

PSD/20/ 000133

31st January, 2020.

TO WHOMSOEVER IT MAY CONCERN

Re: All those pieces and parcels of well defined and demarcated land or ground total adm 23965.60 sq. mtrs being (i) a portion adm 10000 sq. mtrs carved out of Survey No. 113/1/2 total adm 1 Hectare 04.5 Ares assessed at Rs.4=00paise, (ii) portion adm 3965.96 sq. mtrs carved out of Survey No. 113/2/1 total adm 1 Hectare 37.4 Ares assessed at Rs.3=37paise and (iii) portion adm 10000 sq. mtrs carved out of Survey No. 113/2/2 total adm 1 Hectare 36.5 Ares assessed at Rs. 2=50paise situate at Village Wakad, Taluka Mulshi, District Pune and within the limits of Pimpri Chinchwad Municipal Corporation and within the jurisdiction of the Sub Registrar Haveli Nos. 1 to 27, Pune (Hereinafter collectively referred to as "the said Land").

THIS IS TO CLARIFY THAT under the instructions of my clients **M/s. Sukhwani Chawla Developers**, a duly registered partnership firm under the provisions of the Indian Partnership Act, 1932 having its principal place of business at: 208/2A, Opp. Dr. Swaminathan Clinic, Station Road, Pimpri, Pune 411018, I had caused searches to be carried out in respect of the captioned property at the office of the Sub Registrar of Assurances and also perused the photocopies of the Deeds and Documents pertaining to the right, title and interest of my clients to the said Land and have issued a Search and Title Report dated 25/5/2019 interalia certifying that in my opinion, my clients **M/s. Sukhwani Chawla Developers** are well and sufficiently entitled to said land as owners thereof and have a marketable title to the same and that the said Land is free from known encumbrances and reasonable doubts and have an exclusive right and authority to develop the said Land and to sell and/or dispose the units/tenements in the building/s in the project "Sukhwani Skylines" to be constructed thereon to any intending purchaser/s.

Pursuant thereto, I was called upon by my clients to clarify the position in law as regards the Special Civil Suit No. 1086/2018 pending before the Civil Judge Senior Division, Pune filed by Mr. Arun Sampatrao Patil (Plaintiff) against Mr. Pandurang Kondiba Bhumkar and others (Defendants) including my clients M/s. Sukhwani Chawla Developers as Defendant No. 10 for Specific Performance, Declaration, Injunction and Alternative Compensation and having perused the Complaint and other documents in the said Suit, I have issued my detailed Clarification dated 10/8/2019. In continuation thereto it is further clarified that as follows:-

- (A) Limitation:** The said Suit is prima facie barred by limitation since it is based on the Development Agreement dated 19/8/2004 and the suit after a period of about 14 years.
- (B) Latches :** The claim of the Plaintiff that the Defendant No. 1 to 9 have failed to perform their part of agreement, appears to be ill founded and hence it will be very difficult for the Plaintiff to prove the breach of the Agreement dated 19/8/2004 at the hands of the Defendant No. 1 to 9. Further the Plaintiff is himself guilty of latches for non performance of

the obligations, hence the Plaintiff cannot blame the Defendant Nos. 1 to 9 for not obtaining certain permissions for sale of the suit property.

- (C) No Transfer of Rights: No right, title or interest of any kind were transferred to the Plaintiff in view of the statutory provisions of The Maharashtra Tenancy & Agricultural Lands Act, 1948.
- (D) Stamp Duty: The Development Agreement dated 19/8/2004 has not been duly stamped as required under the provisions of The Maharashtra Stamp Act, 1958 as would be contemplated for execution of the Sale Deed.
- (E) No Specific Performance: It is a settled position of law that the Development Agreement is not specifically enforceable and as such the claim for damages if any of the Plaintiff may lie only against Defendant No. 1 to 9 and not Defendant No. 10.
- (F) Compliance of Orders and No Challenge of the same: The Defendant No. 1 to 9 have obtained permission dated 5/6/2010 under section 43 of the Maharashtra Tenancy and Agricultural Lands Act, 1948 for sale of an area admeasuring 50 Ares out of suit property to and in favour of Defendant No. 10 from Sub Divisional Office, Maval and have complied with the said Order. The Plaintiff has also not challenged the legality of the said Order.
- (G) Equitable Remedy: The suit for specific performance is an equitable remedy. The Plaintiff has not done any act, deed or thing and has slept over his alleged right for a period about 14 years and hence the Plaintiff cannot hold responsible the Defendant for non action.
- (H) Amalgamation: The area admeasuring 50 Ares out of Survey No. 113/2/1 has been amalgamated with portion admeasuring 100 Ares out of Survey No. 113/1/2 and portion admeasuring 100 Ares out of Survey No. 113/2/2 and that Defendant No. 10 have invested a sum of about Rs. 12,75,00,000/- for acquisition of the suit property and towards pre development activities. Considering the nature of relief of specific performance, the said fact is in favour of Defendant No. 10.
- (I) Pending Interim Application: The Defendant No. 1 to 9 have filed an application for rejection of Plaint under Order 7 Rule 11 of the CPC, 1908 claiming that the present dispute is a commercial dispute and Commercial Court has jurisdiction to try and entertain the present suit and the application is pending for hearing. No interim or ad interim orders have been passed in the said suit

Considering the aforesaid, I am of the opinion that the said Civil Suit will not have any effect on the title of my clients to the said land and appears to be a vexatious suit filed by the Plaintiff as a chance taker.

This Supplementary Clarification has been issued at the request of my clients M/s. Sukhwani Chawla Developers.

Dated this 31st day of January, 2020.


Prasanna S Darade
Advocate