

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

WP-2302-2019

WITH

IA-1-2020

Jayesh Jinabhai Gohil ... Applicant/Petitioner

Versus

Municipal Corporation of Greater Mumbai and others ... Respondents

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Mr. Vikhil Dhoka alongwith Mr. Yash Mistry and Mr. Jayesh J. Gohil instructed by GM Legal for the Applicant/Petitioner.

Mr. Abhishek Walawaikar for Respondent Nos.6, 7, 9, 11 and 13.

Mr. Rajesh Patil alongwith Ms. Rupali Adhate and Ms. Sheetal Metkari instructed by Ms. Aruna Savla for the MCGM.

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CORAM : S.J. KATHAWALLA AND**RIYAZ I. CHAGLA, JJ.****DATED : OCTOBER 8, 2020.****P.C. :-**

1. The grievance of the Petitioner-developer is that the Corporation is not granting completion certificate since the Petitioner is unable to produce Permanent Alternate Accommodation Agreements with all the original tenants. In our view the Corporation is justified in doing so.

2. We are now informed that out of the 15 original tenants, Respondent Nos.4, 10, 12 and 15 have already executed the Permanent Alternate Accommodation Agreements. Since Respondent No.12 has two units, Agreements have been executed in respect of five units/premises.

3. The Learned Advocate appearing for Respondent Nos.6, 7, 9, 11 and 13 states that Respondent Nos.6, 9, 11 and 13 have approved the Agreements and they shall execute the same within a period of two weeks from today. The statement is accepted. As far as Respondent No.7 is concerned, he has raised a dispute with regard to the area mentioned in the draft Permanent Alternate Accommodation Agreement. He undertakes to execute the Agreement within a period of two weeks from today, with liberty to file a suit with regard to his entitlement to the area in the new building, and obtain orders from the appropriate Court. The undertaking of the Respondent No.7 is accepted and liberty as sought is granted. The Advocate appearing for the Petitioner on instructions undertakes that the Petitioner shall abide by the final orders of the Court passed in any proceedings proposed to be filed by Respondent No.7. The undertaking is accepted.

4. As far as Respondent No.8 is concerned, he is not coming forward to execute the Agreement for Permanent Alternate Accommodation. The Petitioner has sent a letter at his last known address, but the same is returned back with a remark - "person not there". In view thereof, the Corporation shall accept a written undertaking from the Petitioner that he shall keep a flat vacant in the newly constructed building admeasuring 150 sq.ft. area. He shall on the plan also identify the premises which will be allotted to Respondent No.8 as and when he comes forward to execute the necessary Agreement/documents and accept possession of the premises which he is

entitled to receive. It is also made clear that if Respondent No.8 has any dispute qua the area, he will be at liberty to file legal proceedings as advised and obtain necessary orders. The Petitioner undertakes that the final order passed by any Court in any proceedings filed by Respondent No.8 in future, shall be binding on him and he shall comply with the same. The undertaking is accepted.

5. Respondent No. 5 – Mr.V.S.Matkar and Respondent No. 16 – Mr.Kishore M. Rajpurohit are present before the Court through video conferencing. They state that they have approved the Draft Agreement for Permanent Alternate Accommodation, and have confirmed the same in writing (annexed and marked as Exhibit 6 at page 719 and Exhibit 9 at page 722). They further undertake to this Court to execute the Agreement for Permanent Alternate Accommodation with the developer within a period of two weeks from today and get the same registered. The undertaking is accepted.

6. Respondent No. 14, who has two units and who is of advanced age has confirmed his approval in respect of the Draft Agreement for Permanent Alternate Accommodation. He is directed to execute the Agreement for Permanent Alternate Accommodation in terms of the Draft Agreement approved by him and get the same registered, by himself and / or through his Power of Attorney Holder within a period of two weeks from today.

7. The tenants who are interested in purchasing additional area, shall at present

execute the Agreement for Permanent Alternate Accommodation as drafted by the Petitioner, and the statement of the Advocate appearing for the Petitioner that after the project is registered with RERA, he shall execute a fresh Agreement with the tenants who are interested in purchasing additional area, is accepted.

8. The Corporation shall issue the commencement certificate to the Petitioner within a period of three weeks from the date of compliance of the required conditions being fulfilled/complied with by the Petitioner.

9. The above Writ Petition is accordingly disposed off. The above Interim Application is also disposed off.

10. This order will be digitally signed by the PA/PS of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(RIYAZ I. CHAGLA, J.)

(S.J. KATHAWALLA, J.)