IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 444 OF 2022

WITH

INTERIM APPLICATION NO.3307 OF 2021

INTERIM APPLICATION NO.3303 OF 2021

INTERIM APPLICATION NO.3300 OF 2021

INTERIM APPLICATION NO.3299 OF 2021

INTERIM APPLICATION NO.3298 OF 2021

INTERIM APPLICATION NO.29097 OF 2021

INTERIM APPLICATION NO.3178 OF 2021

1. Sabhajit Ramyash Yadav,

2. Gita Sabhajit Yadav,

... Petitioners

Versus

1. State of Maharashtra,
through the office of Government Pleader
Bombay High Court (O.S.), Mumbai.
2. The Collector,
10^{th} Floor, Administrative Building,
Near Chetna College, Government Colony,
Bandra (East), Mumbai – 400 051.
3. The Tahsildar,
Natakwala Lane, Dr. N.R. Karod Road,
Borivali (West), Mumbai – 400 093.

ORAL JUDGMENT : (PER S.J.KATHAWALLA & MILIND N. JADHAV, JJ.)

1. This is one more case where the Developers despite collecting an approximate amount of Rs.178 Crores from the innocent flat purchasers, have not provided to them a single flat till date. Though the tenants have obtained Recovery Certificates from the Maharashtra Real Estate Regulatory Authority, Mumbai (‘**RERA’**) for refund of the sale consideration, due to delay of several years in constructing their flats, the developers have the temerity to state before this Court by themselves and also through their Advocates that “We have nothing to offer to the flat purchasers.”. In any event in view of the completely dishonest conduct of the developers, we cannot trust any of their subsequent statements/promises/ undertakings given to the Court and we proceed to pass an interim order in the above proceedings.

2. As the above Writ Petitions arise out of common set of facts and seek similar reliefs, we considered it desirable to hear all these Petitions together.

3. By the above Writ Petitions, the Petitioners have prayed for a writ in the nature of mandamus or any other appropriate writ or a direction against the Collector, Mumbai and the Tahsildar, Mumbai respectively, mandating them to comply with and execute the Recovery Certificates issued by the Maharashtra Real Estate Regulatory Authority, Mumbai ***(“RERA”***) against the Developer - M/s. Reliance Enterprise and in favour of the Petitioners. The Petitioners in the above Writ Petitions have also

sought ad-interim/interim reliefs against the Developer, which reliefs are sought in aid of the final reliefs.

4. Admit.

5. By this common Order, we will consider whether the Petitioners are entitled to the interim reliefs as sought in the above Writ Petitions.

6. Apart from considering whether the Petitioners are entitled to interim reliefs against the Developer, as sought in the above Petitions, we will also consider whether the partners of M/s. Reliance Enterprise *viz.* Shri Chetan Haridas Mapara and Shri Hemendra Haridas Mapara have wilfully breached and disobeyed the orders of disclosure and injunction passed by this Court and have thereby interfered with the administration of justice, necessitating an action by this Court under the Contempt of Courts Act, 1971 ***("the Contempt Act")*** against Shri Chetan Haridas Mapara and Shri Hemendra Haridas Mapara.

SUBJECT MATTER OF THE ABOVE WRIT PETITIONS

7. The Petitioners in the above Writ Petitions are 'allottees' as defined under Section 2(d) of the Real Estate (Regulation and Development) Act, 2016 ***("the said Act')*** who have purchased flats in a project known as ***'HILL VIEW'*** being developed by M/s. Reliance Enterprise ***("the Developer")*** under registered Agreements for Sale. As the Developer failed to handover possession of their flats

within the stipulated time, the Petitioners filed Complaints *inter alia* under Section 18 of the said Act before RERA. RERA allowed these Complaints and directed the Developer to refund the amounts received by them from these Petitioners, within 30 days from the date of the Order. However, the Developer failed to comply with the said Orders. Infact in Writ Petition (L) No. 28699 of 2021, the Developer even filed an Appeal before the Appellate Authority which was later withdrawn by the Developer subject to a cost of Rs. 1 lakh to be paid by the Developer.

7.1 Since the Developer failed to comply with the aforesaid Orders passed by RERA, the Petitioners were constrained to file execution proceedings before RERA. The execution proceedings were allowed and RERA issued a Recovery Certificate under Section 40(1) of the said Act read with Rule 3 of the Maharashtra Real Estate (Regulation and Development) (Recovery of Interest, Penalty, Compensation, Fine Payable, Forms of Complaints and Appeal, etc.), Rules, 2016 ***(“RERA Rules”)*** in favour of the Petitioners and against the Developer.

7.2 The particulars of the Recovery Certificates issued in favour of the Petitioners are as under:

i A Recovery Certificate dated 5th May 2021 has been issued in favour of Petitioners in Writ Petition No. 444 of 2022.

ii A Recovery Certificate dated 6th September 2019 has been issued in favour of Petitioner in Writ Petition (L) No. 28699 of 2021 iii A Recovery Certificate dated 1st August 2018 has been issued in favour of Petitioners in Writ Petition (L) No. 29063 of 2021.

7.3 RERA then forwarded these Recovery Certificates to the Collector and Tahsildar directing them to execute the same and recover the decreetal amounts as mentioned therein (which were payable to the Petitioners), as arrears of land revenue.

7.4 However, the Petitioners state that despite repeated reminders, the Collector and Tahsildar, have failed to execute or take any effective steps to execute the said Recovery Certificates till date. It is being aggrieved by this inaction of the Collector and Tahsildar in complying with their statutory duties, that the Petitioners have filed the above Writ Petitions.

7.5 In aid of the aforestated final relief that is sought against the Collector and Tahsildar, the Petitioners, in the above Writ Petitions, also seek interim reliefs against the Developer and persons claiming through or under them, so that the decreetal amounts to be paid to the Petitioners under their respective Recovery Certificates are protected till such time as the statutory authorities secure the recovery of the same as arrears of land revenue.

ORDERS PASSED BY THIS COURT AND AFFIDAVITS FILED BY THE DEVELOPER:

8. Before considering the grant of interim reliefs to the Petitioners, it is necessary to set out certain orders that have been passed by this Court and the events

that transpired during the hearing of the above Writ Petitions:

8.1 On 29th November 2021 when Writ Petition No.444 of 2022 came up for hearing, upon being *prima facie* satisfied that the partners of M/s. Reliance Enterprise *viz.* Shri Hemendra Haridas Mapara and Shri Chetan Haridas Mapara had cheated the Petitioners, we directed Shri Hemendra Haridas Mapara and Shri Chetan Haridas Mapara to remain present before us on 2nd December 2021 at 2.30 p.m.

8.2 On 2nd December 2021, only Shri Hemendra Haridas Mapara remained present before us and stated that his brother was advised rest at home and was unfit to work. In support thereof, a medical certificate dated 1st December 2021, issued by a doctor from Kokilaben Dhirubhai Ambani Hospital and Medical Research Institute, was also produced. The said medical certificate only mentioned about certain surgeries performed on Shri Chetan Haridas Mapara but did not mention when these surgeries were performed or the present medical problems being faced by Shri Chetan Haridas Mapara. We then enquired regarding the same from Shri Hemendra Haridas Mapara, who stated that the said surgeries had been performed two years back and thereafter undertook to keep Shri Chetan Haridas Mapara present before this Court on 3rd December at 2.30 p.m. The said statement was accepted. Further, we also directed the Mapara Brothers to file their affidavits of disclosure setting out *inter alia* their movable and immovable assets both encumbered as well as unencumbered, income tax returns, bank account statements, etc. Accordingly, this Court *vide* Order dated 3rd December 2021 directed as under:

> "8. **The Mapara brothers shall file their Affidavit of disclosure setting out their movable and immovable assets both encumbered as well as unencumbered, income tax returns of the last five years of their partnership concern as well as their individual tax returns, the statements of all the bank accounts held by them in their single name as well as joint names, particulars of all their projects, particulars of the flats sold and unsold in the said projects and the amounts received and yet to be received from the flat purchasers.**
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> 9. Stand over to 3rd December, 2021 at 2.30 p.m."
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> (Emphasis Supplied)

8.3 On 3rd December 2021, both, Shri Hemendra Haridas Mapara and Shri Chetan Haridas Mapara, remained present before this Court. We must note here that the presence of Shri Chetan Haridas Mapara at this hearing itself showed that the medical certificate produced on the previous day was only an attempt to avoid complying with the previous order passed by this Court.

8.4 During the hearing, Shri Hemendra Haridas Mapara and Shri Chetan Haridas Mapara produced few income tax returns and statements. Upon perusing the said income tax returns and statements we *prima facie* found that there were several partnership firms in which the Mapara Brothers were partners; there were quite a few projects that they have undertaken; they had received approx. Rs.175 Crores from the flat purchasers in the 'Hill View' Project; they have given huge loans to their immediate family members, however they have informed this Court that they have nothing to offer to the Petitioners in compliance of the Orders passed by RERA in favour of the Petitioners and against them. We were also informed by the Advocate for the Petitioner that more than 200 purchasers had paid monies to the Mapara Brothers towards flats in the 'Hill View' Project but the Mapara Brothers had cheated them all by only constructing a shell structure till date and in the last 7 years. We were also informed that many of these purchasers had invested their life savings and many had even taken loans for purchase of these flats, which they continue to service despite no flat/s being handed over to them by the Developer.

8.5 At this hearing, Advocate appearing for Ragini Kamal Choksi, another flat purchase in the 'Hill View' project, informed this Court that even his client had been cheated by the Mapara Brothers, who have failed to comply with the orders of RERA and the Appellate Authority passed in her favour.

8.6 Thereafter, the Mapara Brothers sought time to file an Affidavit of Disclosure, as directed by this Court *vide* its Order dated 2nd December 2021, on or before 10th December 2021. Meanwhile, the Mapara Brothers also undertook that none of the partners of their partnership firm/s/companies in which any of the Mapara Brothers are partners and/or their immediate family members are partners, will not operate the bank accounts of the partnership firms until 10th December 2021 without seeking prior permission of this Court. The said undertaking was accepted by this Court. In view thereof, this Court by its Order dated 3rd December 2021 directed as under:

> "7. Shri Hemandra Haridas Mapara and his brother Shri Chetan Haridas Mapara seek time to file an Affidavit and place the particulars /

disclosure as directed by this Court by its Order dated 2nd December, 2021, on or before 10th December, 2021. Since Shri Hemandra Haridas Mapara is not before this Court for the first time and was joined as Defendant by other flat purchasers who had earlier filed Suit/s against him in this Court, **the Court is of the view that the statements/promises made/given by the Maparas cannot be relied upon by the Court. In view thereof, we pass the following Order:**

i Shri Hemandra Haridas Mapara and Shri Chetan Haridas Mapara shall file their respective Affidavit/s of disclosure providing all particulars as directed by this Court in the Order dated 2nd December, 2021.

ii Shri Hemandra Haridas Mapara and Shri Chetan Haridas Mapara shall in addition thereto disclose the following:

a Particulars of all the partnership firm/s / Companies in which they and/or their immediate family members are partners.

b Income-tax returns of the last five years of all the partnership firm/s in which they and/or their immediate family members are partners.

c Bank accounts of the last five years of all the immediate family members standing in their single and/or joint names.

iii The undertaking given by Shri Hemandra Haridas Mapara and Shri Chetan Haridas Mapara that until they file their Affidavit/s they and their immediate family members will not operate any of their personal bank account/s as well as bank accounts of their partnership firms is accepted.

iv None of the partners of the partnership firm/s / Companies in which Shri Hemandra Haridas Mapara and Shri Chetan Haridas Mapara and/or their immediate family members are partners, will operate the bank accounts of the partnership firms until 10th December 2021 without seeking prior permission of this Court.

v Shri Hemandra Haridas Mapara and Shri Chetan Haridas Mapara shall open a fresh bank account in a nationalized bank and deposit therein any amount/s received by them and/or by their immediate family members, from any of the flat purchasers and/or their debtors. They shall not deposit any such amount/s received by them in any other account except the fresh account opened for this purpose.

vi Shri Hemandra Haridas Mapara and Shri Chetan Haridas

Mapara and their immediate family members shall not sell, alienate, encumber, part with possession and/or create third party rights in respect of any of their assets or the assets of any of the firm/s / companies in which they are partners/directors and shall not create any further liabilities with regard to any of their personal assets and/or assets of their immediate family members and/or assets of the firm/s / companies in which they are partners/directors.

vii Shri Hemandra Haridas Mapara and Shri Chetan Haridas Mapara and their immediate family members as well as the partners/directors of the firm/s /Companies in which they are partners/directors, shall not sell, alienate, encumber, part with possession and/or create third party rights in respect of the unsold flats in any of the projects undertaken by them.

viii Shri Hemandra Haridas Mapara and Shri Chetan Haridas Mapara shall not leave the country without seeking prior permission of this Court.

Stand over to 10th December, 2021, FOB."

(Emphasis Supplied)

8.7 On 10th December 2021, Ms. Tansin Monis, Advocate appearing for the Developer and the Mapara Brothers, informed this Court that the Mapara Brothers had, admittedly, not complied with the Orders dated 2nd and 3rd December 2021 as the Mapara Brothers had filed an application seeking recall of these Orders. Further an adjournment was sought by her stating that Advocate Rakesh Pandey who was the arguing counsel was before another court at Andheri. The matter was kept back at her request. Despite the same, Advocate Rakesh Pandey failed to remain present. She thereafter insisted that we take on record her written notes of arguments to decide the matter. We refused to do so and observed that we were not willing to decide such matters on the basis of written notes of arguments because the *modus operandi* of the Developer and his Advocates appeared to be to avoid answering any questions put to them and/or their Clients by this Court pertaining to the above matters. However, as a last chance and only by way of indulgence, we adjourned the matters to 15th December 2021, High on Board.

8.8 On 15th December 2021, the above Writ Petitions could not be heard as this Court was not available.

8.9 The above Writ Petitions were then listed on 5th January 2022 when Shri Sharan Jagtiani, appearing for the Petitioners in Writ Petition No. 444 of 2022 informed us that the Developer had not filed any affidavit of disclosure and had once again failed to comply with the Orders dated 2nd and 3rd December 2021 passed by this Court. Advocate Monis, appearing for the Developer, informed us that a Compilation of Documents provided by the Developer has been prepared and is ready for being filed in court and the same would be in compliance of the Orders dated 2nd and 3rd December 2021. Thus, based on this representation made on behalf of the Developer, we gave one more opportunity to the Developer to fully comply with our Orders dated 2nd and 3rd December 2021 and directed Advocate Monis to place the said Compilation of Documents on record. The Compilation of Documents was then forwarded to the Court through the Court Associate and Advocate Monis undertook to serve a copy of the same on the Advocate for the Petitioners in Writ Petition No. 444 of 2022 by 4.00

p.m. The said statement was accepted, and this Court passed the following Order dated 5th January 2022:

> "2. The Learned Advocate representing the developers has thereafter forwarded the compilation/s of documents to the Court through the Court Associate. She states that a soft copy of the compilation shall be forwarded today by 4.00 p.m. to the Advocates for the Petitioners. **The statement is accepted.**
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> 3. We have noted that the Orders dated 2nd and 3rd December, 2021 have not been fully complied with by the Respondent No.4. **Before we proceed to issue contempt proceedings against the developers under the Contempt of Courts Act, we are giving one more opportunity to the developers to ensure full compliance of the Orders dated 2nd and 3rd December, 2021 by 10th January, 2022. Stand over to 13th January, 2022."**
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> (Emphasis Supplied)

8.10 On 13th January 2022, Shri Jagtiani, Learned Senior Advocate informed this Court that the disclosures submitted by the Developer on the previous date were incomplete and not in compliance with the Orders dated 2nd and 3rd December passed by this Court. In support of his submission, Shri Jagtiani tendered a Note containing a table setting out the disclosures required as per the Orders dated 2nd and 3rd December 2021 and the status of its compliance/non-compliance by the Developer. As per the said Note, it could be seen that the Developer had *inter alia* not disclosed (i) the movable assets of the Mapara Brothers; (ii) Income Tax Returns of various partnership firms of the Mapara Brothers (iii) Statements of bank accounts held by the Mapara Brothers, either in single name as well as joint (iv) particulars of all other projects being developed by the Mapara Brothers, sold and unsold units therein and amounts to be received therefrom (v) partnership firms/companies where family members of Mapara Brothers are partners/directors, etc. Further, it was also pointed out that the Disclosures were supposed to be made on Affidavit as per the Orders dated 2nd and 3rd December 2021, but no such Affidavit was filed by the Mapara Brothers.

8.11 Advocate Monis, appearing for the Developer stated that she will go through the Note submitted by Shri Jagtiani and make all the required disclosures on Affidavit. Further, she also stated that the Developer has already applied to the banks to provide statements of their 19 bank accounts as directed by this Court and undertook to produce the said statements before this Court immediately upon receipt of the same from the banks. The statements were ***"accepted as undertakings given to the Court by the Respondent No. 4 – Developer".*** Thereafter, even though this Court was inclined to keep the matter on 24th January 2022, at the insistence of Advocate Monis the same were adjourned to 27th January 2022. Further, by this Order dated 13th January 2022, we also directed the Advocate for the Developer to forward the further disclosure affidavit to the Advocates for the Petitioners in Writ Petition No. 444 of 2022 not later than 24th January 2022.

8.12 On 27th January 2022, we were informed by Shri Jagtiani that an unaffirmed Affidavit dated 26th January 2021 had been filed by Shri Hemendra Mapara on behalf of the Developer. Having given enough opportunities to the

Developer/Mapara Brothers to fully comply with the Orders of this Court, we expected that the Developer/Mapara Brothers would now come out clean and make true and full disclosures. However, we were informed by Shri Jagtiani, that upon perusing the Affidavit in Reply filed by the Developer alongwith the documents, they have infact observed that not only has the Developer once again failed in fully complying with the orders of disclosure dated 2nd and 3rd December but the Developer has also breached the injunction Order dated 3rd December 2021 passed by this Court, by withdrawing large sum of monies from their bank accounts. In view thereof, by our Order dated 27th January 2022, we directed the Mapara Brothers to remain present before this Court on 31st January 2022 through video conferencing.

8.13 On 31st January 2022, Shri Hemendra Haridas Mapara was present before this Court through video conferencing. Shri Jagtiani tendered a Compilation of Documents containing (i) bank statements to show that the Developer had withdrawn monies to the tune of Rs. 56 lakhs from their bank accounts and/or transferred the same to third parties (including a large sum of Rs. 17 lakhs approximately to one, M/s. J V Enterprises), in breach of the injunction order contained in Order dated 3rd December 2021 passed by this Court (ii) bank statements for the period 1 April 2019 to 31 January 2020 of the Developer to show diversion of funds from the escrow accounts of 'Hill View' to personal accounts of the Mapara Brothers, their family members, related entities and M/s. J V Enterprises, to whom large sums of money had been transferred and (iii) a photograph of the poster put up outside the 'Hill View' Project whereby the same entity, M/s. J V Enterprises, claimed that the said 'Hill View' Project belonged to them. Based on these documents, Shri Jagtiani submitted that it appears that M/s. J V Enterprises is a related entity of the Developer to whom large sums of monies are being transferred while the Developer continues to avoid paying the admitted dues of the innocent flat purchasers.

8.14 Shri Jagtiani also tendered another Note with a table setting out the disclosures required as per the Orders dated 2nd and 3rd December 2021 and the status of its compliance/non-compliance by the Developer. From the said Note, it could be seen that the Developer had once again proved false and incomplete disclosure and breached the Orders dated 2nd and 3rd December 2021 passed by this. In the aforesaid Affidavit, the Developer had *inter alia* not disclosed (i) various other group entities *viz.* Relstruct Buildcon Limited, Relstruct Infra Limited, Relstruct, Realtors Pvt. Ltd., etc. where the Mapara Brothers and their family members are directors; (ii) income tax returns of only some of the disclosed partnership firms had been provided; (iii) Out of 30 bank account statements provided by the Developer only 5 were up to 31st December 2021 (iv) statement of receivables and list of sold and unsold units for other projects viz. Giri Niwas, Triveni, Anand Tower, Tilak Sangram, Sarva Mangal, Radhakunj.

8.15 In response, Shri Hemendra Mapara, who was present at the hearing which was being conducted through video conferencing, informed this Court that M/s. J. V. Enterprises was his contractor for the 'Hill View' and 'Triveni' Project and the monies had been transferred to M/s. J V Enterprises and other third parties in view of certain 'consent terms' filed by the Developer before this Court in another proceeding. He admitted that no permission was taken by him from this Court before making these transactions after the Order dated 3rd December 2021 was passed. He also stated that he did not know why the said poster was put up by M/s. J. V. Enterprises outside the project. Accordingly, we directed the Developer to place on record the said consent terms and explain each of the transfers made in breach of the injunction order. Further, we once again granted an opportunity to the Developer to fully comply with the order of disclosures. In view thereof by an Order dated 31st January 2022, this Court directed as under:

> **"1. Shri Jagtiani, learned Senior Advocate appearing for the Petitioners in Writ Petition No.444 of 2022 submits that on 3rd December, 2021, Shri Hemendra Haridas Mapara and Shri Chetan Haridas Mapara, partners of RespondentNo.4 were given another opportunity to comply with the previous orders passed by this Court and file their Affidavit/s of disclosure. During the said hearing, Shri Hemendra Haridas Mapara and Shri Chetan Haridas Mapara, had given an undertaking to this Court that until they file the said Affidavit/s, they and their immediate family members will not operate any of their personal bank account/s as well as the bank account/s of their partnership firms. Shri Jagtiani submits that the said statement was accepted vide Order dated 3rd December, 2021 and this Court directed as under:**
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> > "7(iv) None of the partners of the partnership firm/s/Companies in which Shri Hemendra Haridas Mapara and Shri Chetan Haridas Mapara and/or their immediate

family members are partners, will operate the bank accounts of the partnership firms without seeking prior permission of this Court."

2. **Shri Jagtiani further submits that Respondent No.4 has now filed an Affidavit dated 26 January 2022 and have also provided various bank statements of their individual bank accounts as well as of some of their partnership firms to the Petitioners. He submits that it is noticed that Shri Hemendra Haridas Mapara and Shri Chetan Haridas Mapara, in complete breach of the aforesaid directions contained in the Order dated 3rd December 2021, have transferred huge amounts from the bank account of one of the partnership firm, M/s. Reliance Estate Developers to themselves, their connected entities and various third parties and created Fixed Deposits thereby operating the bank accounts**.

3. In support of his submissions, Shri Jagtiani tendered a Compilation of Documents consisting of some highlighted bank statements of Respondent No.4 and its connected entities and also a photograph of a board which was put up outside the project 'Hill View' in which the Petitioners had purchased a flat from Respondent No.4. Relying upon the said Compilation of Documents, Shri Jagtiani points out as under:

(a) Annexure 1 at Pages 1 – 6 of the Compilation of Documents is the Bank Statement for Account No. 011763300001311 held by the partnership firm, M/s. Reliance Estate Developers with Yes Bank, S V Road Branch. The bank account of this partnership firm is covered by the aforesaid Order dated 3 December 2021. The entries highlighted in pink are transfers made by the said partnership firm to Shri Hemendra Haridas Mapara and Shri Chetan Haridas or other partnership firms, the entries highlighted in green are transfers made to an entity called M/s. J. V. Enterprises and the entries highlighted in orange are transfers made to various third parties. Shri Jagtiani submits that all these transfers have been made in breach of the aforesaid Order dated 3 December 2021 and without seeking leave of this Court.

(b) From the highlighted entries in pink, Shri Jagtiani points out that (i) on 3 December 2021, Shri Hemendra Mapara withdrew Rs. 40,000/- for himself and (ii) on 8 December 2021 the said partnership firm transferred Rs.12

Lakhs for creating a new Fixed Deposit in the name of the said Firm.

(c) From the highlighted entries in green, Shri Jagtiani points out that after passing of the said Order dated 3 January 2021 and till 10 January 2022, monies amounting to approximately Rs. 16-17 lakhs have been transferred to an entity M/s. J V Enterprises. He further submits that Respondent No.4 claims that M/s. J V Enterprises is its contractor. However, the Petitioners apprehend that M/s. J V Enterprises is a business concern or a related entity of the Mapara brothers or not an arms length contracting party. He relies on the photograph annexed at Page 22 of the said Compilation which is a photograph of a board put up by the said M/s. J V Enterprises outside the 'Hill View' Project, whereby M/s. J V Enterprises has claimed that the said Project belonged to them.

(d) He also submits that many such transfers have been made by Respondent No.4 and its other related entities to M/s. J V Enterprises even during 2019-2020, even when the said project had already come to a standstill, as can be seen from bank statements annexed as Annexure 1 at Pages 7-21 of the said Compilation and more particularly the entries highlighted in orange.

(e) From the highlighted entries in orange, Shri Jagtiani points out that after passing of the said Order dated 3 January 2021 and till 10 January 2022, monies amounting to approximately Rs. 27-28 Lakhs have been transferred to various third parties including a emporium, decorators, etc.

4. Shri Jagtiani further submits that the said Affidavit of Disclosure dated 26 January 2022 filed by Respondent No.4 is not in full compliance with the previous Orders dated 2 December 2021 and 3 December 2021, passed by this Court and several particulars as directed by this Court vide the said Orders have not been disclosed by Respondent No.4. In support of his submission, he tendered a Note showing non-compliances of these Orders.

5. He submits that in view thereof, following information/explanation is required to be disclosed by Respondent No.4:

(i) Nature and constitution of the said firm, M/s.J.V. Enterprises;

(ii) Whether M/s. J. V. Enterprises is in any manner related to Respondent No.4 or its partners Shri Hemendra

Haridas Mapara and Shri Chetan Haridas Mapara;

(iii) In what capacity and for what reason was the said board (photograph annexed at Pg.22 of the said Compilation) put up by M/s. J V Enterprises at the Project site (if it was only a mere contractor);

(iv) Nature of relationship between M/s. J. V. Enterprises and Respondent No.4, in view of which such huge amounts have been transferred to M/s. J.V. Enterprises by Respondent No.4 and its connected entities, over the years;

(v) When the Project was stalled since 2016-2017 and no work was being carried out at site, why were huge amounts transferred to M/s. J V Enterprises by Respondent No.4 and its connected entities as can be seen from Annexure 1 and 2 to the said Compilation;

(vi) Nature of transactions/transfers highlighted at Pages 5-6 of the said Compilation and explanation for not obtaining leave of this Court before making such transfers;

(vii) Reasons for not disclosing various group entities where Shri Hemendra Mapara or Shri Chetan Mapara or their family members are directors/partners (i) Relstruct Builders Pvt. Ltd., (ii) Relstruct Real Estate Pvt. Ltd. (iii) Relstruct Realtors Pvt. Ltd.; (iv) Relstruct Buildcon Ltd.; (v) Relstruct Infra Ltd.; (vi) Avanza Buildcon LLP.; (vii) Balkrishna Logistics LLP. Relstruct Builders Pvt. Ltd.; (viii) Relstruct Real Estate Pvt. Ltd., despite having been given multiple opportunities to fully comply with the orders of disclosure passed by this Court (See,Sr.No.2/Pg.6-7 of the Note tendered by the Petitioners on Status of Compliance of Order dated 2nd and 3rd December 2021 by Respondent No.4);

(viii) Reasons for not furnishing Income Tax Returns of Arihant Associates, Reliance Realtors and Adinath Enterprises (See, Sr. No.2/Pg.1-2 of the Note tendered by the Petitioners on Status of Compliance of Order dated 2nd and 3rd December 2021 by Respondent No.4);

(ix) Reasons for not providing particulars of partnership firms or companies where family members of Shri Hemendra Mapara or Shri Chetan Mapara are partners (See, Sr. No. 3/Pg.8 of the Note tendered by the Petitioners on Status of

Compliance of Order dated 2nd and 3rd December 2021 by Respondent No.4);

(x) Reasons for not furnishing all bank statements up to date of filing of the said Affidavit of Disclosure (See, Sr. No. 3/Pg.3 of the Note tendered by the Petitioners on Status of Compliance of Order dated 2nd and 3rd December 2021 by Respondent No.4);

(xi) Reasons for not providing Statement of Receivables from sold and unsold units in the projects owned by Respondent No.4 and/or its group entities (See,Sr. No. 4/Pg.4-5 of the Note tendered by the Petitioners on Status of Compliance of Order dated 2nd and 3rd December 2021 by Respondent No.4);

(xii) Whether Shri Hemandra Haridas Mapara and Shri Chetan Haridas Mapara have opened a fresh bank account in a nationalized bank and whether all amount/s received by them and/or by their immediate family members, from any of the flat purchasers and/or their debtors are being deposited in the said account, as directed under para 7(v) of the Order dated 3 December 2021(See, Sr. No. 7/Pg.11 of the Note tendered by the Petitioners on Status of Compliance of Order dated 2nd and 3rd December 2021 by Respondent No.4);

6. The learned Advocate appearing for Respondent No.4 states that the information/explanation required by Shri Jagtiani on behalf of the Petitioners, will be provided by the developers on Affidavit.

7. In view of the above, the Respondent No.4 developer shall before the adjourned date file an Affidavit interalia setting out the information/explanation sought by the Petitioners and as recorded in Paragraph 5 above.

8. Stand over to 9th February, 2022."

(Emphasis Supplied)

8.16 On 9th February 2022, we were informed that an Affidavit dated 9th February 2022 had been served by Shri Hemendra Mapara on behalf of the Developer. Shri Jagtiani pointed out from the said Affidavit that the consent terms referred to by the Developer on the previous date have been executed between one, Triveni CHSL and the Developer and M/s. J V Enterprises is not a party to the same and despite that, huge amounts were transferred to M/s. J V Enterprises in breach of the Order dated 3rd December 2021. Further, Shri Hemendra Mapara who had initially refused to recognise the board put up outside the 'Hill View' Project now stated that the said board was put up by M/s J. V. Enterprises in view of certain disputes between the Developer and M/s. J V Enterprises as the Developer had not made certain payments to M/s. J V Enterprises, which created trust issues. In view thereof, M/s. J V Enterprises put its board so that no third party denies its rights to receive the amount from the Developer. It is also relevant and interesting to note the explanation provided by the Developer to the Petitioner allegation that large sums of monies were paid to M/s. J V Enterprises in 2018-2020 even though the project was stalled since 2016-2017. The Developer has stated that *"It is unreasonable on the part of the Petitioner to make the baseless allegation that the project was stalled from 2016 to 2017.* ***Merely because the slabs were not being cast does not mean that no work was going in the project****…"*. If no slabs were being casted during this period, there was no conceivable reasons for the Developer to have paid large sums of monies to M/s. J V Enterprises during this period.

8.17 Shri Jagtiani therefore submitted that the Mapara Brothers and their family members were guilty of committing contempt of the Orders passed by this Court. In view of what transpired at the hearing we thought it necessary to direct Shri

Narayan Kohli to remain present to explain the transactions under which he had received large sums of money, before issuing notice seeking explanation from the Mapara Brothers for brazenly violating the orders passed by this Court. Accordingly, by our Order dated 9th February 2022 we directed as under:

> "2. **Before we issue a notice seeking explanation from the Partners of Respondent No.4 and also their family members who according to Respondent No.4 have brazenly declined to comply with the orders of the Court, since Advocate Ms. Tamsin Monis representing Respondent No.4 states that she is very busy upto Tuesday and will remain present in Court alongwith the Partners of Respondent No.4 and Shri Narayan Koli any time after 15th February, 2022,** we are deferring issuance of such notices upto 17th February, 2022. Advocate Ms. Tamsin Monis also states that since Shri Chetan Haridas Mapara, partner of Respondent No.4 is not keeping good health, he shall appear before the Court through video-conference **and Shri Hemendra Haridas Mapara and Shri Narayan Koli shall appear physically on 17th February, 2022. The statements are accepted.**
>
> 3. Stand over to 17th February, 2022."
>
> (Emphasis Supplied)

8.18 On 17th February 2022, when the matter was called out Shri Hemendra Mapara informed this Court that he had informed Shri Narayan Kohli to remain present, however, it seemed that he was not present. We then directed Shri Hemendra Mapara to call and inform Shri Narayan Kohli to remain present before this Court at 2.30 p.m. Thereafter, Shri Narayan Kohli appeared before us at 2.30 p.m. and upon this Court enquiring the reason for him not remaining present in the morning session informed us that he was not aware of the previous order passed by this Court and only learnt of it in the morning. This once again shows that Shri Hemendra Mapara had made an incorrect statement before this Court in the morning session. Shri Kohli informed this Court that he had been involved in construction of 'Hill View' Project since 2018 under a Work Order issued by the Developer. Further, he also informed that construction has completely stopped since the last 18 months and no attempt is made to recommence the construction for the last one year.

8.19 Further, with respect to the board put up by M/s. J. V. Enterprises outside the 'Hill View' Project, he stated that the contents of this Board were prepared by his representative Shri Paresh Katchhy who is a 'broker' and whose mobile number '9867359063' also appears on the said Board. Further, when we enquired as to what was meant by the statement *"Any person deals or does any transaction related to any flats of our project name HILL VIEW are subject to clarification of title clearance of such flats/shops through M/S. J V ENTERPRISES, A wing, Block No. 7, Sita Estate, Opp. Hill View, R.C. Marg, Chembur, Mumbai"*, Shri Kohli who claims to be the Sole Proprietor of M/s. J V Enterprises, was unable to provide any answers.

8.20 Shri Jagtiani, then pointed out to us that the statement made by Shri Kohli is false and incorrect to his knowledge since Shri Paresh Katchhy is the Finance Director of the Relstruct Group where Shri Hemendra Mapara or Shri Chetan Mapara or their family members are Directors/Partners. It is also relevant to note here that despite the contact number on the board being that of Shri Paresh Katchhy, who was a Director in one of the group entities of the Developer, Shri Hemendra Mapara had falsely stated on 31st January 2022 that he was no aware by whom the board had been put up. Shri Jagtiani also informed us that the accounts produced by the Developers shows that the Developer has paid marketing charges / costs including brokerage to the tune of Rs. 34 Crores. Since different statements at different times were being made by the Developers, to ascertain the true and correct facts in the above matter, we by our Order dated 17th February 2022, directed Shri Paresh Katchhy to remain present before this Court on 24th February 2022. By this we also directed as under:

> **"5.** Stand over to 24th February, 2022 when the Developers shall provide a compilation comprising of copies of all the agreements executed (registered/unregistered) by the Developers with the flat purchasers qua the Hill View Project. **On the adjourned dated the Developers shall also file an Affidavit setting out the break up of Rs.34 Crores allegedly spent towards marketing expenses/charges/costs."**
>
> **(Emphasis Supplied)**

8.21 On 24th February 2022, Shri Paresh Katchhy informed us that he was initially acting as a broker for the Developer in the 'Hill View' Project but later at the Developers' insistence he was made a Director of the Relstruct Group. This shows that Shri Hemendra Mapara was always aware by whom the said Board had been put up but deliberately suppressed the same from this Court. Further, at the said hearing, Shri Jagtiani pointed out to us that from the monies collected from the flat purchasers, huge amounts had been transferred to entities which have nothing to do with the construction of 'Hill View' Project. For example, an amount of Rs. 1,75,00,000/- approximately had been transferred to an entity called Parshwanath Trading Co. which is engaged in the business of manufacturing of kids wear and toys during the period from 2013 to 2021. Further, an amount of Rs. 53,39,000/- had been transferred to an entity called Darshil Enterprises which is engaged in the business of clothing/fabric. An amount of Rs. 24,49,579/- had been utilised for taking health insurance for Shri Hemendra Haridas Mapara and Darshan Hemendra Mapara from Religare Finvest Ltd. The Developer also filed an Affidavit setting out the breakup of Rs. 34 crores spent towards marketing. The breakup mentioned therein shows that the entire amount has not been utilised towards marketing expenses but monies have been used for other purposes.

8.22 Pursuant thereto, the Developer informed us that they would pay the dues of the Petitioners but sought time to work out the modalities. In view of this request the matter was listed on 2nd Mach 2022 and 3rd March 2022. However, on 3rd March 2022 we were informed that the Developer is now not willing to settle with the above Petitioners.

REASONS AND CONCLUSIONS

9. Upon hearing the parties and considering the material on record, we are *prima facie* satisfied that despite the directions from RERA, the Collector and Tahsildar have failed to exercise their powers under Section 263 to 267 of the Maharashtra Land Revenue Code, 1966 read with Rule 17 of the Maharashtra

Realization of Land Revenue Rules, 1967 to secure the recovery of the decretal amounts mentioned under the Recovery Certificates, which are payable to the Petitioners.

9.1 In ***Rustam Mehta v State of Maharashtra & Ors***[1]**,** which arose out of similar set of facts, this Court held that in exercise of its inherent and wide powers under Article 226 of the Constitution of India, this Court has the jurisdiction to pass orders and/or directions against a private person if such reliefs are in aid of the final relief. Further, it was also held that it is within the extraordinary and inherent jurisdiction of this Court under Article 226 of the Constitution of India to protect the rights and interests of the Petitioners by granting interim reliefs even against a private party Respondent, that has wrongly benefitted from the inaction on the part of the public authorities in discharge of their public duty.

9.2 In the present case, we have no hesitation in holding that the only person who has wrongly benefitted from such inaction of the Collector and Tahsildar are the Developer herein (being a private party), who have till date failed to comply with the Orders passed by RERA and failed to pay the decreetal amount to the Petitioners, which amounts are admittedly due and payable by the Developer to the Petitioners.

9.3 As per the documents produced by the Developer themselves, they have collected approximately Rs. 178 crores from flat purchasers of the 'Hill View' Project. Despite having received such huge amounts from the flat purchasers, the Developers

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have till date not completed construction of the 'Hill View' Project and has infact abandoned the same for the last one year. Further, from the material on record, it also appears that out of the monies collected from the flat purchasers, huge amounts have been transferred by the partners of the Developers to themselves, their family members and even related entities while the innocent flat purchasers still await their dream homes or the refund of their hard-earned money. Infact, in teeth of the order of injunction passed by this Court in the above Writ Petitions, the Developer has transferred monies to the tune of Rs. 56 lakhs inter alia to itself and related parties, in complete disregard to the orders passed by this Court.

9.4 Considering the aforesaid conduct of the Developers, we are of the view that the Developer has no intention of voluntarily repaying the admitted dues of the Petitioners and that the Petitioners are justified in their apprehension that if interim reliefs to protect the decreetal amounts of the Petitioners are not granted, it is very likely that the Developer shall deal with or further encumber all their assets and nothing will be left to the hands of the Petitioners despite having a decree in their favour. Accordingly, we are of the view that the Petitioners have made out a case for grant of interim reliefs and the balance of convenience is in favour of the Petitioners and against the Developer.

9.5 Further, from the events set out hereinabove, it is also clear that not only has the Developer failed to comply with the Orders passed by RERA but has also brazenly violated various orders of disclosure passed by this Court. Despite this Court having given a long rope to the Developer to provide a true and complete disclosure of its assets in terms of the Order dated 2nd and 3rd December 2021, which were clear and ambiguous, the Developer has till date not fully complied with the said Order.

9.6 We must note that at each hearing false and insufficient disclosures were made by the Developer, with an intent to mislead this Court. Further, the *modus operandi* of the Developer was to suppress material information and only disclose the same if and when such non-compliance was pointed out by the Advocates for the Petitioners. Such conduct is unacceptable. As held by this Court in ***Rustam Mehta (supra)***, the determination of whether a disclosure is sufficient or not, is not to be made by the party who is ordered to make such disclosures by the Court – when the terms of the Order seeking disclosure are clear and ambiguous. We must also note here that on multiple occasions undertakings were given by the Developer that the affidavits of disclosure filed by it are in full compliance of the Orders dated 2nd and 3rd December 2021, which undertakings were accepted by this Court. However, we hold that the Developer has willfully and deliberately breached these undertakings which shows that the Developer has no regards for the orders passed by this Court.

9.7 In addition to the breach of the Orders of disclosure, the Developer has also breached the undertaking given by the Developer that the Developer and its family members shall not operate their bank accounts till further orders of the Court, as contained in the Order dated 3rd December 2021. The Developer in breach of this Order transferred approximately Rs. 56 lakhs to itself, its related entities and other third parties without seeking any permission from this Court. The only explanation provided by Shri Hemendra Mapara on behalf of the Developer for not seeking such permission is that it ***"…skipped my mind…"***. We cannot accept such an explanation.

9.8 In our view, such brazen and continuous disregard for orders of the Court including by making false and misleading statements would amount to a willful and deliberate breach, obstruction and interference with the administration of justice entitling this Court to take suo-moto action in contempt against the partners of the Developer *viz.* Hemendra Haridas Mapara and Chetan Haridas Mapara.

9.9 An Order of injunction alone would not be sufficient in the facts and circumstances of the present case where the Petitioners have Recovery Certificates and the statutory authorities are unable or unwilling to proceed towards making any recovery. As we have noticed in Rustam Mehta (supra) developers such as this Developer carry on businesses through special purpose vehicles all forming part of the same group or economic unit. Even though innocent flat purchasers are left stranded with no sight of the monies admittedly due to them, the developer or the group continue to engage in high value real estate projects with there being no impact on their lives or business. This shakes the confidence of the ordinary citizens especially when there is no recovery being made by the statutory authorities who are supposed to act for their benefit. In these circumstances the Courts will have to in exercise of their extraordinary writ jurisdiction attempt to pass effective interim orders. Keeping this in mind and having already directed the Developer to open a separate bank account with a nationalised bank for all receivables and revenues, some provision will have to be made for the actual recoveries to be realised by the Petitioners. In the peculiar facts and circumstances of the present case such orders are entirely justified and would alone further the interest of justice.

10. In view of our foresaid findings, we pass the following order:

(i) The Developer is directed to forthwith disclose the particulars of the bank account opened by it with a nationalised bank **("the Designated Account")**, pursuant to our Order dated 3rd December 2021;

(ii) The Developer shall continue to deposit all amount/s received by them and/or by their immediate family members, from any of the flat purchasers in respect of any of its projects including 'Hill View' and 'Triveni and/or from their debtors in the said Designated Account, until further orders of this Court;

(iii) The Court Receiver, High Court, Bombay is appointed as Receiver in respect of the Designated Account with all powers under Order XL of Code of Civil Procedure Code, 1908;

(iv) On 1st day of every month, the Court Receiver is directed to transfer 30% of the total credits lying in the Designated Account to a bank account to be opened by the Prothonotary and Sr Master, High Court, Bombay with a nationalised bank.

(v) Upon deposit of the 30% of all credits from the Designated Account to a bank account opened by the Prothonotary and Sr Master, High Court, Bombay, the Petitioners on 5th day of every month shall be entitled to withdraw monies in the following proportion:

Petitioners in Writ Petition No. 444 of 2021: **41.35%**
Petitioner in Writ Petition (L) No. 28699 of 2021: **51.03%**
Petitioners in Writ Petition (L) No. 20963 of 2021: **7.62%**

(vi) The amounts withdrawn by the Petitioners in the manner as aforestated shall be adjusted by it towards the decreetal amount, till the entire decreetal amount of the Petitioners is satisfied. It is made clear that the amounts so withdrawn shall be first adjusted against the interest amount and thereafter towards the principal amount payable to the Petitioners;

(vii) A statement of balance decreetal amount payable to each Petitioners after adjusting the amounts withdrawn by them in the aforesaid manner shall be provided to the Prothonotary and Sr Master, High Court, Bombay by the Petitioners on or before 5th of every month;

(viii) Till the entire decreetal amounts of the Petitioners are paid, the Developer, its partners Mr. Hemendra Haridas Mapara and Mr. Chetan Haridas Mapara including their family members and their group entities shall continue to be restrained and bound by our Orders dated 2nd December 2021 and 3rd December 2021;

(ix) A Notice under Section 14 of the Contempt of Courts Act, 1971 read with Rule 1031 of the Original Side Rules, 1960 shall be issued by the Original Side Registry of the Bombay High Court, to the partners of the Developer viz. Shri Hemendra Haridas Mapara and Shri Chetan Haridas Mapara calling upon them to respond as to why they should not be punished under the aforesaid provisions for obstruction and interference with the administration of justice and for lowering the dignity of this Court;

11. We would also like to clarify here that for the purpose of calculating the proportion of each of the Petitioners, as more particularly specified in paragraph 9(v) above, we have only considered the principal amount payable to each of the Petitioners (excluding the amounts paid towards stamp duty, registration charges, VAT, costs, etc.)

12. The application for interim reliefs is accordingly allowed in the aforesaid terms. Parties shall be at liberty to apply.

13. Costs will be considered at the stage of final disposal of the above Writ Petitions.

(MILIND N. JADHAV, J.) **(S.J. KATHAWALLA, J.)**