



Mayur Khot.

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

NOTICE OF MOTION (L) NO.2049 OF 2018

IN

SUIT NO.1174 OF 2018

RNA Palazzo Residents Welfare Association

...Applicant /  
Plaintiff

*Versus*

East and West Builders and Ors.

...Defendants

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Mr. Mayur Khandeparkar a/w Ms Sneha Prabhu i/b. Ms. Kinnari Mehta for the Applicant /Plaintiff.

Mr. Nilesh Ojha a/w Mr. Tanweer Nizam, Hania Shaikh Ms. Manali Jain i/by Dipashri Raorane for Defendant No.1.  
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CORAM : R.I. CHAGLA J

DATE : 2 May 2023

ORDER :

1. The Plaintiff Association and the Defendant No. 1 in the above Notice of Motion have agreed for an order to be passed, in view of the Plaintiff Association taking over the construction of the subject project.

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2. By this suit, the Plaintiff Association comprising of 78 Flat Purchasers are seeking specific performance of their respective Agreements/allotment letters in context of a Project known as RNA Palazzo partly constructed by Defendant No. 1 on a property bearing CTS No. 283A and 283B and Survey No. 92 admeasuring 5233.3 square meters at Kandivali West, Taluka Borivali. Presently, the building has been partly constructed upto 14 floors i.e 16 slabs. Admittedly there has been no construction activity since the year 2012.

3. In this suit, the Plaintiff Association has taken out a Notice of Motion (L) No. 2049 of 2018 seeking *inter alia* an appointment of Receiver for the purpose of completion of the building. Learned Counsel for the Plaintiff appearing on behalf of the Plaintiff seeks reliefs in terms of prayer clauses (a)(i), (iii), (iv) and (vii) of the Notice of Motion with liberty to seek other reliefs at a later stage as and when necessary. At the hearing of the said Notice of Motion on 19<sup>th</sup> August 2019, the learned Counsel appearing on behalf of Defendant No. 1 upon instructions stated that Defendant No. 1, Mr. Anubhav Agarwal, who was present in court, is agreeable to have a Court Receiver appointed for the purpose of completion of

the project. Thereafter, the matter has been adjourned from time to time for the purposes of considering the terms upon which the Court Receiver, High Court, Bombay can be appointed for the purpose of completing the project.

4. Having considered relevant facts and rival submissions, Plaintiff and Defendant No. 1 are agreeable for the following order:

(a) The Notice of Motion is allowed in terms of prayer clauses (a)(ii), (iii), (iv) and (vii), with the following modifications:

(a)(ii) this Hon'ble Court be pleased to appoint a Court Receiver under the provisions of O. XL of the Civil Procedure Code and hand over possession of the said project "RNA PALAZZO" to the Plaintiff Association with powers to sell unsold flats, transfer, settle and/or compromise with third parties, make and receive payments and complete the construction through self development and complete the project by appointment of a contractor, PMC, architect and

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such other agency under the supervision and control of the Hon'ble Court Receiver High Court Bombay;

- (iii) That this Hon'ble Court be pleased to pass an order in the nature of temporary injunction restraining the Defendant No.1 and the Respondents from interfering and/or intermeddling with the construction of the project "RNA PALAZZO" by the Court Receiver and/or its nominees and/or appointees and/or agents of the Court Receiver and/or the Plaintiff Association and/or its nominees and/or appointees and/or agent/s entity appointed to complete the project "RNA PALAZZO";
- (iv) that this Hon'ble Court be pleased to order and direct the Defendant No.1 by way of a mandatory injunction calling upon the Defendant No.1 to hand over in its possession and custody all original documents / certified copies / copies, including but not limited to all the flats sold under an agreement for sale and/or allotment letters, receipts of payments, copies / original latest sanction plan, original / copy of the approvals and sanctions and/or

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any other document in its custody, in respect of this project "RNA PALAZZO" within a period of 2 weeks from the date of the order;

(vii) That this Hon'ble Court be pleased to direct the Court Receiver, High Court Bombay to open an Escrow Account in a Nationalised Bank for the purposes of all transactions (sale, purchase, transfer) in relation of the project "RNA PALAZZO" including and not limited to deposit of balance flat sale consideration by the members of the Plaintiff Association as well as other flat purchasers, for the purposes of payment to various authorities etc;

(b) The said project is now to be completed by the Plaintiff Association through self development. The Plaintiff association has resolved at a meeting held on 20<sup>th</sup> February 2021 that the project would now comprise of a building with Ground + Podium + 26 floors and having 117 flats. These 117 flats shall be constructed for a total of 84 flat purchasers (out of which 78 flat purchasers form part of the Plaintiff Association) and 10 flats to be

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allotted to Defendant Nos. 2 and 3 towards the reservation concerning public housing. Balance 5 flats would be sold by the association for the purpose of generating funds which shall be employed towards costs for completion of the said project. Certain members of the Plaintiff Association who had been allotted flats on higher floors have agreed to accommodate themselves in the lower floors of the building to be constructed. It is expected that the Plaintiff Association shall take appropriate decisions for rearranging flats amongst themselves to the satisfaction of its members by passing appropriate Resolutions in that regard. Additionally, there are 6 Flat Purchasers who have not yet joined the Plaintiff Association. These 6 Flat Purchasers shall be at liberty to subscribe to the membership of the Plaintiff Association on such terms as were available to the other members and will be afforded parity in that regard.

- (c) In a further affidavit dated 7<sup>th</sup> October 2022, the Plaintiff Association has stated that a 13-member Committee which has been referred to as Project Completion

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Committee has been duly elected and/or nominated by the Plaintiff Association for the purpose of being appointed as the agents of the Court Receiver. The Committee shall carry out the following work and act on the following terms:

- (i) To complete the said project in a time bound manner, without any interference from the said Developer or other parties previously involved with the Project, till the Occupation Certificate is procured and peaceful possession of flats is handed over to the flat purchasers.
- (ii) To appoint and nominate a Project Management Consultant, Contractor, and any other necessary parties to complete the said project including obtaining Occupation Certificate on a self-development basis in the interest of timely and cost-effective execution.
- (iii) The Agent of the Court Receiver shall have the powers to limit the construction up to certain floors such that it accommodates all flat purchasers

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and creates least financial burden, if at all, in terms of escalation amounts on the flat purchasers but only after obtaining consent from majority members of the Association and by passing necessary resolutions.

- (iv) To enter into Agreement for Sale / Flat Purchase Agreement / Rectifications Agreements with the current as well as future flat purchasers / allottees to the extent of the flats being constructed by the Association, as per the provisions of MOFA / MahaRERA, any Rectification Deeds required for flats already registered or any other agreement / deed / legal document to be executed, as the case may be, and nominate a representative to execute the same on behalf of the Defendant No.1 Developer.
- (v) To open an Escrow Bank Account for the purposes of collecting the balance outstanding consideration and/or any escalated amounts/ costs/ contributions from the flat purchasers and make



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payments as required. The Agent of the Court Receiver so appointed shall within seven days of the opening of such an account inform the Court Receiver and provide details of the said account.

- (vi) To appoint, engage and enter into agreements and make payments to the Contractor, Architect, Security guards, Project Management Consultant, Chartered Accountants, towards cost of construction, all statutory taxes and dues, charges, premiums and/or other requisite payments required for completion of the said project from the said Escrow Account.
- (vii) To make payments of outstanding amounts to planning authorities i.e. MCGM (statutory dues, charges, levies, premiums, etc.) for the purpose of commencement and completion of the project and incur expenditures as necessary for the purposes of completion of the project. In case of any other liabilities other than those mentioned herein and upon establishing these as legitimate

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responsibilities of the Association, the same shall be subject to such orders as it may be passed in the present pending suit.

- (viii) To provide a status report of the steps taken in the completion of the project along with bank statements of the Escrow Account to the Court Receiver on a monthly or quarterly basis.
- (ix) To utilise the unsold inventory (flats) in the Project to the extent of the flats to be constructed by the Association on the ground plus 27 floors as proposed, to various third-party flat purchasers / investors / prospective allottees at a price which shall not be lower than the ready reckoner rate for the time being in force. In case of any clarifications / impediments in execution and sale of the unsold inventory (flats), liberty to apply to the Court for necessary directions. To receive all considerations / balance considerations/ contributions from the members of the association / flat purchasers in the designated

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Escrow Account only and that no amounts shall be taken on personal account by the Association or its members or accept cash or kind considerations in any manner whatsoever.

- (x) To complete the Project to the extent of ground plus 27 floors as proposed, and as per its feasibility till Occupation Certificate is received and peaceful possession of flats is handed over to the flat purchasers. All decisions in respect of the completion of the said project shall be done by the said Committee/ Association by passing resolution of the majority. The minutes of the meeting shall be recorded and made available to members. The said Committee shall abide by the principles stipulated under the Maharashtra Co-operative Societies Act, 1960 and Rules framed thereunder, till the time the Society is formed and registered.
- (xi) To apply for amendment of the existing plans and/ or extending the project without affecting the

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Association members entitlement of area under the respective agreements / allotments.

- (xii) To take all necessary steps for the implementation of resolution dated 20<sup>th</sup> February 2021 as well as the feasibility report dated 15<sup>th</sup> April 2021, for the purposes of constructing the building till Ground Plus 27 floors and allocating/ allotting the flats purchasers of flats on the higher floors onto the lower floors by following the due process based on a resolution and with consent of majority of members.
- (d) The Project Completion Committee shall be responsible for day-to-day operation of the bank accounts which shall be opened in a nationalised bank. This bank account would be regarded as the designated account, through which all transactions relating to the project shall be undertaken. The Project Completion Committee shall employ an accountant and retain all bills and/or invoices in context of the payments to be made towards the project. A project report concerning all expenses

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relating to the project shall be filed by the Project Completion Committee on a quarterly basis with the Court Receiver, High Court, Bombay, which will be available to all concerned stakeholders for inspection, subject to them bearing necessary costs and charges as may be determined by the Office of the Court Receiver.

- (e) It is clarified that in case of any dispute or disagreement *inter se* the Project Completion Committee and/or the Plaintiff Association and/or Flat purchasers concerning the project completion, the same shall be resolved by them by employing the rule of majority at a meeting duly convened with a notice of not less than 7 days in that regard. If any further dispute or disagreement remain, any such affected party may initially apply to the Court Receiver, High Court, Bombay, who shall attempt to resolve the same after hearing all the parties concerned.
- (f) At this stage, the Plaintiff Association has estimated that the completion of the project would require the following approximate expenditure to be incurred

towards its completion:

BMC premiums and charges	7.66 crores (approx.)
Balance Construction upto 27 floors	43.57 crores (approx.)

As against the aforesaid expenditure, the receivables due from the members of the Plaintiff Association and or flat purchasers are estimated to be about 32.09 crores. These payments from the Flat Purchasers are due at various milestones in the manner as contemplated under their respective Agreements. However, it is stated by the Plaintiff Association that they shall by majority resolve for a new timeline towards payment by all its members/flat purchasers into the designated account. These payments shall then be utilised towards completion of the project. The Plaintiff Association shall also resolve to decide the proportion of contribution which would be required from its members of the Plaintiff Association/flat purchasers in addition to that mentioned in their respective Agreements. This is

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primarily because the balance receivable due from the members of the Plaintiff Association/flat purchasers itself is insufficient towards completion of the project, as can be seen from the estimated expenditure. The Plaintiff Association shall also be entitled to sell five residual flats and utilise the sale proceeds thereof towards cost of completion. In context of sale of these five flats, the Court Receiver High Court, Bombay shall be entitled to receive applications and/or conduct sale in the manner as may be agreed by the Plaintiff Association and file appropriate report to this Court for the purpose of confirmation of sale, as regards any such sale proposed to be undertaken concerning these five flats.

- (g) Project Completion Committee and/or Court Receiver, would be at liberty to apply in the present proceedings for appropriate orders as may be required on any aspects required for the project and for ensuring its expeditious completion.
- (h) It has been stated by the learned Counsel for Defendant No. 1 that Kotak Mahindra Bank has certain claims in

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relation to the receivables from the project, in response, the Learned Counsel appearing on behalf of the Plaintiff has stated that Notice of Motion (L) No. 1600 of 2018 filed by Kotak Mahindra Bank seeking impleadment in the present proceedings has already been rejected with a finding that any such claim as may be made by the said bank is to be decided in appropriate proceedings as may be filed by the same and that no order passed in the present proceedings would prejudice the rights and claims of the said bank. In view thereof, it is similarly clarified that nothing stated in this order would affect the rights and claims of Kotak Mahindra Bank.

- (i) All contentions and/or claims in context of residual FSI/TDR and/or development component upon completion of the building upto 27 floors are expressly kept open to be decided at an appropriate stage and/or proceedings.

5. MCGM shall extend all co-operation to the Court Receiver, High Court, Bombay and/or Project Completion Committee in granting expeditious approvals for the purpose of completion of



the present project. This is of course, subject to appropriate compliances and subject to payment of costs and charges in that regard. The Project Completion Committee shall be entitled to appoint its own architect and/or license surveyor who shall make necessary applications for revalidating and/or submitting appropriate applications in context of the plans and/or approvals concerning the project. BMC shall consider the said applications filed by the Architect and/or license surveyor as may be appointed by the Project Completion Committee without insisting on an NOC from the erstwhile License Surveyor / Architects appointed by Defendant No. 1. MCGM shall also make available a copy of the project file and/or any plans as may be required by the Project Completion Committee as expeditiously as possible and in any case within a period of one week from any such application being filed.

6. Mr. Nilesh Ojha, learned Counsel appearing for the Defendant No. 1 has submitted that there are certain pending cases/complaints filed by the flat purchasers regarding the construction of the subject project. He has submitted that in view of the Plaintiff Association having taken over construction of the subject project, the claims/complaints made by the flat purchasers are

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required to be addressed to the Plaintiff Association and for which suitable directions would be required to be issued in the above Suit and Applications taken out therein.

7. By keeping the issue of the claims/complaints filed by the flat purchasers regarding the subject project and completion thereof open to be addressed in any Application taken out by the Plaintiff Association for which liberty is granted and in which the Defendant No. 1 will be heard, the Notice of Motion is disposed of in the aforesaid terms.

8. Liberty to the parties to apply.

[ R.I. CHAGLA J. ]