

**CHANDRAKANT M. VITHLANI**  
**M. Com., LL.B.**  
**Advocate High Court, Bombay.**

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Date: 13<sup>th</sup> April, 2018

To:  
**Shivam Dev Infracon Private Limited,**  
2/13, Siddharth Nagar,  
Prabhodhan Krida Bhawan,  
Goregaon (West),  
Mumbai-400062

**Ref:** Investigation of your rights and entitlements to undertake the redevelopment of the land bearing old building/plot No. 29 in the layout of MHADA at D. N. Nagar, Andheri West, Mumbai; and forming part of the larger land of MHADA bearing CTS No. 195 (pt), Village Andheri, Taluka Andheri, Mumbai Suburban District and admeasuring 936.43 square meters or thereabouts ("**the Society's Land**") and the land bearing Plot no.29A admeasuring 588.87 square meters in the said layout of MHADA ("**the Adjoining Land**").

Dear Sirs,

1. On your instructions, I have investigated your entitlement to undertake the redevelopment of the Society's Land and the Adjoining Land more particularly described in the **First Schedule** and the **Second Schedule** hereunder written; and as requested by you, I am issuing this certificate in respect of your entitlement in respect thereof.
2. In the course of such investigation, I have caused searches to be taken with the offices of the Sub-Registrar of Assurances at Mumbai and Bandra for the years 1989 to 2018.
3. During the course of investigation, you have furnished to me copies of certain documents with regard to the Society's Land and Adjoining Land and I have perused the same and following appears therefrom:
  - a. The Maharashtra Housing and Area Development Authority (hereinafter referred to as "**MHADA**") is seized and possessed of the Society's Land, as the owner thereof, subject to the entitlements of one, D.N. Nagar Mamta Co-operative Housing Society Limited, a tenant co-partnership housing society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 under No. BOM/WK/HSG/OH/1309/1984 (hereinafter referred to as "**the Society**"), as elaborated hereinafter;
  - b. MHADA had constructed on the Society's Land, a building bearing no.29 comprising of ground plus 4 (four) storeys and containing 40 (Forty) self-contained flats (hereinafter referred to as "**the said Old Building**") and had



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allotted the various flats therein to various allottees;

- c. It was envisaged by MHADA at such time, that the various allottees of flats in the Old Building would form themselves into a co-operative housing society; and thereafter, MHADA would grant a lease in respect of the Society's Land and convey the said Old Building to and in favour of such co-operative housing society. The Society's Land and the said Old Building are hereinafter collectively referred to as "**the Society's Property**". The said Old Building has since been demolished, as elaborated hereinafter;
- d. Accordingly, the various allottees of flats in the said Old Building had with the consent and concurrence of MHADA had formed a co-operative housing society, being the said Society i.e. D.N. Nagar Mamta Co-operative Housing Society Limited;
- e. By and under a Lease Deed dated 12<sup>th</sup> December, 1995, MHADA has granted a Lease in respect of the Society's Land in favour of the said Society for a period of 99 (Ninety Nine) years commencing from 1<sup>st</sup> April, 1980, at and for the consideration and the rent reserved therein and on the terms and conditions, as more particularly stated therein. The said Lease Deed dated 12<sup>th</sup> December, 1995 is duly registered with Sub Registrar of Assurances at Bandra under serial no. BDR1-1597-1995 (hereinafter referred to as "**the said Lease Deed**");
- f. The Society had acquired ownership rights to the said Old Building by virtue of the Sale Deed dated 12<sup>th</sup> December, 1995 made and executed between MHADA of the one part and the Society of the other part. The said Sale Deed dated 12<sup>th</sup> December, 1995 is duly registered with Sub Registrar of Assurances at Bandra under serial no. BDR1-1599-1995 (hereinafter referred to as "**the said Sale Deed**");
- g. In the circumstances, by virtue of the said Indenture of Lease and the said Sale Deed, the Society became seized and possessed of the Society's Land, as the lessee of MHADA in respect thereof; and became entitled to the said Old Building, as the owner thereof;
- h. The Society has 40 (Forty) members who were occupying the premises in the said Old Building (hereinafter referred to as "**the Existing Members**");
- i. The said Old Building was in a dilapidated condition and beyond economical repairs and in view thereof, the Society was desirous of appointing a fit and a proper entity to undertake the redevelopment of the Society's Land by demolishing the Old Building standing thereon and constructing on the Society's Land, a new multistoried building (hereinafter referred to as "**the Proposed Building**"), by using and utilizing the entire available Floor Space

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Index (hereinafter referred to as “FSI”) available for consumption on the Society’s Land under the provisions of the Development Control Regulation for Greater Mumbai, 1991 (hereinafter referred to as “DCR”);

- j. By and under an Agreement for Development dated 2<sup>nd</sup> May, 2013, made between the Society of the one part and you viz. Shivam Dev Infracon Private Limited of the other part, the Society had granted development rights in respect of the Society’s Land to and in your favour; and has authorised you to undertake redevelopment of the Society’s Land by demolishing the said Old Building and constructing thereon the Proposed Building (hereinafter referred to as “**the Development Agreement**”). The said Development Agreement was registered with the Sub Registrar of Assurances at Andheri-3 under serial no. BDR9-3522-2013;
- k. Along with the said Development Agreement, the Society had also executed a Power of Attorney also dated 2<sup>nd</sup> May, 2013, in your favour for enabling you to effectively undertake redevelopment of the Society’s Land (hereinafter referred to as “**the PoA**”). The said PoA was duly registered with the Sub Registrar of Assurances at Andheri-3 under serial no. BDR9-3523-2013;
- l. Accordingly, you became entitled to undertake the redevelopment of the Society’s Land by demolishing the Old Building and construct the Proposed Building thereon, under the applicable provisions of the DCR;
- m. By and under Supplemental Agreement dated 30<sup>th</sup> March, 2017 (hereinafter referred to as “**Supplemental Agreement**”) made and executed between the Society and you, certain terms and conditions of the Development Agreement were mutually amended and supplemented at and for the consideration and on the terms as more particularly stated herein. Vide the Supplemental Agreement, the Society has interalia permitted you to amalgamate the redevelopment of the Adjoining Land with the Society’s Land (as described in Second Schedule hereunder written) as a single scheme of redevelopment. The said Supplemental Agreement was duly registered with the Sub Registrar of Assurances at Andheri-2 under serial no. BDR4-5804-2017.
- n. You have informed me that pursuant to the Development Agreement, the members of the Society had ~~had~~-vacated their respective premises in the Old Building and handed over the possession thereof to you and that you have in turn already demolished the Old Building;
- o. The Adjoining Land bearing Plot no.29A adjoins the Society’s Land and is also owned by MHADA. There exists on the Adjoining Land the building known as Office Building no.10 (hereinafter referred to as “**OB10 Building**”) on the Adjoining Land and the units/premises in the said OB10 Building are occupied

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by 8 (eight) persons as allottees of the MHADA (hereinafter referred to as "**OB10 Occupants**"). MHADA has not granted lease in respect of the Adjoining Land in favour of the OB10 Occupants and the said OB10 Occupants have not formed any co-operative society or other body of unit holders.

- p. By and under separate agreements made and executed between you and each of the OB10 Occupants, the said OB10 Occupants have consented to participate in the scheme of the redevelopment of the Society's Land to be amalgamated with the Adjoining Land as a single scheme of redevelopment on the basis that which all the OB10 Occupants would be allotted a permanent alternate accommodation in the Proposed Building to be constructed by you on the Society's Land and the Adjoining Land and each of the OB10 Occupants would also be admitted as members of the Society.
  - q. By and under an offer letter dated 24<sup>th</sup> March, 2017, issued by the MHADA, the MHADA has permitted the redevelopment of the Society's Land and Adjoining Land as a single scheme of the redevelopment subject to payment of premium of Rs.39,93,725/- as mentioned therein and on the other terms and conditions as set out therein. As per the terms of the said Offer Letter, certain constructed area is also to be allotted/provided to MHADA.
  - r. The said amount of Rs.39,93,725/- has been paid to MHADA on or about 24<sup>th</sup> March, 2017.
  - s. By and under an NOC dated 18<sup>th</sup> November, 2017 issued by MHADA to the Executive Engineer, Building Proposal Department (WS) of the Municipal Corporation of Greater Mumbai, MHADA has confirmed that MHADA has no objection to the redevelopment of the Society's Land and Adjoining Land as an amalgamated scheme of redevelopment on the terms and conditions set out therein.
  - t. As per the terms of the above referred documents, the existing members of the Society as well as the OB10 Occupants have become entitled be allotted certain premises in the Proposed Building, of such areas, as more particularly described in aforesaid documents. Further, as per the terms of the above referred documents you have been authorised to create third party rights in respect of the additional premises (other than the premises to be provided to the existing members of the Society as well as to the OB10 Occupants and to MHADA) in the Proposed Building (hereinafter referred to as "**the Sale Area**").
4. In the course of the searches caused to be taken by me with the offices of Sub-Registrar of Assurances, at Mumbai and Bandra from 1989 to 2018 as aforesaid, I have not come across any entries of registration of any documents, whereby your entitlement to put up

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construction of the Proposed Building on the Society's Land and the Adjoining Land may be adversely affected.

5. You have informed me that you shall be shortly making an application to the Maharashtra Real Estate Regulatory Authority for registering the project of construction of the Proposed Building under the provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA").
6. In the circumstances, subject to what is stated hereinabove, I am of the opinion that you viz. Shivam Dev Infracon Private Limited are entitled to undertake development of the Society's Land as well as the Adjoining Land by constructing Proposed Building thereon, as per the terms and conditions of the said Development Agreement, Supplemental Agreement and the other documents referred to hereinabove including the above referred NOC dated 18<sup>th</sup> November, 2017, granted by MHADA, in accordance with the approvals to be granted by the MCGM for carrying out and completing construction of the Proposed Building on the Society's Land and the Adjoining Land; and further that subject to your obtaining registration of the project of construction of the Proposed Building under the provisions of RERA, you shall be entitled to create third party rights in respect of the units/premises in the Proposed Building other than the units/premises to be provided by you to MHADA the existing members of the Society and the OB10 Occupants.

**FIRST SCHEDULE**

**Description of the Society's Land**

All that piece and parcel of land admeasuring 936.43 square meters (reflected in MHADA's NOC as 942.74 square meters) and bearing CTS no.195 (pt) at D.N. Nagar, Village Andheri, Taluka Andheri, Mumbai Suburban District and bounded as follows:

- |                            |   |                                              |
|----------------------------|---|----------------------------------------------|
| On or towards the East by  | : | Plot with Building no.28 of the MHADA Layout |
| On or towards the West by  | : | The Adjoining Land                           |
| On or towards the North by | : | 11.50 Meters wide Existing Road              |
| On or towards the South by | : | Boundary of DN Nagar MHADA Layout            |

**SECOND SCHEDULE**

**Description of the Adjoining Land**

All that piece and parcel of land admeasuring 582.91 square meters and bearing CTS no.195 (pt) at D.N. Nagar, Village Andheri, Taluka Andheri, Mumbai Suburban District (on which the Office Building no.108 presently stands) and bounded as follows:

- |                           |   |                    |
|---------------------------|---|--------------------|
| On or towards the East by | : | The Society's Land |
|---------------------------|---|--------------------|



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On or towards the West by : Plot with Building No.30 of the MHADA Layout  
On or towards the North by : 11.50 Meters wide Existing Road  
On or towards the South by : Boundary of DN Nagar MHADA Layout

*Dated this 13<sup>th</sup> day of April, 2018.*



**(Chandrakant M. Vithlani)**

Advocate, High Court Bombay.

*Bar Council of Maharashtra & Goa  
Enrolment No. MAH/1333/2000.*