IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 548 OF 2024
WITH
INTERIM APPLICATION NO. 15064 OF 2024
IN
APPEAL FROM ORDER NO. 548 OF 2024

1) Rahul Ganesh Mehta]
Age: 33 yrs, Occ: Business,]

2) Kirankumar Kanubhai Kotdiya,]
Age: 35 yrs, Occ: Business,]

3) Bhavesh Jeram Babriya,]
Age: 40 yrs, Occ: Business,]
Nos. 1 to 3 having office at: 1500 Infinity,]
Plot No. 396 to 400 &]
Plot No. 406 to 408, Sector-36,]
Seawood, Nerul, Navi Mumbai]
Tal & Dist. Thane] **...Appellants**

Versus

1) Narayan Ganpat Gaikwad,]
Age: 73 years, Occ: Not Known,]

2) Nandkumar Narayan Gaikwad,]
Age: 51 years, Occ: Not Known,]
Nos. 1 & 2 R/at: Plot No. 158,]
Sector-1, Karanjade,]
Near APASC Collage, Tal. Panvel,]
District: Raigad 410 206.]

3) M/s. Shripati Buildcon,]
Through it's Partners]

3/1. Amol Maruti Rajage,]
Age: 34 years, Occ: Business,]

3/2. Maruti Baburav Rajage,]
Age: 60 years, Occ: Business,]
Both R/at: Flat No. 401, Kasturi]
Heights, Sector-20, Plot No. 39,]
Khargar, Tal. Panvel, Dist.: Raigad 410 210.]
And having office at: Shop No. 3,]

	Plot No. 48, Sector -5, Karanjade,	]
	Tal. Panvel, District: Raigad 410 206.	]
4)	City & Industrial Development Corporation (CIDCO) Through its Managing Director, Having Office at: 2nd Floor, CIDCO Bhavan, CBD Belapur, Navi Mumbai - 400 614	]
5)	Chief Land and City Survey Officer, NMAV 22.5% & Re-establishment & Resettlement Department, Having office at Ground Floor, CIDCO Bhavan, CBD Belapur, Navi Mumbai 400614.	]
6)	The Estate Officer, 22.5% Department, Having office at: Ground/First Floor, CIDCO Bhavan, CBD Belapur, Navi Mumbai 400614.	]
7)	The Town Planning Officer, Construction Department, Having office at: 4th Floor, Raigad Bhavan, CBD Belapur, Navi Mumbai 400614.	] **...Respondents**

Mr. Surel Shah senior Advocate a/w Mr. Prashant Patil, for the Appellant.
Mr. Drupad Patil a/w Mr. Suyash Sule i/b Mr. Drupad Patil, for the Respondent No. 3.
Mr. Onkar Gawade i/b Mr. Jaydeep Deo, for the Respondent Nos. 4 to 7(CIDCO).

CORAM : SHARMILA U. DESHMUKH
RESERVED ON : JULY 17, 2026
PRONOUNCED ON : AUGUST 7, 2026

JUDGMENT:

1. The present Appeal is at the instance of the original Plaintiffs, aggrieved by the impugned order dated 19th June, 2024, passed by the 2nd Assistant Civil Judge, Senior Division, Panvel, below Exhibit 5, in

Special Civil Suit No. 181 of 2024, rejecting the Exhibit 5 application.

2. Special Civil Suit No. 181 of 2024 was filed by the Plaintiffs seeking *inter alia* specific performance of the agreement for sale dated 31st July, 2017, executed by Defendant No. 1 in favour of the Plaintiffs. The suit property is described as Plot No. 345, admeasuring 940 square meters, situated at Sector 3, Taluka Panvel, District Raigad. It was pleaded that the suit property was allotted to Defendant No. 1 by CIDCO, in view of the acquisition of Defendant No. 1's original property, under the 22.5% scheme. It was pleaded that as Defendant No. 1 did not have the financial capability and the expertise to develop the suit plot, it was agreed between Defendant Nos. 1 and 2 and the Plaintiffs in July 2017 that the said plot would be developed by the Plaintiffs, and 50% of the constructed built-up area would be handed over to the Plaintiffs along with monetary consideration of Rs. 1 crore 88 lakhs.

3. The consideration of Rs. 1 crores 88 lakhs was to be paid by the Plaintiffs to Defendant Nos. 1 and 2 as per the timelines mentioned in the agreement and was paid by the Plaintiffs.

4. On 12th August, 2017, the Plaintiffs published a public notice about the sale transaction, to which there was no objection, and accordingly, the Plaintiffs have paid a sum of Rs. 70,80,000/- to the Defendant Nos. 1 and 2. It was pleaded that as per the agreement dated 31st July, 2017, 50% of the constructed built-up area was to be handed

over to Defendant No. 1 after CIDCO executes a lease deed in favor of Defendant No. 1 and hands over possession of the said property. On 12th February, 2018, lease agreement was executed between CIDCO and Defendant No. 1, which was registered on 15th February, 2018. Defendant No. 1 approached the Plaintiffs and, citing advanced age, requested the Plaintiff's help to obtain the necessary permissions from CIDCO for transferring the suit plot in favour of Defendant No. 2 with the assurance that Defendant No. 2 would comply with all obligations under the development agreement. The Plaintiffs, relying on the assurance, accepted the request of Defendant No. 1 and after CIDCO's permission was obtained on 8th August, 2019, Defendant No. 1 executed a gift deed on 9th August, 2019 for the suit plot in favor of Defendant No. 2, in respect of which public notice was issued by the Plaintiff's Advocate on 3rd May, 2019. It was pleaded that the Plaintiffs paid a sum of Rs. 22 lakhs to Defendant No. 2 on the assurance of Defendant No. 2 that, after the plot is handed over by CIDCO, there will be a tripartite agreement executed in favour of Plaintiffs in respect of 50% of the plot.

5. It was further pleaded that on 1st March, 2024, when the Plaintiffs visited the office of CIDCO, it learned of the application filed by Defendant No. 2 with CIDCO for the transfer of the suit plot in favor of Defendant No. 3. Consequently, a legal notice was issued on 1st March, 2024 and 4th March, 2024. Similarly, criminal complaint was filed by the

Plaintiffs against Defendant Nos. 1 and 2, and the suit came to be filed seeking specific performance of the agreement for sale dated 31st July, 2017.

6. In response to the Exhibit 5 application seeking temporary injunction against the Defendants from creating any third-party rights, the Defendant No. 1 contended that, as per the agreement for sale, 50% of the suit plot was to be transferred to the Plaintiffs via a tripartite agreement after execution of the lease agreement with CIDCO. It was further contended that on 12th February, 2018, the lease deed was executed by CIDCO in favor of Defendant No. 1, and possession of the suit plot was handed over on that date, and therefore, it was necessary for the Plaintiffs to seek compliance with the obligations on 12th February, 2018, and the suit was required to be filed by 11th February, 2021, and is therefore barred by limitation.

7. It was further pleaded that, as per the terms of the agreement for the purpose of executing a tripartite agreement in respect of the Plaintiff's 50% share after the execution of the lease deed, the cost and charges were required to be borne by the Plaintiffs, which has not been done, and therefore, there is non-compliance of the obligations of the Plaintiffs. It was further claimed that though approached by the Plaintiffs, Defendant No. 1 did not agree to sell the suit plot, and therefore, a development agreement was reached between the parties.

It was pleaded that after execution of the development agreement in March 2019, Defendant No. 1 inquired with the Plaintiffs regarding the development of the plot, and was informed in April 2019 that the Plaintiffs are not developers but involved in real estate, and that the Plaintiffs are unable to carry out the development of the said plot, and permitted the Defendant No. 1 to develop the said plot with third party. Insofar as the amount received is concerned, it was orally agreed that the amount can be returned with 15% interest, and till that time, the original lease agreement of the Defendant No. 1 with CIDCO be kept as security with the Plaintiffs. Accordingly, as the Plaintiffs was unable to comply with their obligations and pay the balance consideration, the development agreement came to an end in April 2019, and therefore, the Plaintiffs are disentitled to seek the relief for specific performance.

8. It was further pleaded that the suit property has been gifted to Defendant No. 2 with the permission of CIDCO, to which there was no objection by the Plaintiffs, and that there was no readiness and willingness on the part of the Plaintiffs.

9. The case of Defendant No. 2 was of absence of privity of contract. The execution of the agreement dated 31st July, 2017 was denied. The Plaintiffs had not carried out any development project. The amount of Rs. 22 lakhs received by Defendant No. 2 from Plaintiffs was financial loan repayable with interest.

10. The case of Defendant No. 3 was of non-compliance of obligations by the Plaintiffs. As the title documents of the suit plot was in favour of Defendant No. 2 the Defendant No. 3 entered into sale transaction with Defendant No. 2 and paid the sale consideration and is *bona fide* purchaser for value.

11. The Trial Court noted the rival contentions to observe that *prima facie* there was execution of development agreement on 31st July, 2017, and during the existence of the agreement, Defendant No. 2 has entered into a development agreement with Defendant No. 3. It further noted that Defendant No. 3 is not a *bona fide* purchaser for value, as there were no details regarding when the development agreement between Defendant Nos. 2 and 3 was entered into, the agreed sale consideration, or the amount paid.

12. The Trial Court further noted that Defendant No. 2 was witness to the agreement for sale dated 31st July, 2017 executed between the Plaintiffs and Defendant No. 1 and had full knowledge of the agreement and that the Plaintiffs are entitled to seek specific performance against Defendant No. 2 under Section 19(b) of the Specific Relief Act, 1963 (for short '**Specific Relief Act**').

13. It further noted that Defendant No. 1 claimed that the agreement dated 31st July, 2017 was terminated and the money was to be returned with 15% interest, however, there is no written agreement to that

effect. It further noted that there is no written contract to support the case of Defendant No. 2 that for financial assistance, Defendant No. 2 accepted the sum of Rs. 22 lakhs from the Plaintiffs, and as security, deposited the original gift deed with the Plaintiffs.

14. On the basis of the material on record, the Trial Court opined that out of the total sale consideration of Rs. 1 crore 88 lakh, a sum of Rs. 70,80,000/- has been paid by the Plaintiffs between 31st March, 2017 and 29th December, 2022. It noted that on 15th February, 2018, the possession of the suit property was handed over to Defendant No. 1 by CIDCO, and as per the Plaintiffs, it happened on 30th December, 2021. The suit has been filed on 1st April 2024. It noted that the Plaintiffs have not produced any documents to show that it has carried out any development project, and from the possession date of 30th December, 2021 till March 2024, no steps have been taken by the Plaintiffs for obtaining necessary permissions.

15. The Trial Court noted the provisions of Section 14(3)(c) of the Specific Relief Act and noted that the development agreement does not mention any proposed residential or commercial plans, as required by Section 14(3)(c)(i). It noted that the Plaintiffs can be compensated in terms of money, and there is no planning permission obtained and neither third-party rights have been created. It noted that the Plaintiffs have failed to make out a *prima facie* case under Section 14(3)(c)(i) and

(ii) and dismissed the Interim Application.

16. Mr. Shah, learned Senior Advocate for the Appellant would submit that as per the agreement between the parties, the entire suit property was to be developed by the Plaintiffs, and 50% of the constructed built-up area alongwith Rs. 1.88 crores as consideration was agreed to be paid to Defendant No. 1. He submits that around Rs. 70,80,000/- of the consideration amount has been paid to Defendant Nos. 1 and 2. He would further point out that the contract was executed between the parties in 2017, and the finding of the Trial Court is that as the suit has been filed in the year 2024, the Plaintiffs has not taken any steps in furtherance of the contract. He would point out Clause 9 of the development agreement to submit that the obligation was upon Defendant No. 1 to take all steps for the purpose of obtaining the possession of the plot and for transferring the same in favor of the Plaintiffs. He would further point out that as per Clause 23 of the agreement for sale, time was not of essence, and therefore, there is no question of any inaction by the Plaintiffs. He would further point out that the Trial Court has accepted that the Plaintiffs has paid a sum of almost Rs. 70,80,000, and has rejected the contention of Defendant No. 2 that the sum of Rs. 22 lakhs was taken to tide over financial difficulties. He submits that the possession of the plot was received on 30th December, 2021. He submits that the development agreement was

signed by Defendant No. 2 as witness and despite thereof, Defendant No. 2 is attempting to create third party rights in favor of Defendant No. 3.

17. He has taken this Court in detail through the findings of the Trial Court and would submit that the Trial Court has accepted the execution of the development agreement between the Plaintiffs and Defendant No. 1 on 31st July, 2017, and has observed that Defendant No. 3 is not *bona fide* purchaser for value. He submits that the Defendants have not challenged this finding. He submits that the clauses in the development agreement clearly provides that the plot was required to be developed only after the surrounding areas have been developed, and therefore, time was not of essence. He submits that the Defendants did not inform the Plaintiffs about the actual possession of plot in the year 2021, and there is no termination and no refund of the amount paid.

18. *Per contra*, Mr. Patil, learned counsel for Defendant No. 3 would submit that the development agreement was executed on 31st July, 2017, prior to the lease deed, which came to be executed on 15th February, 2018. He submits that on the date of the agreement, Defendant Nos. 1 and 2 were not the lessees of the plot. He submits that as per the terms of the agreement, a tripartite agreement was to be executed in favor of the Plaintiffs for only 50% of the plot. He submits that in view thereof, specific performance can be permitted

solely for this 50%, and Defendant No. 3 has purchased 50% of the suit plot. He submits that since the suit was filed in respect of the entire suit land, any injunction granted would cover the whole property, which is contrary to the agreement terms. He would further submit that the Trial Court specifically noted that the Plaintiffs are not in development business, and therefore, can be compensated. He submits that the sum of about Rs. 70 lakhs paid by the Plaintiffs can be secured by reserving the flats to be constructed on the land by Defendant No. 3.

19. In rejoinder, Mr. Shah would point out that under Clause 2 of the development agreement, the entire suit property was to be developed, as the development will take place by taking into consideration the Floor Space Index of the entire plot of land.

20. Rival contentions now fall for determination.

21. There is no dispute about the fact of execution of the development agreement between the Plaintiffs and Defendant No. 1 on 31st July, 2017. The suit plot was to be allotted by CIDCO to the Defendant No. 1 in view of acquisition of the original plot of Defendant No. 1 under 22.5% scheme floated by CIDCO. The recital in the agreement for sale is that due to financial difficulties and inability to develop the plot, the Defendant No. 1 has entered into development agreement with the Plaintiffs. The recital in the agreement for sale is that there has been an allotment of plot by allotment letter dated 3rd

June, 2015, which is the suit plot. Clause 2 of the agreement for sale records that Defendant No. 1 has agreed for the development of the suit plot to be carried out by the Plaintiffs and 50% of the constructed built-up area was to be handed over by the Plaintiffs to Defendant No. 1. Clause 3 provides for consideration of Rs. 1 crore 88 lakhs to be paid by the Plaintiffs to Defendant No. 1. Clause 7 provides that upon the actual possession of the plot being handed over by CIDCO to Defendant No. 1, the Defendant No. 1 will cause to be executed a tripartite agreement in respect of 50% of the plot in favor of Plaintiffs or its nominees. Clause 8 provides that by the tripartite agreement, 50% of the plot will be transferred in favor of the Plaintiffs under the tripartite agreement and 50% will remain in name of Defendant No. 1. Clause 9 provides that the Defendant No. 1 will at its own cost take all steps for the purpose of execution of the lease deed in favor of the Defendant No. ,1 and for the purpose of entering into a tripartite agreement in favor of the Plaintiffs, will execute all necessary documents.

22. Clause 22 provides that in event, the development does not take place within a period of 42 months, damages to the sum of Rs. 50,000/- per month will be paid by the Plaintiffs to Defendant No. 1. Clause 23 provides that even if the previous clause provides for the construction to be carried out within a period of 42 months as the suit plot is in an undeveloped area, and the entire area will take some time for

development, for the purpose of receiving beneficial consideration for sale of the constructed area, the development will take some time in respect of which no objection will be taken by Defendant No. 1.

23. The terms of the agreement make it clear that time was not the essence of the contract, and though 50% of the plot was required to be transferred in favor of the Plaintiffs by virtue of tripartite agreement, the contract entered into between the parties was for the development of the entire suit plot with 50% of the constructed area to be handed over by the Plaintiffs to Defendant No. 1 along with consideration of Rs. 1 crore 88 lakhs. There is no dispute about the fact that Rs. 70,80,000/- has already been paid by the Plaintiffs to Defendant No. 1. It is also an admitted position that after the agreement for sale was entered into between the Plaintiffs and Defendant No. 1, gift deed with consent of the Plaintiffs was entered into between the Defendant Nos. 1 and 2 and the sum of Rs. 22 lakhs was paid by Plaintiffs to Defendant No. 2.

24. The stand taken by Defendant No. 2 that the sum of Rs. 22 lakhs was received as financial assistance has not been accepted by the Trial Court. The Trial Court has also not accepted the contention of Defendant No. 1 that in April 2019, the development agreement has been terminated by Defendant No. 1. The Trial Court has further not accepted that the Defendant No. 3 is a *bona fide* purchaser for value without notice. The Trial Court has accepted that the actual possession

of the plot was handed over by CIDCO to the Plaintiffs on 30th December, 2021.

25. The reason why the Trial Court declined to exercise its discretion in favor of the Plaintiffs is that the Plaintiffs had not produced any document to show that the Plaintiffs are developers and had carried out any development work. It has further noted that the agreement for sale was executed on 31st July, 2017, and the lease deed was executed in favor of the Defendant No. 1 on 12th February, 2018, the gift deed was executed on 9th August, 2019, and actual possession was handed over on 30th December, 2021, and the Plaintiffs till March 2024 have not taken any steps towards carrying out the construction.

26. The Trial Court failed to notice Clause 7 of the development agreement which provides that after the physical possession of the plot is handed over by CIDCO, the Defendant No. 1 will execute the tripartite agreement either in favor of the Plaintiffs or in respect of the nominees of the Plaintiffs. It is not necessary for the developer to prove his credentials and it would have been perfectly possible for the Plaintiffs to engage a contractor for the purpose of carrying out construction. There was no clause in the agreement which required the satisfaction of such credentials of the Plaintiffs. The Trial Court also failed to notice Clause 23 of the agreement for sale which makes it clear that time was not of essence, and it was agreed between the parties that as the suit

plot allotted is an undeveloped zone, it would be in beneficial interest of both the parties to await development of the surrounding areas in order to receive better consideration for the constructed area. The Trial Court therefore committed an error in holding that the Plaintiffs had been inactive from the year 2021 to March 2024.

27. The other reason which went against the Plaintiffs was that no planning permissions were obtained by the Plaintiffs and that as per the agreement for sale, all the expenses in respect of obtaining the permissions from CIDCO was to be borne by the Plaintiffs. The said finding is factually erroneous as Clause 9 of the agreement for sale imposes an obligation on Defendant No. 1 to take all steps necessary with CIDCO for the purpose of execution of the lease deed and for the purpose of transferring the plot in favor of the Plaintiffs.

28. The next ground on which the Trial Court declined interim injunction was in view of Section 14(3)(c) of the Specific Relief Act. The development agreement was executed on 31st July, 2017 prior to the amendment to the Specific Relief Act in 2018. The unamended Section 14(3) reads as under :

> "(3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the Court may enforce specific performance in the following cases:-
> (a) where the suit is for the enforcement of a contract,-
> (i) to execute a mortgage or furnish any other security for securing the repayment of any loan which the borrower is not willing to repay at once: Provided that where only a part of the loan has been advanced the lender is willing to advance the remaining part of the loan in terms of the contract; or (ii) to take up and pay for any debentures of a company;

> (b) where the suit is for, -
> (i) the execution of a formal deed of partnership, the parties having commenced to carry on the business of the partnership; or
> (ii) the purchase of a share of a partner in a firm;
> (c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land:
> Provided that the following conditions are fulfilled, namely:-
> (i) the building or other work is described in the contract in terms sufficiently precise to enable the Court to determine the exact nature of the building or work;
> (ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and
> (iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.".

29. In the case of ***Sushil Kumar Agarwal vs Meenakshi Sadhu And Others***[1], the Honorable Apex Court noted that the expression development agreement is not statutorily defined and can be used to describe a wide range of agreements which an owner of a property may enter into for development of immovable property. Broadly summarizing the character of development agreements, it held in paragraph 17.1 to 17.5 as under :

> "17.1. An agreement may envisage that the owner of the immovable property engages someone to carry out the work of construction on the property for monetary consideration. This is a pure construction contract;
>
> 17.2. An agreement by which the owner or a person holding other rights in an immovable property grants rights to a third party to carry on development for a monetary consideration payable by the developer to the other. In such a situation, the owner or right holder may in effect create an interest in the property in favour of the developer for a monetary consideration;
>
> 17.3. An agreement where the owner or a person holding any other rights in an immovable property grants rights to another person to carry out development. In consideration, the developer has to hand over a part of the constructed area to the owner. The developer is entitled to deal with the balance of the constructed area. In some situations, a society or similar other association is formed and the land is conveyed or leased to

1 (2019) 2 SCC 241

> the society or association;
>
> 17.4. A development agreement may be entered into in a situation where the immovable property is occupied by tenants or other right holders. In some cases, the property may be encroached upon. The developer may take on the entire responsibility to settle with the occupants and to thereafter carry out construction; and
>
> 17.5. An owner may negotiate with a developer to develop a plot of land which is occupied by slum dwellers and which has been declared as a slum. Alternately, there may be old and dilapidated buildings which are occupied by a number of occupants or tenants. The developer may undertake to rehabilitate the occupants or, as the case may be, the slum dwellers and thereafter share the saleable constructed area with the owner."

30. It held that when a pure construction contract is entered into, the contractor has no interest in either the land or the construction which is carried out. But in various other categories of development agreement, the developer may have acquired a valuable right either in the property or in the constructed area, and it is the terms of the agreement which are crucial in determining whether any interest has been created in the land or in respect of rights in the land in favor of the developer. It held that in development agreements, where an interest is created in the land or in the development in favor of the developer, it may be difficult to hold that the agreement is not capable of being specifically performed.

31. The Honorable Apex Court further noted the decision of the Full Bench of the Calcutta High Court in case of ***Ashok Kumar Jaiswal vs Ashim Kumar Kar***[2] which has held that a right to seek specific performance of a development agreement is not barred expressly or by

2 2014 SCC Online Cal 3497

necessary implications while deciding whether the suit at the instance of the developer is maintainable in view of Section 14(3)(c).

32. Applying the law laid down by the Hon'ble Apex Court to the facts of the present case, the terms in the development agreement would make it evident, that the Plaintiffs are not merely contractors engaged to undertake the construction and had agreed to develop the entire suit plot and hand over 50% of the constructed built-up area and consideration to Defendant No. 1, while retaining the balance 50%. Considering the nature of the agreement, the Trial Court erred in construing the agreement as pure construction contract by applying Section 14(3)(c). By construing the agreement as construction contract, the Trial Court has applied the consideration of absence of any construction carried out by Plaintiffs prior to present contract.

33. For the purpose of being entitled to grant of injunctive relief in a suit seeking specific performance of an agreement, it is necessary for the Plaintiffs to show *prima facie* compliance of its obligations under the agreement and the breach or the attempted breach on part of the Defendant No. 1 which raises triable issues.

34. In the present case, the obligation upon the Plaintiffs was to develop the entire suit plot and hand over 50% of the constructed built-up area and consideration of Rs. 1 crores 88 lakhs to Defendant No. 1. The obligation was upon Defendant No. 1 to take all necessary steps

and ensure the tripartite agreement is executed in favor of Plaintiffs by CIDCO. Despite the physical possession of the plot being handed over by CIDCO to Defendant No. 1 on 30th December, 2021, Defendant No. 1 did not inform the Plaintiffs about the said fact, which fact came to the notice of the Plaintiffs only when they visited the office of CIDCO. The allotment of the plot was in the year 2015, development agreement was executed in the year 2017 and the actual possession has been handed over in the year 2021. The Plaintiffs have paid substantial consideration and the obligation to carry out the construction would arise only after the possession of the physical plot is handed over or atleast informed to have been received from CIDCO. The payment terms set out in Clause 3 of the development agreement would indicate that substantial amounts were required to be paid only after tripartite agreement was executed in favor of the Plaintiffs, and despite thereof, the Plaintiffs have paid almost Rs. 70,80,000/-, though not required to pay at this stage. There is no obligation of the Plaintiffs which has not been complied with in order to disentitle the Plaintiffs to the injunctive relief in a suit for specific performance. The breach, if any, is on the part of Defendant Nos. 1 and 2 for failing to inform the fact of actual possession of the land being handed over to Defendant No. 1 and executing the purported agreement in favor of Defendant No. 3. The Trial Court has itself noted that Defendant No. 3 is not a *bona fide* purchaser for value without notice. The Defendant No. 3 has not produced the contract entered into with the Defendant No. 2 or the consideration agreed upon or paid. No rights could therefore be claimed at this stage atleast by Defendant No. 3.The right claimed by Defendant No. 3 would, however, support the Plaintiff's claim for injunctive relief as there is likelihood of alienation of suit property.

35. In light of the discussion above, the Plaintiffs have made out a *prima facie* case for grant of injunctive reliefs. Though, it is sought to be contended that the Plaintiffs are only entitled to 50% of the suit plot and Defendant No. 3 has purchased the balance 50%, the Defendant No. 3 has not produced its purported agreement to demonstrate the sale transaction. The development agreement of 2017 provides for the development of the entire plot and 50% of the constructed area to be handed over to the owner and 50% of the land to be conveyed by a tripartite agreement in favor of the Plaintiffs. *Prima facie*, the Plaintiffs are therefore entitled to the benefit of the FSI arising out of the entire plot area and their rights to develop the entire plot could not be curtailed on the basis of the covenant that 50% of the land be thereafter be conveyed in favor of the Plaintiffs.

36. The Plaintiffs having complied with their obligations and having acquired an interest in the property, which is one of the incident of ownership, irreparable loss and injury will be caused to the Plaintiffs in

the event the injunction is not granted. The balance of convenience is in favor of Plaintiffs and not in favor of Defendant No. 3, particularly considering the finding of the Trial Court that Defendant No. 3 is not a *bona fide* purchaser.

37. Resultantly, the Appeal From Order succeeds. The impugned order dated 19th June, 2024 is hereby quashed and set aside. The application dated 1st April, 2024 below Exhibit 5 is allowed.

(SHARMILA U. DESHMUKH, J.)