

EXAMINER PRESS BUILDING
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Ref. No.

B/ 707 /2014

Date :



Re: The immovable property comprising of a piece or parcel of land admeasuring 1088.6 square metres or thereabouts bearing C.T.S. Nos.159, 159/3 to 159/8 of Village Bandivli, Taluka Andheri, Mumbai Suburban District, together with the building or structure standing thereon and situated at S.V. Road, Jogeshwari (West), Mumbai - 400 102.

THIS IS TO CERTIFY that on behalf of **Jainika Co-operative Housing Society Limited**, a Co-operative Housing Society, registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 under Registration No.BOM/K-West/HSG(TC)/3325 of 1987-88, we have investigated it's title to the aforesaid property and have observed as follows:

1. That the aforesaid property comprising of a piece of land originally admeasuring 1088.6 square metres or thereabouts was bearing Survey No.17, Hissa No.4 of Village Bandivli and subsequently given City Survey Nos.159, 159/1 to 159/8 of Village Bandivli. In the course of the time, the area covered by the City Survey Nos.159/1 admeasuring 21 square metres and City Survey Nos.159/2 admeasuring 90.6 square metres was merged with the City Survey No.159 and as such the said property bearing the City Survey Nos.159, 159/3 to 159/8 and hereinafter referred to as **"the said property"**.
2. The said property belongs to one Kanta Prasad Jain (hereinafter referred to as **"the said Owner"**) and this Certificate is based on the ownership of the said Owner in respect of the aforesaid property.



CERTIFIED TRUE COPY
UDAI PRAKASH (M.A. LL.B.)
ADVOCATE & NOTARY GOVT. OF INDIA
MUMBAI (MAHARASHTRA)
Regd No 9972

3. The said property was allowed to be developed by one Messrs Jainika Builders, a registered partnership firm (hereinafter referred to as "**the said Builders**") pursuant to an arrangement arrived at between the said Owner and the said Builders.

4. In pursuance of this arrangement, the said Builders constructed a multi-storied building on the said property comprising of diverse residential flats and the same are sold by the said Builders to the prospective purchasers under the Agreement executed by them with the said purchasers. In the said Agreements, the said Owner has also been joined and referred to as 'the present owner'.

5. Therefore the said Owner and the said Builders are the Promoters within the meaning of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as "**the said MOFA**").

6. As per the terms and conditions of the said Agreement with the Flat Purchasers which are identical with each other, by Clause 22 of the Agreement, the Builders agreed to assign the building and the land in favour of such Co-operative Housing Society or Private Limited Company or Association of Apartment Owners as the case may be.

7. In the earlier part of the said Agreement, in the recital thereof, it is specifically provided that the Owner being the Party of the Third Part to the said Agreement was however confirmed the deal to lend legality to the Agreement with this specific provision contained in the said Agreement. All that was agreed by the Builders under the said Agreement was and is binding on the Owner. In nutshell, the Owner covenanted with each of the Flat Purchasers to





convey the land with the building to a Society or to a Private Limited Company or Association of the Apartment Owners as the case may be as set out in the said Agreement.

8. Upon sale of the tenements constructed in the said building, the acquirers of the tenements formed themselves into the Co-operative Society being the said Jainika Co-operative Housing Society Limited (hereinafter referred to as "**the said Society**").

9. Since the Owner and the said Builders failed and neglected to convey the said land together with the said building which is known as "**Jainika Apartment**" in favour of the said Society despite the specific provision contained in the Agreement for Sale executed under the MOFA, the Society made a unilateral Deemed Conveyance Application bearing No.78 of 2013 to the Competent Authority as per the powers conferred upon, under Section 5 (a) of the MOFA. In the said Application for Deemed Conveyance, the said Society joined the Original Owner as well as the Builders and one Messrs. Varsha Builders & Developers in whose favour the Owner had executed the Conveyance of the said property notwithstanding the fact that the said Society had become entitled to the Conveyance of the said property in view of the aforesaid facts and events.

10. The Competent Authority after issuing the notice to the Respondents under the said Application as stated above, passed an Order-cum-Certificate bearing No.DDP-3/MUM/DC-78 of 2013/4709/13 dated 23rd August, 2013 certifying that the Society became entitled to the unilateral Conveyance of the said land and the said building and to have the same registered as provided under The Registration Act, 1908.

A handwritten signature in black ink, appearing to be 'R. M. Singh', written over a horizontal line.



11. In pursuance of the said Order, the said Competent Authority by name Mr. Subhash Patil by an Indenture of Conveyance dated 31st December, 2013 and registered in the office of the Sub-Registrar of Assurances at Bandra under Serial No.BDR-1/405 of 2013 conveyed the said property in favour of the said Society being the said land together with the said building 'Jainika Apartment' as set out therein.

12. It may be mentioned that from out of the total area of 1088.6 square metres or thereabouts, an area of 45 square metres was acquired by the Municipal Corporation of Brihanmumbai as road set back with the result that the land is now admeasuring 1043.6 square metres and the said Deemed Conveyance was executed in favour of the Society for the said area of 1043.6 square metres only.

13. In the said Order made on the said Application for Deemed Conveyance, the said Messrs. Varsha Builders and their partners were joined as Respondent No.3 who had filed the Written Statement and Sur-Rejoinder to the said Application in the said Order of Deemed Conveyance dated 23rd August, 2013. It is observed by the Competent Authority that the said Messrs. Varsha Builders being the Respondent No.3 had purportedly purchased the said land from the Opponent No.2 i.e. from K.P. Jain with the due knowledge of the building of the said Society being in existence on the said plot of land and with the knowledge and the responsibility to convey the land with the building in favour of the Society.

14. The Respondent No.3 after knowing purportedly acquired the said property under a Conveyance from the said Original Owner had got mutated it's name in the Property Register Card. After the Deemed Conveyance dated 31st

December, 2013 the Society made an application to The Superintendent of Land Records and in pursuance thereof, the name of the Respondent No.3 was deleted and the name of the Society is mutated as the owners of the said property.

15. The said Respondent No.3 filed a Writ Petition bearing Writ Petition (L) No.2362 of 2013 and the Honourable High Court of Judicature at Bombay challenging the said Order dated 23rd August, 2013 passed by the said Competent Authority granting Certificate of Deemed Conveyance as set out in the Petition. In the said Petition, the Society is made a party Respondent No.1. By the Order dated 16th January, 2014 passed by the Honourable Court the said Petition was admitted but it was made clear that the admission of the Petition will not prohibit the Society from taking any further steps. No interim relief has been granted to the said Petitioners and the application for interim relief was refused as recorded in the Order dated 25th October, 2013 passed in the said Writ Petition.

16. In view of the fact that there being no prohibitory order passed by the Honourable High Court in the said Writ Petition No.2362 of 2013 and further in view of the fact that the said property is duly mutated in favour of the Society, the Society entered into and executed Development Agreement dated 9th July, 2014 with Messrs. Crystal Constructions, a registered partnership firm and registered with the Sub-Registrar of Assurances at Bandra under Serial No.BDR-4/4848 of 2014 at or for the consideration and upon the terms and conditions therein contained.

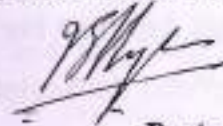
17. We have not found any other encumbrance recorded in the Record of Rights in respect of the said property or any part or portion thereof. There is no impediment on the part of the Society to proceed from taking any further



steps relating to the said property. In view of the aforesaid and subject to the pending Writ Petition, we are of the opinion that the title of the Society to the said property is clear and marketable and the Society is entitled to develop the said property as the owner of the said property and in pursuance of the aforesaid Development Agreement, the said Developers are entitled to develop the said property subject to the terms and conditions thereof..

Dated this 18th day of November, 2014.

Yours truly,
For HARIDAS & CO.,



Partner.
Advocates & Solicitors.



CERTIFIED TRUE COPY
U Prakash

UDAI PRAKASH (M.A. LL.B.)
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