IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION IN ITS COMMERCIAL DIVISION SUIT NO.30 OF 2016

Anand Laxmanrao Ambesange and Anr. ... Plaintiffs

versus

M.S.Shah Developers Pvt. Ltd. and Ors. ... Defendants

Mr. Srivastava i/by M/s. Maniar Srivastava and Associates, for Plaintiffs.

Mr. Sharique Nachan i/by M/s. Judicare Law Associates, for Defendant No.2.

Ms. Jyoti Chavan i/by Mr. Kunal Phoole, for Defendant No.3.

Mr. Arun Panicker, for Defendant Nos.4 and 5.

Mr. Mohd. Salim Mapkhan Shah, Defendant No.2 present.

CORAM: S.J. KATHAWALLA, J.

DATE: 27th FEBRUARY, 2018

P.C.:

1. The learned Advocates for the Plaintiffs and Defendant NO.3 have tendered Minutes of Order. They submit that the Minutes of Order be taken on record and an order be passed in terms of the said Minutes. The Minutes of Order is taken on record and marked 'X' for identification. The Minutes of Order are signed by the Advocates for the parties. Order in terms of the Minutes, marked 'X'.

(S.J.KATHAWALLA, J.)

Explanait XI-

IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION COMMERCIAL NOTICE OF MOTION NO. 16 OF 2016

COMMERCIAL SUIT NO. 30 OF 2016

Anand Laxmanrao Ambesange & Anr. ...Plaintiffs

Versus

M.S. Shah Developers Private Limited & Ors

..Defendants

Commence of the second

Date: 27th February 2018

MINUTES OF ORDER

- Breach of Undertaking / Agreement committed by Defendant No. 2 has been recorded in Order dated 12th February 2018. Accordingly the Court in the said Order recorded whether Defendant No. 3 is interested in taking up the Olive Project.
- On 14th February 2018, Defendant No. 3 submitted his 2. proposal for completing the Olive Project. The said proposal was placed before the Association of the Flat Purchasers of Olive Project ("AOP") in the meeting held on 15th February 2018.
 - The AOP has accepted the proposal of Defendant No. 3 in terms of Project Summary. Copy of Project Summary has been tendered by the parties and the same is taken on record and marked as **Exhibit "XY"** for identification.
 - In view of the aforesaid Defendant No. 3 agrees and undertakes 4. to do the following:-

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- (i) That Defendant No. 3 shall pay a sum of Rs.64 Lacs approximately towards the property tax due against the said Project within a period of one week from today.
- (ii) Defendant No. 3 shall submit the proposal upto 16th floor for its scrutiny, pay the necessary scrutiny fees and IOD deposit for the same within a period of two weeks.
- (iii) Defendant No. 3 within four weeks from the date of the issuance of the IOD upto 16th floor shall pay all the necessary charges / premium / fees to the MCGM required for the issuance of Commencement Certificate upto 16th floor.
- (iv) Defendant No. 3 shall within four weeks from the date of issuance of the IOD upto 16th floor load required Transferable Development Right (TDR) on the project for obtaining Commencement Certificate upto 16th floor.
- (v) Defendant No. 3 shall ensure execution and registration of Conveyance / Decree in respect of CTS No. 204 and 206 of the project plot within a period of 6 months from today.
- (vi) Defendant No. 3 shall open the bank account in the name of M.S. Shah Developers Pvt. Ltd. (Olive).
- 5. Defendant No. 3 alongwith one Mr. Kamlesh Sharma (being one of the flat purchaser and member of the AOP) shall open a joint account (Designated Bank Account) within a period of four weeks. The said Designated Bank Account to be operated for utilization of the deposits of the sale amounts of the commercial premises and for the deposits to be received from the flat purchasers of the said project in terms of the Project' Summary.

- 6. Defendant No. 3 has furnished a copy of flow / bar chart in respect of the said Project, where time frame has been stipulated from the date of the issuance of the Commencement Certificate. The same is taken on record and marked as **Exhibit "XZ"** for identification.
- 7. Mr. Amol Shetgiri of M/s. Shetgiri & Associates has been appointed as the Project Manager to supervise the Project.

 Defendant No. 3 undertakes to pay his professional fees to supervise the Project within a period of two weeks from raising his invoice.
- 8. The properties mentioned in Project Summary Stage II shall be transferred to the Contractor and/or his nominee only after the Project Manager certifies the work set out in Stage II as complete. The properties mentioned in the Project Summary Stage IV shall be transferred to the contractor and/or his nominee in stage-wise manner only after the value of the work certified by the Project Manager is more than the value assigned to the said properties.
- 9. Defendant No. 3 shall be entitled to utilize the maximum potential of the project plot.
- 10. Defendant No. 3 shall inform the Advocates for Defendant Nos.4 and 5 about the progress of the said Project every month in writing.
- 11. The members of the AOP agree to deposit amounts in terms of Project Summary in Designated Bank Account. The AOP shall bring in a sum of Rs. 4,50,00,000/- (Rupees Four Crores And Fifty Lacs Only) upon casting of the slabs upto 16th floor of Olive project and the remaining payment would be paid by the

flat purchasers as per their respective Agreements and/or their Allotment Letters and the same shall be deposited in the Designated Bank Account. The flat purchasers above 16th floor shall start paying the remaining amount only upon receipt of CC upto 22 floors as per their respective Agreements and/or their Allotment Letters. The consideration payable by the flat purchasers shall be deposited in the Designated Bank Account.

- 12. The Defendant No.1 & 3 shall execute necessary Agreement for Sale with the Flat Purchasers and get the same registered as and when required by the respective flat purchasers. Stamp duty and registration charges shall be borne by the respective flat purchasers.
- 13. The provisions of Consent Terms dated 9th December, 2016 shall remain in force. The effect and operation of orders dated 8th July, 2016, 24th August, 2016, 7th October, 2016, 23rd October, 2017 and the injunction against the properties stated in the various Affidavits filed by Defendant Nos.1, 2 & 3 from time to time in this Hon ble Court shall continue to remain in force until further orders save and except as modified herein.
- 14. In the event, any of the conditions and/or undertaking enumerated herein are breached, AOP would have an option to sell under the supervision of this Hon'ble Court all the properties enumerated in the Consent Terms dated 9th December, 2016 and in various Affidavits filed by Defendant Nos.1, 2 & 3 from time to time, to complete the construction of the building or to seek refund as agreed under the Consent Terms dated 9th December, 2016.

15. If the amount recovered from sale of properties mentioned in the Consent Terms dated 9th December, 2016 and various affidavits filed by Defendant Nos.1, 2 & 3 is not sufficient to defray the aforesaid refund, this Hon'ble Court would constitute a Committee of three officers to identify the immovable properties of Defendant Nos.1, 2 & 3 and immediate family members of Defendant Nos.2 & 3 and get value of those properties evaluated with the assistance of revenue department and attach the same forthwith and the same would be sold under the supervision of this Hon'ble Court and sale proceeds would be expropriated firstly towards expenditure incurred identifying and selling the same and then towards making balance payment to the members of the AOP.

Sdl-Adr for Plainhffs

Sd/-Adv for Del No.3

Sdl-Adv. For Def No. 4 Cs If the amount recovered by the color of the color and various the Consont Terms dassed we have a color of the color and various affidiances fined by the substance of the color of the fine the color would define the appropriate of the color of the color

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29/-Adv for Dej No.3

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PROJECT SUMMARY

| | | | <u>204, 206</u> | of the conveyances in favour of Defendant No. 1 in respect of CTS No. | <u>area</u> Stamp duty and | 16 th floor till obtaining the OC of commercial | II. Casting of slabs till | | | I. CC till 16 th Floor | | | STAGE |
|---|--------------------|-------------------------------------|--|---|---|---|--|--|---|---|-------------------------|-------------|---------------|
| | Total | | (v) Construction cost till completion of commercial premises | (iv) Casting of 14 th to 16 th slabs | (iii) Stamp duty and registration charges for CTS 206 | (ii) Stamp duty and registration charges for CTS 204 | (i) Approximate amount to be paid to the owners of CTS No. 204/206 | • | Total | (ii) Cost for obtaining CC from BMC inclusive of Architect's fees and other miscellaneous expenses including the cost of TDR to be loaded for construction upto 16 th floor. | (i) Tax assessment due | Particulars | OUTFLOW |
| | 6,29,05,407.00 | | 3,57,89,400.00 | 1,74,45,708.00 | 57,86,543.00 | 28,83,756.00 | 10,00,000.00 | The second secon | 70255720.00 approx. | 6,35,55,720.00 | 63,00,000.00 approx. | Rs. | |
| , | | | | December 2016 at Clause No. 1(iii) given towards the adjustment for value of Rs.7,55,63,200 to the contractor and/or his nominee. | | | | | The monies will be intused by Derendant No. 3 uii uiis stage. | | | Particulars | INFLOW RS. |
| | Rs. 7,55,69,200.00 | 1 | | | | | | | approx. | | | Rs. | |
| | | to be utiliz e IV 6,63,793.00 | Excess amount in | | | | | | | | | | AMOUNT |

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| | <u>building.</u> | floor of residential premises ,passenger lift and fire fighting and obtaining of OC of entire | IV. Completion of construction work and finishing from 2 nd to 22 nd (i) | | | 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 | ined ential dered | | STAGE |
|---------------------|--|--|---|---------------------------------|--------------------|--|---|---|---------|
| Total | wie 4 | floor to 22 nd floor upto lock and key stage | casting of slabs till 22 floors and finishing work from 2 nd | | Total | | (i)Cost for obtaining CC from BMC inclusive of Architect's fees and other miscellaneous expenses. | | OUTFLOW |
| 21,97,97,866.00 | | 21,97,97,866.00 | | | 12,82,22,400.00 | | 12,82,22,400.00 Approx. | | |
| Total | (iv) Balance consideration to be received from the flat purchasers approximately The same to be received in a stage-wise manner agreed between the AOP and Defendants. | (iii) Adjustment to be taken against the transfer / sale of unsold Flats at Olive viz. 201, 204 and 1706 in favour of the contractor and/or his nominee. | (ii) Adjustment to be taken against the transfer / sale of Lailac Shops and flats mentioned in clause No. 1 (at Item No. vii, viii and ix) of consent terms dated 9th December 2016 in favour of the contractor and/or his nominee. | (i) Surplus from earlier stages | Total | (ii) Part payment by the flat purchasers of Project Olive upto 16 th floors to be deposited in designated account - | (i) selling the commercial premises of project Olive. Approximate realizable value to be deposited in designated account. | Expenses for obtaining the CC shall be realized from: | RS. |
| Rs. 24,08,37,753.00 | Rs. 10,00,00,000/- Approx. | Rs. 3,39,66,360.00 | Rs. 5,35,00,000/- | Rs. 5,33,71,393/- | Rs. 16,89,30,000/- | Rs 4,50,00,000/- approx. | | Rs.12,39,30,000/- approx. | |
| Rs. 2,10,39,887.00 | Section and the second of | | | | Rs. 4,07,07,600.00 | | Excess amount in Stage III to be utilized in Stage IV - Rs. | | AMOUNT |

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LIABILITIES ON DEFENDANT NO. 1 AND THE EXPENSES INCURRED BY DEFENDANT NO. 3 TO BE SETTLED FIRST FROM THE EXCESS AMOUNT AFTER STAGE IV AND MONICA VILLA SALE / TRANSFER IN FAVOUR OF DEFENDANT NO. 3 AND/OR HIS NOMINEE AFTER THE COMPLETION OF STAGE IV

| <u>Sr.</u> No. | <u>Particulars</u> | Amount Rs. |
|-------------------|---|-----------------|
| 1. | NIZAM MANSOORI | 14,99,000.00 |
| 2. | SHALU THAKUR | 7,95,800.00 |
| 3. | AJAY KALYANKAR | 5,00,000.00 |
| 4. | MAULESH BUCH | 5,66,000.00 |
| 5. | NIRAV BUCH | 5,66,000.00 |
| 6. | VISHAL PARMAR | 10,64,745.00 |
| 7. | PRADEEP ARYA | 15,00,000.00 |
| 8. | PARESH TO PAY SBI | 10,00,000.00 |
| 9. | JOHN LUCAS | 5,62,000.00 |
| 10. | SHAHIKANT GOHIL | 6,00,000.00 |
| 11. | JEETENDRA KHADE | 5,50,000.00 |
| 12. | CHIRAG SHAH DIFFERENCE IN AREA | 18,00,000.00 |
| 13. | BROKERAGE IN BHIMJIANI MATTER | |
| | (VISHAL JANI) | 15,91,158.00 |
| 14. | G.P PATEL SALIM'S PERSONAL LOAN | 5,00,000.00 |
| 15. | MODULAR KITCHEN IN SAMPLE FLAT | 78,000.00 |
| 16. | STATE BANK OF INDIA | 75,00,000.00 |
| 17. | INCOME TAX | 1,62,45,390.00 |
| 18. | SALES TAX | 10,12,135.00 |
| 19. | COURT FEE | 3,00,000.00 |
| 20. | AKIRAJ | 4,44,500.00 |
| 21. | SITE EXPENSES | 20,74,878.00 |
| 22. | MITULABEN SHAH | 96,64,000.00 |
| | Sub Total | 5,04,13,606.00 |
| 23. | Expenses incurred by Defendant No. 3 at | |
| | Stage I | 7,02,55,720.00 |
| | TOTAL | 12,06,69,326.00 |
| | | |

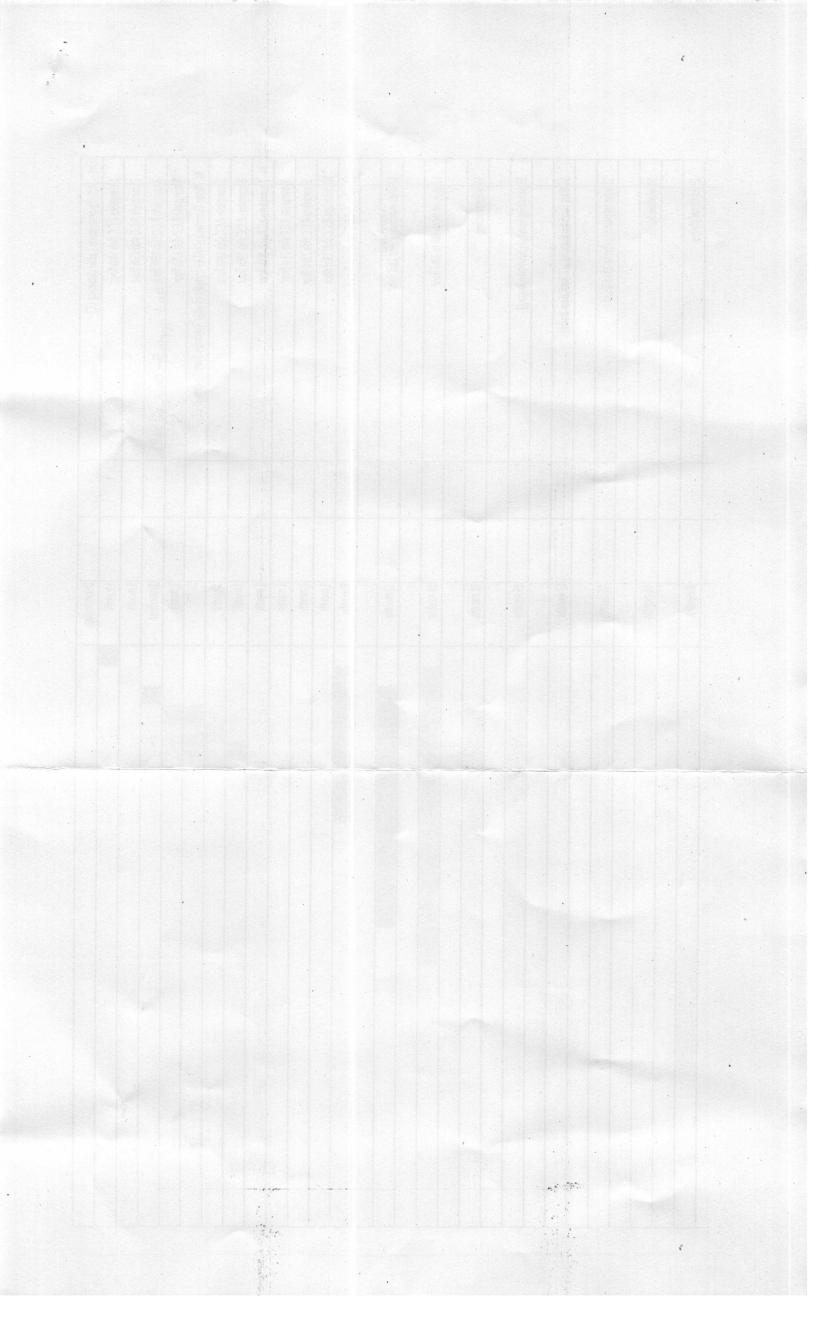
- Adjustment to be taken against the transfer / sale of Monica Villa mentioned in clause No. 1 (at Item No. (i)) of consent terms dated 9th December 2016 in favour of Defendant No. 3 and/or his nominee for value of Rs. 10,00,00,000/-.
- Excess amount remained after Stage IV Rs. 2,10,39,887.00.

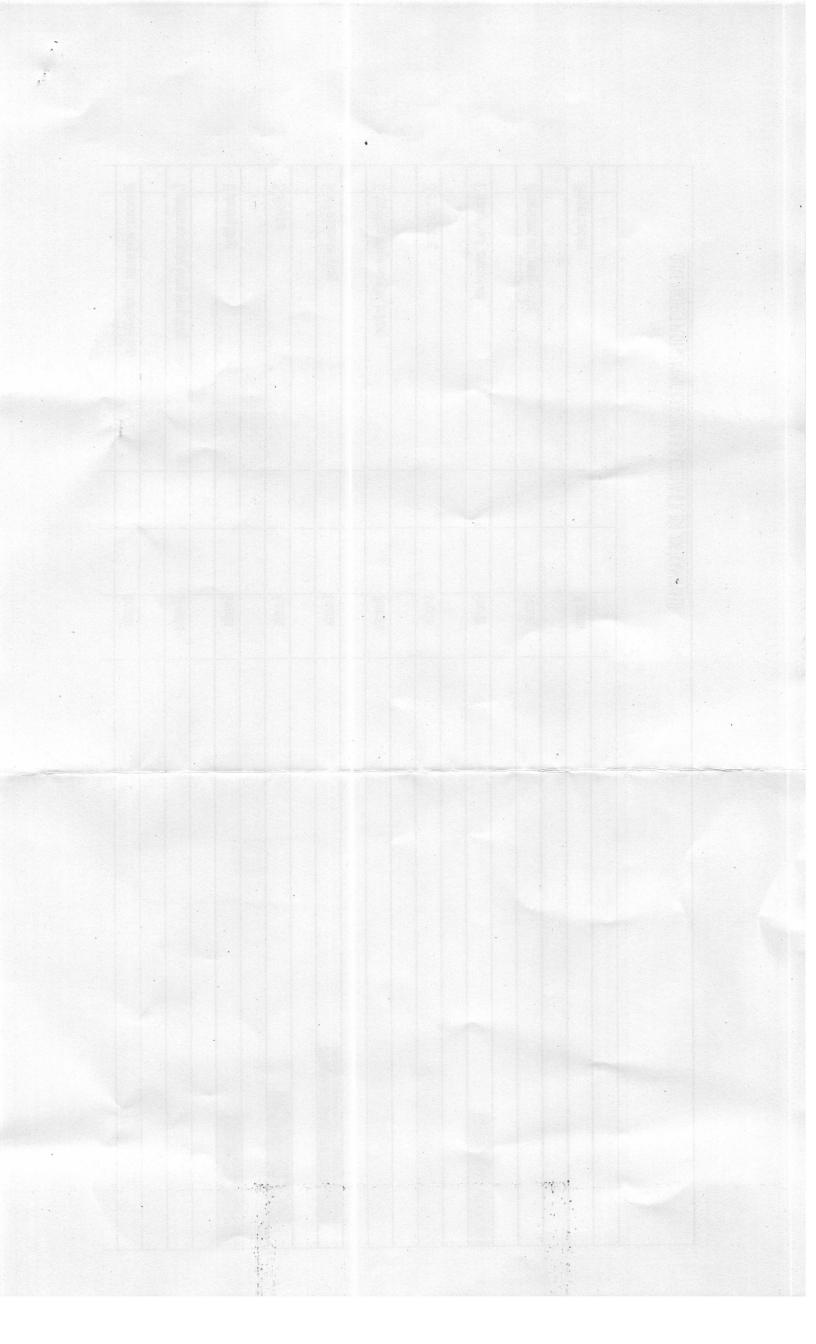
| COURT FEE | |
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| 19 external plaster | 18 window frame | 17 internal painting (1st to 23 rd floor) | 16 tiling (kitchen platform, w.c. bath, door frame) | 15 plumbing (sanitary,downtake,looping) | 14 waterproofing | 13 gypsum work 4th to 23rd floor | 12 brick machinery upto 23rd floor | 11 balance R.C.C basement & podium | 10 complete R.C.C slab 23rd floor | 9 complete R.C.C slab 22nd floor | 8 complete R.C.C slab 21st floor | 7 complete R.C.C slab 20th floor | 6 complete R.C.C slab 19th floor | 5 complete R.C.C slab 18th floor | 4a Note: Commerical will be completed after 3 months from the date of CC | 1 | 3 complete R.C.C slab 16th floor and apply for CC up to 22 24 | 2 complete R.C.C slab 15th floor | 1 complete R.C.C slab 14th floor | sr.no Activity description (after obtaining CC) |
|---------------------|-----------------|---|---|---|------------------|----------------------------------|------------------------------------|------------------------------------|-----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|--|---------|---|----------------------------------|----------------------------------|--|
| 6 months | 16 months | 16 months | 17 months | 16 months | 11 months | 14 months | 12 months | 8 months | | 1 month | | 1 month | 1 month | 1 month | | 1 month | 2 months | 1-month | 1 month | Duration days |
| | | | | | | | | | | | | | | | | | | | | |





OLIVE - KANDIVILI

RESOLUTION

* Meeting of all the glat purchasers under AOP samely olive & developers and flat purchasers. association is held a Shubbam Hall Kandivil. The said meeting was attended by Mr. Abdul Hamid Mapkhan & glab purchasers.

The developer has proposed as under 1) The developer will obtain ce upto 16th floor by paying requisite BMC charges that will be arranged by the developer namely Mr. Abdul

a) As per comunication with the exchitect the expected time of obtaining co with will be within I month goom

the order of the court

3) The developer will complete the costing of slabs upto requisite funds will be arranged by the developer.

4) After costing of the 16th slab, the flat purchasers upto 16th floor shall contribute/pory the 50% of the amount out of balance consideration payable by them After that bolance amount stall be paid by the to the developer

purchaser as per the progress of finishing work upto 16th gloor is a staggred manner subject to

architect Bertificate.

5) The developer is expecting further cc upto 22nd gloor within 2 months of 16th floor slab. After getting in principle approval from BMC the developer will call out another meeting of the flat purchaser above 16th floor.

6) The developer will propose for part Oc upto 16th gloor and bandover the possession upto 16th floor within 12

months from the date of cc.

7) After obtaining ca upto 16th floor the flat purchaser who intend to register their aggreement can get it done by paying applicable taxes & Stomp duty.

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(8) The developer has proposed to open a designated account with permission of court in joint some of a) Mr. Abdul Homid Maphan

b) Mr. Ashak Devictored Jain

e) Mr. Brijballabh Chondok

the account will be operated by all three jointy.

All the contributions of the purchasers will be in these account

9) All the flat purchasers suggested and developers agreeded to provide I parking for IBHK and 2BHK and 2 parking for 3BHK flats. The purchasers bave agreed to pay for the stack cost along with installation charges. No charges are to be paid for open to sky parking.

1) is recolution will be put up in front of the court for appropriate order

1) Signed by the developer

Mr. Abdul Hamid M. Shah

a) Signed by the purchasers as per attached list.

3) signed by AOP members

e) Mr. Ashok Devictored Jai

b) Mr. Brijballah Chandak

Peg (16/07/17.

ANNEXED TO THE RESOLUTION PASSED IN THE MEETING HELD ON OLIVE FLAT LIST WITH PAYME! 16 th JULY 2017

| Customer Name 791 Mr. Kishore Soni 791 Mrs. Poornima P Shah 1183 Mr. Nikhil Ulhas Thakur 791 Mr. Amish Patel & Mrs. Megha Patel 791 Mrs. Priya Arunkumar 1183 Mr. Mukumd Kuswah Chtendad Dethal 1235 Dr. Anand Ambesange and Dr. Sarita Ambesange 1183 Dr. Sarita Ambesange and Dr. Anand Ambesange 791 Mr. Prakash Alwani 791 Mrs. Sandra Fernandes 1183 Nikita Jaia 1235 Mrs. Ula and Narshi Hathiyani 1235 Mrs. Vinda Jain 791 Mr. Royston Blaise D'mello 791 Mrs. Sanita Rodrigues 1183 Mr. Rajeshwar Tiwari 1235 Mrs. Pushpa Bhimjiani 1235 Mrs. Pushpa Bhimjiani 1235 Mrs. Pushpa Bhimjiani 1235 Mrs. Pushpa Bhimjiani |
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| 791 Mrs. Poornima P Shah 1183 Mr. Nikhil Ulhas Thakur 791 Mr. Amish Patel & Mrs. Megha Patel 791 Mrs. Priya Arunkumar 1183 Mr. Mukund Kaswala CASENDAA DETHA 1235 Dr. Anand Ambesange and Dr. Sarna Ambesange 1183 Dr. Sarita Ambesange and Dr. Anand Ambesange 791 Mrs. Saadra Fernandes 1183 Nikita Jain 1235 Mrs. Uila and Naeshi Hathiyani 1235 Mrs. Uila Jain 791 Mrs. Sanita Rodrigues 1183 Mrs. Rujston Blaise D'mello 791 Mrs. Sanita Rodrigues 1183 Mrs. Pushpa Bhimjiani 1235 Mrs. Pushpa Bhimjiani 1235 Mrs. Pushpa Bhimjiani 1183 Mrs. Nilofer Jiwani 791 Mrs. Sakina Raja |
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| 02 | 1906 | 1513 | Mrs. Varsha Haresh Modi | -NACY- |
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| 03 | 2001 | 1513 | Mr. Rajesh Ömprakash Mehta | 18-48m |
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| 05 | 2003 | 791 | Mr. Rajesh Omprakash Mehta | 150 T |
| 06 | 2004 | 791 | Ms. Jigna Gangar | L) (0; - 1) |
| 07 | 2005 | 1183 | Mr. Jainarayan Agarwal | 15-A-50- |
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Teacher's Signature

PAGE NO.: 15-Feb-2018 Olive Flat purchasers direction of the flat purchasers Kandirli (west) at 7.00 hereby decided the proposal given Abdul hanid M. Shah Building time line approved members in the meeting 1) The Developer Shall obtain CC upto 16th floor within eight (8) weeks from the date of order of i) As it is necessary the get the project register with RERA Flat 10. Signature DEVELOPER I Igna amor 2004

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