

**KSV/ 4884 /2019**

22<sup>nd</sup> August, 2019

**Shivam Megastructures Private Limited,**  
218, Prem Baug,  
1st Floor, Sir Bhalchandra Road,  
Matunga (C.R.),  
Mumbai – 400 019.

**Supplemental Opinion on Title**

Dear Sirs,

Re: All that piece and parcel of Slum land, bearing, CTS No. 163/A (part) admeasuring 5,822.71 sq. mts. or thereabouts of Village Akurli Taluka Borivali situate, lying and being at Akurli Road, Hanuman Nagar, Kandivali (East), Mumbai – 400 101.

1. By our Opinion on Title dated 16<sup>th</sup> October, 2017 bearing Ref. No.KSV/6821/2017 (hereinafter referred to as “**the Opinion on Title**”), we have *inter alia* opined that, on the basis of and subject to what is stated therein, (a) M/s. Shivam Developers (therein and hereinafter referred to as “**the Developers**”) are entitled to develop all those pieces and parcels of Slum Land admeasuring 34,390.69 sq. mtrs. or thereabouts bearing CTS No. 163A (part) of Village Akurli Taluka Borivali, situate, lying and being at Akurli Road, Hanuman Nagar, Kandivali (East), Mumbai – 400 101, as more particularly described in the Third Schedule thereunder written and the **First Schedule** hereunder written (hereinafter referred to as “**the said Property**”), as part of the slum rehabilitation scheme sanctioned by the Slum Rehabilitation Authority (“**SRA**”) vide the Revised LOI dated 14<sup>th</sup> June, 2016 and in accordance with the terms and conditions specified therein, and their said rights are clear and marketable; and (b) pursuant to the Agreement for Sub-Development dated 29<sup>th</sup> October, 2010 (therein and hereinafter referred to as “**the said Agreement for Sub-development**”), Shivam Megastructures Private Limited (therein and hereinafter referred to as “**Shivam Megastructures**”), is entitled to (i) the development rights in respect of the said Free sale Land (being a portion of the said Property, as defined in the Opinion on Title); and (ii) the right to sell and transfer units in the buildings constructed under the free sale component of the proposed slum rehabilitation project to be undertaken on the said Free sale Land, subject to the terms and conditions as specified in the said Agreement for Sub-development and further subject to the terms and conditions of the Old LOI dated 18<sup>th</sup> May, 2009 read with the Revised LOI dated 14<sup>th</sup> June, 2016

(as mentioned in the Opinion on Title), issued by SRA in favour of the Developers. A photocopy of the Opinion on Title is annexed hereto and marked as Annexure "A".

2. Capitalized terms herein which have not been specifically defined shall, unless the context otherwise implies, have the meaning ascribed to them in the Opinion on Title.
3. By and under the said Agreement for Sub-development, referred to in paragraph 10 of the Opinion on Title, the Developers granted/ assigned unto Shivam Megastructures, *inter alia*, (i) the development rights in respect of the portion of the said Property admeasuring 7,708.50 sq. mts. ("**the Original Free sale Land**"); (ii) the right to use the assured FSI to be used on the Original Free sale Land; (iii) right to use the entire additional area as may become available in respect of the development of the said Rehab Land (as defined in the Opinion on Title); and (iv) the right to sell and/or dispose or allot premises and all additional parking and other spaces to be constructed under the free sale component on the Original Free sale Land, at or for the consideration and on the terms and conditions specified therein. Further, under the said Agreement for Sub-development, Shivam Megastructures also accepted the responsibility to construct the rehabilitation building on the said Rehab Land. As per clause 10 of the said Sub-development Agreement, the minimum available FSI for utilization for free sale area on the said Free sale Land would be 3,88,394 sq. ft. or thereabouts.
4. We have been informed that due to expertise in planning and availability of fungible FSI, the available free sale FSI stood increased from 3,88,394 sq. ft. or thereabouts to 5,43,799 sq. ft. or thereabouts (equivalent to 50,520 sq. mts. or thereabouts).
5. We have been informed that since the area of the Original Free sale Land was likely to be reduced due to part of the area denoted as a Town Planning Road as per the Town Planning Scheme of SRA, vide the Revised LOI dated 14<sup>th</sup> March, 2016 issued by SRA and designing constraints, it was agreed between the Developers and Shivam Megastructures, that an additional area forming part of the said Property, admeasuring 5,181.5 sq. mtrs. or thereabouts, occupied by the members of the Sai Krupa Shejaar Samitee Co-operative Housing Society and Shree Sai Darshan Ganga Darshan Co-operative Housing Society, which had been included to develop the free sale portion, would be available to Shivam Megastructures for utilization of the free sale FSI of 50,520 square metres, equivalent to

- 5,43,799 sq. ft. or thereabouts (“**Original Free Sale FSI**”) available on the said Property.
6. Pursuant to the said Agreement for Sub-development, the Developers and Shivam Megastructures entered into an Agreement dated 21<sup>st</sup> March, 2018, registered with the office of the Sub-registrar of Assurances at Mumbai under Serial No. BRL-3/6341 of 2018, as an addendum to the said Agreement for Sub-development, whereby the Developers *inter alia* agreed to permit Shivam Megastructures to utilize additional land admeasuring 4,608.73 sq. mtrs. out of the said Property (therein and hereinafter referred to as the “**Additional Free Sale Land**”) for the purpose of developing the buildings utilising the Original Free Sale FSI and the Additional Free Sale FSI of 1,339.56 sq. mts., on the terms and conditions and in the manner more particularly specified therein.
  7. The Developers and Shivam Megastructures have now entered into a further Addendum to the Sub-development Agreement dated 13<sup>th</sup> August, 2019, wherein the Developers have agreed to transfer unto Shivam Megastructures, additional free sale FSI of 5,810 sq. mts. (excluding fungible FSI) available with the Developers and have also agreed to permit Shivam Megastructures to utilize additional land admeasuring 1,213.98 sq. mts. out of the said Property, without assigning/ transferring its development potential, at or for the consideration and on the terms and conditions and in the manner more particularly mentioned therein.
  8. We have been informed that pursuant to the said Agreement dated 21<sup>st</sup> March, 2018 and the said Addendum dated 13<sup>th</sup> August, 2019, Shivam Megastructures are now entitled to Free Sale FSI of 58,363.92 square meters (including fungible FSI) equivalent to 628,229.23 square feet. Further, under the said Addendum, it is agreed that the Developers shall appoint Shivam Megastructures and Shivam Megastructures shall construct the rehabilitation component (i.e. 11,205 sq. meters built-up area) on any portion of the layout sanctioned by it under the scheme and handover the same to the Developers. The cost for constructing 11,205 Sq. meters built-up area of rehabilitation component, shall be borne by Shivam Megastructures alone. The cost towards Land Premium and all other charges like rent, charges, etc. shall borne by the Developers.
  9. We have been informed that the Developers and Shivam Megastructures are in the process of getting the said Addendum to the Sub-development Agreement dated 13<sup>th</sup> August, 2019, registered with the concerned office of the Sub-registrar of Assurances.

10. Accordingly, we have been informed that Shivam Megastructures has conceptualized the development of the Free Sale FSI of 58,363.92 square meters (including fungible FSI) in two phases namely, Phase 1A and Phase 1B in the following manner:
  - a. Phase 1A consists of approximately 27,027.77 sq. mtrs. of FSI (including fungible FSI), which translates into 2,60,459.31 sq. ft. or thereabouts carpet area and comprised in 4 wings namely Wings A, B, C and D as per Intimation of Approval dated 7<sup>th</sup> April, 2016 bearing reference no.SRA/ENG/3069/RS/MHL/AP, to be utilized on a portion of the said Property, admeasuring 7,008.66 sq. mtrs. or thereabouts (hereinafter referred to as “**Phase 1A Free Sale Land**”); and
  - b. Phase 1B consists of approximately 31,336.15 sq. mtrs. of FSI (including fungible FSI), which translates into 297,101 sq. ft. or thereabouts carpet area, to be utilized on a portion of the said Property, admeasuring 5,822.71 sq. mtrs. or thereabouts, hereinafter referred to as “**Phase 1B Free Sale Land**” and more particularly described in the **Second Schedule** hereunder written and shown in red colour boundary line on the plan of the said Property hereto annexed and marked as “**Annexure – B**”.
11. We have now been requested by Shivam Megastructures to issue a Supplemental Opinion on Title in respect of the new building(s) to be constructed on the Phase 1B Free Sale Land.
12. Phase 1A Free Sale Land and Phase 1B Free Sale Land are hereinafter jointly referred to as the “**Free Sale Land**”.
13. In paragraph 29 of the Opinion on Title, we had made reference to Deed of Mortgage dated 14<sup>th</sup> October, 2014 registered with the Sub-registrar of Assurances at Kurla under Serial No. KRL-1/ 9284 of 2014, as varied and modified by Supplemental Mortgage Deed dated 14<sup>th</sup> July, 2015, registered with the Sub-registrar of Assurances at Borivali under Serial No. BRL-6/ 6379 of 2016, read with further Supplemental Mortgage Deed dated 15<sup>th</sup> February, 2016, registered with the Sub-registrar of Assurances at Kurla under Serial No. KRL-2 /1511 of 2016, read with Second Supplemental Mortgage Deed dated 10<sup>th</sup> February, 2017 registered with the Sub-registrar of Assurances at Kurla under Serial No. KRL-2 /1310 of 2017, whereby Shivam Megastructures and the Developers *inter alia* charged and mortgaged all their right, title and interest in respect of the said Property, in favour of Yes Bank Limited.

14. Pursuant to the above, by and under a Third Supplementary Mortgage dated 15<sup>th</sup> May, 2018 entered into between Shivam Megastructures, therein referred to as Mortgagor 1, the Developers herein, therein referred to as Mortgagor 2 and Rohit Premji Chheda, therein referred to as Mortgagor 3 in favour of Yes Bank Limited, therein referred to as the Mortgagee, and registered with the office of the Sub-registrar of Assurances at Borivali under Serial No.BRL-3/5199 of 2018, Shivam Megastructures and the Developers recorded the modification of the existing facilities given by Yes Bank Limited and that the revised facilities would also stand secured by the subsisting mortgage on the right, title and interest of the Developers and Shivam Megastructures in the said Property. The said Deed of Mortgage read with all the Supplementary Mortgage Deeds executed in favour of Yes Bank Limited are hereinafter collectively referred to as **“the Yes Bank Mortgage”**.
15. By and under a Deed of Mortgage dated 28<sup>th</sup> August, 2018 (hereinafter referred to as **“the PNB Mortgage”**) entered into between Shivam Megastructures, therein referred to as Mortgagor No.1, Shivam Developers, therein referred to as Mortgagor No.2, Rohit Premji Chheda, therein referred to as Mortgagor No.3, Shree Gajanan Warehouse Private Limited, therein referred to as Mortgagor No.4 and PNB Housing Finance Limited, therein referred to as the Lender and registered with the office of the Sub-registrar of Assurances at Mumbai under Serial No.BRL-4/ 13048 of 2018, Shivam Megastructures and the Developers created a parri passu charge in favour of PNB Housing Finance Limited over *inter alia* Project Godrej Tranquil, being all that piece or parcel of land having sale FSI of 53,940.96 sq. mts. and all the right, title and interest of Shivam Megastructures and the Developers in the said Property as and by way of security for the loan facility given by PNB Housing Finance Limited to them, in the manner and on the terms and conditions more particularly specified therein.
16. The Yes Bank Mortgage and the PNB Mortgage are hereinafter collectively referred to as **“the said Mortgages”**.
17. We have been informed that pursuant to the Addendums to the said Agreement for Sub-development and due to expertise in planning and availability of fungible FSI, the total FSI available for Phase 1B is now 3,37,302 sq. ft., amounting to a saleable area of 4,90,216 sq. ft.
18. SRA has issued an Intimation of Disapproval (**“IOD”**) dated 24<sup>th</sup> June 2019 bearing No. SRA/ENG/RS/MHADDA/0018/20060720/AP/S in respect of Sale Building S2, proposed to be constructed on Phase 1B Free Sale Land.

19. SRA has issued a Commencement Certificate (“CC”) dated 21<sup>st</sup> August, 2019, bearing No. RS/MHADA/0018/20060720/AP/S, in favour of the Developers, upto Plinth level of Wing A and D of the said proposed Sale Building S2 to be constructed on the Phase 1B Free Sale Land.
20. We had engaged Mr. Nilesh Vagal, Search Clerk, to carry out updated searches in the offices of the concerned Sub-registrar of Assurances for the period from 2016 to date, in respect of the land bearing CTS No. 163-A of Village Akurli, Taluka Borivili, who has submitted his updated Search Report dated 5<sup>th</sup> February, 2019 in respect thereof. On a perusal of the updated Search Report, we have not come across any other encumbrances on the Phase 1B Free Sale Land, save and except the said Mortgages.
21. We had engaged Oke Thakkar and Associates, Company Secretaries, to carry out searches on the website of Ministry of Corporate Affairs in respect of the charges created by Shivam Megastructures in respect of, *inter alia*, its right, title and interest in the Phase 1B Free Sale Land. Upon perusal of the Report dated 8<sup>th</sup> January, 2019 submitted by Oke Thakkar and Associates, save and except the said Mortgages abovementioned, there are no other charges created in respect of the Phase 1B Free Sale Land.
22. As per the instructions of our client, the Developers herein, we have not issued any Public Notice for the investigation of the right, title and interest of the Developers and Shivam Megastructures in respect of the Phase 1B Free Sale Land.
23. We have been furnished with a photocopy of the Property Register card obtained on 24<sup>th</sup> September, 2017, in respect of the larger land bearing CTS No. 163/A of Village Akurli. Upon perusal of the said Property Register Card, it is observed that the entire larger land stands in the name of the Government of Maharashtra.
24. By a notarized Declaration dated 22<sup>nd</sup> August, 2019, executed by Mr. Zaverchand L. Shah, in his capacity as Director of Shivam Megastructures and as authorised partner of the Developers, it has been, *inter alia*, declared, that:
  - (a) the said Shivam Megastructures, has the responsibility to construct rehab building/s on the said Rehab Land and is fully entitled to develop the said Free sale Land and to sell/mortgage flats in the building/s constructed by it thereon, in accordance with the terms and conditions specified in the said Agreement for Sub-development

read with the Agreement dated 21<sup>st</sup> March, 2018 and the Addendum dated 13<sup>th</sup> August, 2019, and the Developers, i.e. M/s. Shivam Developers, are fully entitled to carry out the slum rehabilitation scheme on the remaining portion of the said Property and construct the sale building/s thereon in accordance with the terms and conditions specified in the Old LOI dated 18<sup>th</sup> May, 2009 and the New LOI dated 9<sup>th</sup> July, 2012, read with the Revised LOI dated 14<sup>th</sup> June, 2016 (as specified in the Opinion on Title) and the permissions and approvals issued by the concerned authorities, from time to time and to sell, transfer or mortgage flats in such sale building/s to third parties;

- (b) the development rights of the Developers in respect of the said Property are not rescinded and/or challenged by any of the aforesaid slum societies or any members thereof;
- (c) save and except the said Mortgages, neither Shivam Megastructures nor the Developers nor any of their partners have created any lien, charge, mortgage or encumbrance on the said Property, or any part thereof;
- (d) the said Property is not the subject matter of any pending dispute, litigation, proceedings or attachment either before or after the judgment nor is there any restraining order or injunction passed by any court, authority, tribunal or forum pertaining to the said Property or any part thereof;
- (e) Shivam Megastructures is not restrained, prevented or prohibited by any order or direction or injunction of any court, forum, tribunal or authority from selling, transferring, mortgaging or creating third party rights in respect of the said Property and/ or any construction thereon; and
- (f) no Notice of Attachment/Reservation of the said Property or any part thereof has been served upon Shivam Megastructures, the Developers or upon any of its partners.

25. It may be noted that:

- (a) We have not visited/ inspected any part of the said Property or the buildings constructed/ being constructed thereon;

- (b) The aspect of zoning, permitted user, reservation/set-back (if any), development potential/ Floor Space Index and developability of the said Property fall within the scope of an architect review and we express no views about the same; and
- (c) The following has been assumed by us:
- (i) Copies of documents/ papers provided to us are precise and genuine copies of originals;
- (ii) Each document/ paper has been signed/ executed by persons purporting to sign/ execute the same and such person has full authority and power to do so; and
- (d) In no circumstances, shall the cumulative liability, if any, of our firm viz., Messrs Kanga and Co., Advocates & Solicitors, its Partners, Associates or employees, in connection with the preparation or the issue of this Supplemental Report on Title, exceed the professional fees paid by the Developers, M/s. Shivam Developers, to us in that behalf.
26. On the basis of and subject to the above, and in particular, subject to the said Mortgages, in our opinion, M/s. Shivam Developers are entitled to develop the said Property as part of the slum rehabilitation scheme sanctioned by the SRA vide the Revised LOI dated 14<sup>th</sup> June, 2016 and in accordance with the terms and conditions specified therein; and the said rights of M/s. Shivam Developers, are clear and marketable.
27. Further, on the basis of and subject to the above, and in particular, subject to the said Mortgages, in our opinion, pursuant to the aforesaid Agreement for Sub-Development dated 29<sup>th</sup> October, 2010, read with the Agreement dated 21<sup>st</sup> March, 2018 and the Addendum dated 13<sup>th</sup> August, 2019 (subject to the same being duly registered), Shivam Megastructures Private Limited is entitled to (i) the development rights in respect of the Phase 1B Free Sale Land (as described in the Second Schedule hereunder written); and (ii) the right to sell and transfer units in the buildings constructed thereon, being part of the free sale component of the proposed slum rehabilitation project to be undertaken on the said Property, subject to the terms and conditions as specified in the said Agreement and further subject to the terms and conditions of the Old LOI dated 18<sup>th</sup> May, 2009 read with the Revised LOI dated 14<sup>th</sup> June, 2016, issued by SRA in favour of M/s. Shivam Developers.



**THE FIRST SCHEDULE ABOVE REFERRED TO**


*(Description of the said Property)*

All that piece and parcel of slum land and ground, belonging to the Government of Maharashtra, admeasuring 34,390.69 sq. mts., and bearing CTS No. 163/A (pt.) of Village Akurli, Taluka Borivili, within the registration district and sub-district of Mumbai City and Mumbai Suburban.

**THE SECOND SCHEDULE ABOVE REFERRED TO**

*(Description of the Phase 1B Free Sale Land)*

All that piece and parcel of land, being a portion of the said Property, admeasuring 5,822.71 sq. mtrs. or thereabouts, demarcated for Phase 1B.

Yours faithfully,  
**Kanga & Company,**  
  
Partner