

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

**NOTICE OF MOTION (L) NO.2295 OF 2018
IN
COMMERCIAL SUIT NO.206 OF 2016**

Rekha S. Jain
And Another ... Plaintiffs
Versus
Skyline Construction Co.
And Others ... Defendants

**ALONG WITH
NOTICE OF MOTION (L) NO.85 OF 2016
IN
COMMERCIAL SUIT (L) NO.126 OF 2016**

Jignesh Manhar Rathod
And Another ... Plaintiffs
Versus
Skyline Construction Co. ... Defendant

**ALONG WITH
NOTICE OF MOTION (L) NO.107 OF 2016
IN
COMMERCIAL SUIT (L) NO.151 OF 2016**

Mukesh Lalu Depchandani
And Another ... Plaintiffs
Versus
Skyline Construction Co. ... Defendant

**ALONG WITH
NOTICE OF MOTION (L) NO.144 OF 2016
IN
SUIT NO.563 OF 2017**

Bakir Hussain Zakir Hussain
Shaikh And Another ... Plaintiffs
Versus

Skyline Construction Co. ... Defendant

**ALONG WITH
NOTICE OF MOTION (L) NO.73 OF 2017
IN
COMMERCIAL SUIT (L) NO.80 OF 2017**

Kinjal M. Shah
And Another ... Plaintiffs
Versus
Skyline Construction Co. ... Defendant

**ALONG WITH
NOTICE OF MOTION NO.113 OF 2017
IN
COMMERCIAL SUIT NO.160 OF 2017**

Rajeev R. Chaudhari
And Another ... Plaintiffs
Versus
Skyline Construction Co. ... Defendant

**ALONG WITH
NOTICE OF MOTION NO.173 OF 2018
IN
COMMERCIAL SUIT NO.206 OF 2017**

Bhaskar Verma
And Another ... Plaintiffs
Versus
Skyline Construction Co. ... Defendant

**ALONG WITH
NOTICE OF MOTION NO.283 OF 2017
IN
COMMERCIAL SUIT NO.328 OF 2017**

Mrs. Pratibha Ladha
And Another ... Plaintiffs

Versus
Skyline Construction Co. ... Defendant

**ALONG WITH
NOTICE OF MOTION NO.284 OF 2017
IN
COMMERCIAL SUIT NO.346 OF 2017**

Ansuya Prasad Purohit
And Another ... Plaintiffs
Versus
Skyline Construction Co. ... Defendant

**ALONG WITH
COMMERCIAL SUIT (L) NO.321 OF 2017**

Yashasvi H. Mehta
And Another ... Plaintiffs
Versus
Skyline Construction Co. ... Defendant

**ALONG WITH
NOTICE OF MOTION (L) 344 OF 2017
IN
COMMERCIAL SUIT (L) NO.321 OF 2017**

Ruti Y. Mehta ... Plaintiffs
Versus
Skyline Construction Co. ... Defendant

**ALONG WITH
NOTICE OF MOTION NO.607 OF 2017
IN
SUIT NO.658 OF 2017**

Anjali Ajit Rao
And Another ... Plaintiffs
Versus

Skyline Construction Co. ... Defendant

**ALONG WITH
NOTICE OF MOTION NO.627 OF 2017
IN
COMMERCIAL SUIT NO.685 OF 2017**

Prachi Bhobe
And Another ... Plaintiffs
Versus
Skyline Construction Co. ... Defendant

**ALONG WITH
NOTICE OF MOTION NO.2094 OF 2017
IN
SUIT NO.659 OF 2017**

Mr. Mehul A. Gor
And Another ... Plaintiffs
Versus
Skyline Construction Co. ... Defendant

**ALONG WITH
NOTICE OF MOTION NO.108 OF 2018
IN
COMMERCIAL SUIT NO.710 OF 2017**

Chandralata H. Asarpota
And Another ... Plaintiffs
Versus
Skyline Construction Co. ... Defendant

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Mr. Rohan Sawant a/w Mr. Tushar Gujjar and Ms. Prachi Bhobe I/b Solicis Lex for the Applicants/Plaintiffs.

Ms. Neha Joshi I/b Vidhii Partners for Defendant No.1.

Mr. Joaquim Reis, Senior Advocate a/w Mr. R.Y. Sirsikar for Defendant No.2-MCGM.

Mr. Jayesh Desai I/b Singhi & Co. for Respondent No.3 (Bank of Baroda) in Notice of Motion (L) No.2295 of 2018.

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CORAM : S.C. GUPTE, J.

DATE : 28 MARCH 2019

P. C. :

. This notice of motion is taken out in a pending Commercial Suit, seeking appointment of a Court Receiver. The case of the Applicants, who are original plaintiffs in the suit, is that contrary to the assurance given to the Court, and which is recorded in a detailed order passed by this Court on 4 May 2018, defendant No.1-developer (Respondent no.1 herein and original defendant no.1 to the commercial suit) has not completed construction of the building, where the Applicants/Plaintiffs have agreed to buy flats. Learned Counsel submits that defendant No.1 has overshoot the timeline provided in the order dated 4 May 2018 by a substantial margin. Learned Counsel, in the premises, submits that Court Receiver, High Court, Bombay, should be appointed as receiver of the project with right to complete the remaining project. On the other hand, it is submitted by learned Counsel for Respondent No.1 that no further construction can take place as a result of change of policy as notified by the Municipal Corporation of Greater Mumbai ("MCGM") for issuing commencement certificate ("CC"). The policy, in particular, relates to the requisite open spaces to be maintained in the compound of the building. It is submitted that open spaces maintained in the project are in accordance with the old policy and on their basis all sixteen buildings have already come up at site. It is submitted that further CC has not been issued by MCGM on account of deficiency in maintaining open spaces in accordance with the current development policy of MCGM.

2 MCGM, for its part, through its learned Counsel, submits that

considering the hardship that the stakeholders have to suffer in pending projects as a result of change of policy midway during their execution, where part CCs for further constructions are held up due to this change, MCGM is considering a transitional policy. Learned Counsel submits that most of the aspects of this transitional policy have already been deliberated upon and decided by MCGM, but the issue of open spaces still remains unresolved. It is submitted that this issue is proposed to be resolved shortly.

3 In the facts recounted above, this Court is of the view that appointment of Court Receiver for completing the balance project can only be considered when transitional policy of MCGM is in place. Until such policy is put in place, as confirmed by learned Counsel for MCGM, no construction can take place in the suit project. MCGM, in the premises, is directed to place all relevant facts concerning formulation of transitional policy on record through an affidavit. Such affidavit may be filed within **ten days** from today.

4 One more aspect, which deserves consideration, is that the plaintiffs/flat purchasers have invested their hard earned money in the project, which is badly stuck up for the last many years. When the project was conceived and monies were obtained from flat purchasers, it was envisaged that the construction would be completed by 2012. We are in 2019 and there is no end in sight. In the circumstances, it is imperative that some other effective interim relief, apart from appointment of Court Receiver should also be considered, subject to any transitional policy of MCGM. It transpires from the facts placed before this Court in the affidavit

in support of notice of motion that defendant No.1-developer has already agreed in a joint meeting held with the flat purchasers to compensate them by way of interest on their amounts deposited with the developer so far. Infact this interest was agreed to be paid after 31 March 2018 and till the date of possession. Even the rate of interest was agreed to by Defendant No.1. This court proposes to consider this aspect on the next date.

5 It also transpires that Defendant No.1 has already created third party rights in the nature of mortgage of the entire project, including unsold flats in it, noticed in the last order passed by this Court, i.e. order dated 4 May 2018. Though technically, Defendant No.1 cannot be said to have acted in breach of that order, since the order requires Defendant No.1 not to sell flats except in the manner stated therein or create any third party rights after the date of the order and mortgage is created much prior to the date of the order, it is quite apparent that creation of these third party rights and their enforcement by the mortgagee (Bank of Baroda) as far back as in 2017, was not disclosed to this Court. In any event, a definite impression was given to the court when it passed its order dated 4 May 2018 that these unsold flats are unencumbered. Today, Bank of Baroda claims that it has not only issued orders under Sections 13(2) and 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act"), but has gone ahead and obtained suitable orders from the Magistrate's Court under Section 14 of SARFAESI Act and claims to have taken even symbolic possession of all unsold flats. This also is a serious aspect, which would have to be deliberated and decided on the next date of hearing.

6 All the notices of motion are stood over to **15 April 2019** at 03.00 p.m.

(S.C. GUPTE, J.)