

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

INTERIM APPLICATION (L) NO.15139 OF 2024

IN

NOTICE OF MOTION NO.396 OF 2017

IN

COMMERCIAL SUIT NO.524 OF 2017

Ratilal Ambalal Saparia & Ors.

... Applicants

(Original Defendant Nos.3 to 6)

In the matter between

Azadi Mario Stanislaus Rodrigues

& Ors.

... Plaintiffs

Vs.

M/s. Kamla Mahesh Developers & Ors.

... Defendants

WITH

COMMERCIAL SUIT NO.524 OF 2017

WITH

CHAMBER SUMMONS NO.229 OF 2017

IN

COMMERCIAL SUIT NO.524 OF 2017

WITH

INTERIM APPLICATION (L) NO.2442 OF 2023

IN

COMMERCIAL SUIT NO.524 OF 2017

Mr. Sushant Arora i/by L R & Associates for the Plaintiffs.

Mr. Mayur Khandeparkar a/w Vikram Singh Garewal a/w Parth Jasani i/by M/s.

This order is corrected as per speaking to minutes order dated 13th September 2024.

Mugdha

Purnanand & Company for the Applicant/Original Defendant Nos.3 to 6 in IAL No.15139 of 2024.

Mr. Vishal Raman, Counsel a/w Nanki Garewal, Manasi Joglekar i/by Wadia Ghandy for the Applicant in IAL No.2442 of 2023/Original Defendant No.8.

CORAM : ARIF S. DOCTOR, J.

DATE : 4TH SEPTEMBER 2024

P.C. :

1. The matter was heard for some time.

2. Both these Interim Applications will have to be heard finally. Pleadings are complete.

3. Mr. Khandeparkar, Learned Counsel appearing on behalf of the Applicant in Interim Application (L) No.15139 of 2024 submits that the Plinth Commencement Certificate of the building has now been obtained and project is also registered under RERA, therefore, in terms of the consent terms entered into between the parties, the Applicants shall issue letters of allotment against certain balance consideration due and payable by the flat purchasers, who are duly certified.

This order is corrected as per speaking to minutes order dated 13th September 2024.

Mugdha

4. Mr. Arora, Learned Counsel today enters appearance on behalf of all the flat purchasers, some of whom are the Plaintiffs in the Suit. He submits that the flat purchasers will have no problem in making payment as per the letters of allotment, provided that they are satisfied of the title of the Applicant to carry on the construction.

5. To this, Mr. Khandeparkar submits that the consent terms are very clear in as much as the same disclosed the fact that a prior title suit had been filed and pending in the City Civil Court. He submits however that the stay granted in the Suit was set aside in the Appeal by this Court. He thus submits today that there is no stay on the project being processed with. In any view of the matter, this is wholly irrelevant because the flat purchasers were always aware of this fact when the consent terms were entered and since the consent terms makes specific reference to the said Suit and also provides for the exit mechanism which infact some flat purchasers has availed of. He fairly submits that in that event any of the present Plaintiffs have or other flat purchasers have any apprehension of proceedings with the payment of consideration, they shall be offered exist in terms of the consent terms. However, he submits that the flat purchasers to whom letters of allotment are to be issued, cannot on this ground withhold payment of the balance consideration, that is due and payable in respect of their said flats.

This order is corrected as per speaking to minutes order dated 13th September 2024.

6. Interim Application filed by original Defendant No.8 shall also be heard and disposed of on the next date.

7. Stand over to 10th October 2024.

(ARIF S. DOCTOR, J.)