

# CHARUSHILA J. RAORANE, B.COM, LL. B,



Advocate, High Court, Mumbai

H/505, Fifth Floor, Ekta Bhoomi Garden, Dattapada Road, Opp. TATA Steel, Borivali (East), Mumbai – 400 066  
E-mail : charushilar@gmail.com

## ANNEXURE

### TO TITLE REPORT DATED 4<sup>th</sup> March,2022

#### FLOW OF TITLE

**Sub: All That** piece or parcel property bearing City Survey No. 1448/1A, lying, being and situate at Village Eksar, Borivali (West), Mumbai, Mumbai Suburban District, in the Registration District and sub-district of Mumbai City and Suburban admeasuring about to 2010.75 Square Meters and 1986.32 Sq. Meters as per physical survey on site along with a presently incomplete building structure standing at the society property after demolishing the building structures of each known as Building No.7 and Building No. 8, belonging to the Borivali Amrapali Co-Operative Housing Society Limited and within registration Sub-district and District of Mumbai City and Mumbai Suburban within Greater Mumbai; **(“hereinafter referred to as the said Property for the sake of brevity”).**

Our observation relating to the title of Borivali Amrapali Co-Operative Housing Society Limited to the said property described in the Schedule hereunder written and also the entitlement of M/S. Rishabraj Estate Developer Pvt. Ltd. to undertake the redevelopment of the said property is as under:

- A. The said Society i.e., **BORIVALI AMRAPALI CO-OPERATIVE HOUSING SOCIETY LTD.**, is a Society registered under the provision of Maharashtra Co-operative Societies Act. 1960, bearing Registration No. BOM(WR) /HSG(TC) /9238/95-96, (hereinafter referred to as the said Society).
- B. By a registered Indenture of Lease dated 3<sup>rd</sup> May, 2006 vide registration No. 3589-2006, dated 10.05.2006 made by and between MHADA, therein referred to as the Party of the One Part and the Society, herein referred to as the Lessee of the Other Part, MHADA demised unto the Society, the said property for a term of 90 years commencing from 1<sup>st</sup> July, 1992 upon a yearly rent of Rs.10,560/- (Rupees Ten Thousand Five Hundred Sixty only) and upon the terms and conditions.
- C. By a registered Sale Deed dated 3<sup>rd</sup> May, 2006 vide registration No. 3590-2006, dated 10<sup>th</sup> May, 2006 made by and between MHADA, therein referred to as the Authority of the One Part and the Society, herein referred to as the Party of the Other Part, MHADA sold, conveyed and transferred unto the Applicant Society the two buildings constructed on the said property for the consideration and upon the terms and conditions.



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- D. The said Society are seized and possessed of and otherwise well and sufficiently entitled to all that piece and parcel of land admeasuring City Survey No. 1448/1A, lying, being and situate at Village Eksar, Borivali (West), Mumbai, Mumbai Suburban District, in the Registration District and Sub-district of Mumbai City and Suburban admeasuring about to 2010.75 Square Meters and 1986.32 Sq. Meters as per physical survey on site along with a presently incomplete building structure standing at the society property after demolishing the building structures of each known as Building No. 7 and Building No. 8 belonging to the Borivali Amrapali Cooperative Housing Society Limited, hereinafter called as the “**SAID PROPERTY**”.
- E. The said Society as Landlords were also sized and possessed of and otherwise well and sufficiently entitled to Society Building consisting of Ground and Four Upper Floors consisting of 40 Members of two building i.e. Building No.7 and 8 out of which 20 each Members were fully let to Member.
- F. Since the conditions of the said tenanted building was very old and dilapidated the Society thought it appropriate to undertake re-development of the said property;
- G. In response to the re-development offer the said Society had received Offer from one **M/S. SHUBH ENTERPRISE**, for undertaking the redevelopment of the said property. The Society in view of the discussion and negotiation that took place agreed to appoint **M/S. SHUBH ENTERPRISE** as the Developer for undertaking the redevelopment of the said property.
- H. By Registered Development Agreement dated 11<sup>th</sup> August, 2006 and a consequential Registered Power of Attorney dated 27<sup>th</sup> November, 2007 executed between **BORIVALI AMRAPALI CO-OPERATIVE HOUSING SOCIETY LTD.,** therein referred to as “**SOCIETY**” and **M/s. SHUBH ENTERPRISE**, being the “**DEVELOPER**” therein [hereinafter referred to as the “**M/s. SHUBH ENTERPRISE**”] and duly registered, the said Society did thereby agreed to grant and assign the development rights in respect of the said property and subject to the terms, conditions and covenants therein recorded along with the responsibility of negotiating with the Society of the said property for re-development of the said property with authority to demolish the existing tenanted building and in place thereof construct a multistoried building wherein the Members/ Occupants of the



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Tenanted Building could be reaccommodated by providing them permanent alternate accommodation;

- I. Henceforth, the disputes and differences arose between the said Society and the said M/s. Shubh Enterprise on account of the defaults and failure of the M/s. Shubh Enterprise to implement the project and discharge the various obligations and responsibilities casted upon the M/s. Shubh Enterprise under the Development Agreement dated 11<sup>th</sup> August, 2006, which resulted into Owners issuing Notice of Termination dated 8th January, 2015 inter-alia invoking the Arbitration proceedings ARBAPL/2061/2015 in the Hon'ble High Court at Bombay against the said M/s Shubh Enterprise in October 2015 for a declaration of valid termination of the Development Agreement and for recovery of arrears of rent and other dues. The said arbitration proceedings were concluded with a favorable Award passed by the Sole Arbitrator Adv. Miss Manjari Shah on 22<sup>nd</sup> February, 2019, wherein the termination of the Development Agreement dated 11<sup>th</sup> August, 2006 and Power of Attorney dated 27th November, 2007 made by the Society was upheld as valid.
- J. That from the Arbitration Award dated 22<sup>nd</sup> February, 2019, passed by the Learned Arbitrator, M/s Shubh Enterprise have filed an Appeal in the Hon'ble High Court against the said Arbitration Award of the Learned Arbitrator, but the appeal is primarily rejected by the Hon'ble High Court vide its Order dated 17th October, 2019 in the Interim Application No.01 of 2019 and the Arbitration Award already passed by the Learned Arbitrator is still in effect.
- K. Thereafter, the Society has appointed M/s. C.H. Patil & Sons (Now M/s. C.H. Patil & Sons LLP.) as the intended developers on 4<sup>th</sup> June, 2017 by adopting 79(A) process. However, from the appointment on 4<sup>th</sup> June, 2017 to 31<sup>st</sup> July 2020 M/s. C.H. Patil & Sons (Now M/s. C.H. Patil & Sons LLP.) has made procedural delays, no progress in performance and till end i.e., 31<sup>st</sup> July, 2020 did not commence the project. Society members lost faith and trust in the said intended Developer. Finally in the Special General Body Meeting held on 15<sup>th</sup> August, 2020 society members with unanimous decision, terminated and cancelled the appointment of M/s. C.H. Patil & Sons (Now M/s. C.H. Patil & Sons LLP.) as the intended Developer for redevelopment of Society's property.
- L. The Society has issued letter dated 16<sup>th</sup> September, 2020 to M/s. C.H. Patil & Sons (Now M/s. C.H. Patil & Sons LLP.) intimating their termination and cancellation of appointment as the Developer and also send legal notice dated 6th October, 2020



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through their advocates and solicitors to M/s. C.H. Patil & Sons (Now M/s. C.H. Patil & Sons LLP.) intimating their termination and cancellation of appointment as the Developer with immediate effect and the Society could proceed further with the re-development of the said property by appoint new Developers.

M. By Development Agreement dated 28.07.2021 registered before the Sub-Registrar Mumbai Suburban bearing Document Serial No. BRL-09-9217 of 2021, dated 28.07.2021, the said M/S. RISHABRAJ ESTATE DEVELOPERS PVT. LTD. therein called “The Developers” of the First Part, BORIVALI AMRAPALI CO-OPERATIVE HOUSING SOCIETY LTD., therein called as “The Society” of the Second Part and MR. JOHN ANTHONY & OTHERS therein called “The Members” of the Other Part, the Society therein granted the development right to **M/S. RISHABRAJ ESTATE DEVELOPERS PVT. LTD.** in respect of the abovementioned property on the terms and condition mentioned therein and Borivali Amrapali Co-Operative Housing Society Ltd., have granted the development right to M/S. RISHABRAJ ESTATE DEVELOPERS PVT. LTD. for the purpose of redevelopment in respect of the abovementioned property further granted General Power of Attorney in favour of M/S. RISHABRAJ ESTATE DEVELOPERS PVT. LTD. which is duly registered on 28/07/2021 with Sub-Registrar Mumbai Suburban bearing document Serial No. BRL-9/9218/2021 in respect of the property mentioned hereinabove. The said documents are not the subject matter of any litigation and the same is valid, subsisting and binding upon the parties thereto.

N. Thus, the appointment of M/s. Rishabraj Estate Developers Pvt. Ltd as Developers of the said property by the Society is valid and legal and as Developers M/s. Rishabraj Estate Developers PVT. LTD is fully entitled to implement redevelopment of the said property.

**Dated this 04 day of March, 2022**



Yours faithfully,

CHARUSHILA J. RAORANE  
Advocate, High Court

Place: Mumbai