

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

WRIT PETITION NO.2952 OF 2018

Shri Umesh Chandiware & Ors.

... Petitioners

Vs

The State of Maharashtra & Ors.

... Respondents

Mr.Kevic Setalwad, Senior Advocate i/b A.S. Gaikwad for the
Petitioners

Mr.A.L. Patki, Addl. G.P. for Resp. Nos.1 to 5

Ms.Kiran Bagalia for Resp. No.6 & 8

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATED: OCTOBER 1, 2019

P.C.:

1. In the order dated 22.2.2012 in Public Interest Litigation
No.131 of 2008 and other connected Public Interest Litigations, the
Court had besides others, given the following direction:

"(h) The developer shall sell to the State Government from
such construction such of the flats or units as would
represent 15% of the total FSI of the total plot consumed
under the development @ Rs.135/- per sq.ft. and the State
Government shall offer those flats to be purchased by the
employees of the State Government at the aforesaid rate in a
transparent manner."

2. Our query with the government has, therefore, been as to how much does 15% of the total FSI of the total plot consumed under the development constitute. Alongwith an affidavit dated 16.9.2019 filed by one Samadhan Khatkale, Under Secretary, Urban Development Department, pursuant to our orders dated 12.2.2019 and also 1.8.2019, a copy of the order dated 3.10.2017 passed by Division Bench in Civil Application No.36 of 2017 has been produced. The Civil Application was filed by the developer. One of the prayers being :

"(b) that it be clarified that the Applicants are required to sell aggregate area of 17,146.5 sq.mtrs to the State Government to comply with the remaining obligation under clause 8(ii) of the Tripartite Agreement."

3. In response to this application, the State Government had in reply affidavit accepted the stand of the developer that it has already handed over a portion of the constructed area and balance area of 17146.5 sq.mtrs remains to be handed over to the State Government so as to constitute 15% of the total FSI. In view of the stand taken by the Government, the Court made the following observations:

"5. In the light of admitting the said factual position, with regard to the aggregate area, we are of the opinion that so far as prayer clause (b) is concerned, the obligation of the application is only to the extent of aggregate area of 17,146.5 sq.mtrs to be sold at Rs.135/- per sq.feet to the State Government."

4. During the course of arguments, we had enquired with the learned AGP about the basis of this calculation of 17146.5 sq.mtrs. of built up area in the balance which the developer would have to surrender to the government to achieve 15% of the total FSI of the total plot consumed as per the order dated 22.2.2012. He stated that he does not have such calculations readily available but would provide the same on the next date of hearing.

5. S.O. to 15.10.2019, when the respondents shall place on affidavit the computation of the said remaining constructed area that the developer had to surrender to the government to comprise of 15% of the total FSI of the total plot.

(S.J. KATHAWALLA, J.)

(AKIL KURESHI, J.)