plaintiff believing the representations made by the defendant nos.1 to 4, agreed to purchase one residential flat being Flat No.1606 on 16th floor for a total consideration of Rs.52,50,000/-. It is the case of the plaintiff that initially he had paid an amount of Rs.5,25,000/- to defendant nos.1 to 4 vide cheque no.038849 dt.23.9.2006 drawn on Dena Bank, Andheri (West) Branch, Mumbai.

4. It is the case of the plaintiff that a regular agreement was agreed to be executed by the parties after obtaining the IOD and CC. It is the case of the plaintiff that an allotment letter was issued on 25.9.2006 by defendant Nos.1 to 4 in favour of plaintiff in respect of the suit flat. It is the case of the plaintiff that thereafter he was in continuous follow up with the defendants, but the defendants failed to take any concrete steps to construct flats and the defendants were reluctant to execute an agreement for sale inspite of constant persuasion by the plaintiff. It is the case of the plaintiff that subsequent developer (defendant No.5) gave a public notice, wherein the plaintiff has raised his objection. Ld.Counsel for the plaintiff contends that defendants are not ready to execute agreement of sale inspite of allotment letter issued in his favour.

Ld.Counsel for the plaintiff contends that plaintiff be protected as defendants are likely to create third party interest in the suit property which would defeat his rights. Hence, prayed accordingly.

5. Per contra, Ld.Counsel for defendant No.6 vehemently opposed the grant of relief contending that defendant No.5 is appointed as a new developer, whereas defendant Nos.1 to 4 were the earlier developer, since they failed to carry out the re-development work, therefore defendant No.5 was appointed afresh as a new developer to complete the re-development.

6. Ld.Counsel for defendant No.6 contended that there is no privity of contract between plaintiff and them as there is merely a allotment letter in favour of the plaintiff and not a complete agreement. Ld.Counsel for defendant No.6 relied upon the ratio laid down in the case of **Hansa V.Gandhy Vs. Deep Shankar Roy & Ors. reported in (2013) 12 Supreme Court Cases 776**, wherein following ratio has been laid down by the Hon'ble Supreme Court:-

"A. Contract and Specific Relief – Contractual Obligations and Rights – Accrual of Contractual Obligation – Letter of intent – On facts, held, was not a complete agreement – Letter of intent containing certain terms and conditions with a stipulation that only fulfillment of said terms entitle parties to enter into agreement – Thus, held, said letter

of intent is not even an agreement to sell/contract for sale (CFS) – Hence, held no right for specific performance of contract accrues merely based on said letter of intent.”

7. Ld.Counsel for the defendant no.6 contended that no step were taken by the plaintiff since 2006 till today to enforce his rights if any. Ld.Counsel further contends that the building was in a dilapidated condition and the object of re-development was to construct a new building and house its old members free of cost, for which the builder gets salable flats so that it could be viable for him to construct and give the members flats free of costs. Ld.Counsel for the defendants contends that plaintiff has no privity of contract with them and has no right to seek any relief, as the entire project would get hampered in case any relief is granted in favour of the plaintiff. Hence opposed.

8. I have heard Ld.Counsel for the plaintiff and Ld.Counsel for the defendants. Perused the documents filed on record.

9. It is manifest from the record that the allotment letter issued in favour of plaintiff is of the year 2006. The allotment letter stipulates a condition to enter into further agreement for sale in the printed format. Allotment letter contemplates that

plaintiff was allotted flat No.1606 and a regular agreement would be executed on obtaining IOD and CC. There is no communication on the part of the plaintiff subsequent to issuance of IOD. It appears that the plaintiff was not interested to enforce his rights, as lot of water has flown under the bridge wherein the development agreement with the earlier developer was terminated and a new developer has been appointed who has taken the charge to redevelop the building. There is laxity on the part of the plaintiff to take effective steps after issuance of letter of allotment dated 25.9.2006, wherein the suit is filed in the year 2015 which is after a period of 9 years from the date of allotment letter. In view of the ratio laid down by the Hon'ble Supreme Court in the case cited supra, no interference can be called for at this stage, which would create impediment in the re-development work. Hence, following order:-

ORDER

- 1) Notice of Motion NO.2623 of 2015 stands dismissed.
- 2) Costs in main cause.

(S.C. Khati)

Judge,
City Civil Court,
Dindoshi, Mumbai.

26th April, 2018

Dictated on : 26/04/2018
 Transcribed on : 07/05/2018
 Checked & Signed by HHJ : 29/05/2018

**“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE
 ORIGINAL SIGNED JUDGMENT/ORDER.”**

13/07/2018

UPLOAD DATE AND TIME

MR.S.M.BANDEKAR

(S.G.STENOGRAPHER)

NAME OF STENOGRAPHER

Name of the Judge (With Court Room No.)	H.H.J.Shri S.C.Khati Court Room No.1
Date of pronouncement of Judgment/Order	26/04/2018
Judgment/Order signed by P.O. on	29/05/2018
Judgment/Order uploaded on	13/07/2018