

To,

KOLTE PATIL DEVELOPERS LIMITED

501, The Capital
Plot No. C 7C, G Block
Bandra-Kurla Complex, Bandra (E)
Mumbai – 400 051.

CERTIFICATE RELATING TO TITLE

Re.: All that piece and parcel of land admeasuring 2505.6 sq. mtrs. (as per the Property Register Card) and 2613.24 sq. mtrs. (as per title documents), situate at Plot No. F.P. No. 761, TPS III (Old Plot No. 697-TPS III) having CTS Nos. 822 and 822/1 of Village Borivali, together with 2 (two) buildings previously standing thereon (now demolished), situate, lying and being at Swami Vivekanand Marg, Borivali (West), Mumbai – 400 092 in the Registration District and Sub-District of Mumbai and Mumbai Suburban, and bounded as under:

On or towards East: By Jai Gokul Dham Co-operative Housing Society Ltd

On or towards West: By Mandar Municipal Staff Co-operative Housing Society Ltd

On or towards North: By 120 ft wide DP Road

On or towards South: By Mangal Mahesh Co-operative Housing Society Ltd.

1. TITLE DOCUMENTS:

For the purpose of this certificate, we have perused the photocopies of the following documents (originals and/ or copies as stated below), and have relied upon the contents being true and correct:-

DOCUMENTS PERUSED:

- (a) Photocopy of Indenture of Conveyance dated 29 May 1976 executed between the Owners, therein referred to as the Vendors of the First Part, Dyandeo Pandurang Mirajkar, therein referred to as the Confirming Party of the Second Part and Om Shree Gokul Co-operative Housing Society Limited, therein referred to as the Purchasers of the Third Part and registered with the Office of Sub-Registrar of Assurances at Bombay under Serial No. 1537 of 1976.
- (b) Photocopy of Development Agreement dated 18 August 2010 executed between Om Shree Gokul Co-operative Housing Society Limited, therein referred to as the Society/Owner of the One Part and one M/s. Hitech Hafizi Town (A) Developers therein referred to as the Developers of the Other Part and registered with the Office of Sub-Registrar of Assurances at Borivali under Serial No. 8040 of 2010.

- (c) Photocopy of Power of Attorney 18 August 2010 registered with the Office of Sub-Registrar of Assurances under Serial No. 8041 of 2010.
- (d) Photocopy of Agreement for Sale of TDR dated 1 March 2013 executed between one M/s. Raj Rahim Enterprise, therein referred to as the Assignor of the One Part and M/s. Hitech Hafizi Town (A) Developers, therein referred to as the Assignee of the Other Part.
- (e) Photocopy of Deed of Rectification dated 10 April 2013 executed between Om Shree Gokul Co-operative Housing Society Limited, therein referred to as the Society of the One Part and M/s. Hitech Hafizi Town (A) Developers, therein referred to as the Developers of the Other Part.
- (f) Photocopy of Intimation of Disapproval dated 22 April 2013 bearing No. CHE/A-47770/BP(WS)/AR of 2012-2013, in the name of M/s. Hitech Hafizi Town (A) Developers.
- (g) Photocopy of Notice dated 27 September 2013 under Section 354 of the Mumbai Municipal Corporation Act, issued by the MCGM to Om Shree Gokul Co-operative Housing Society Limited.
- (h) Photocopy of Letter dated 16 December 2014, addressed by Deepak Chitnis – Chiparikar & Co., Advocates of M/s. Hitech Hafizi Town (A) Developers, to the Advocate of Om Shree Gokul Co-operative Housing Society Limited.
- (i) Photocopy of Letter dated 24 December 2014, addressed by Deepak Chitnis – Chiparikar & Co., Advocates of M/s. Hitech Hafizi Town (A) Developers, to the Advocate of Om Shree Gokul Co-operative Housing Society Limited.
- (j) Photocopies of papers and proceedings in respect of Arbitration Petition No.90 of 2015 under Section 9 of the Arbitration and Conciliation Act, 1996 before the Hon'ble Bombay High Court filed by M/s. Hitech Hafizi Town (A) Developers against Om Shree Gokul Co-operative Housing Society Limited.
- (k) Photocopy of Order dated 20 January, 2015 passed by the Hon'ble Bombay High Court in Petition No.90 of 2015.
- (l) Photocopy of Separate order dated 20 January, 2015 passed by the Hon'ble Bombay High Court in Petition No.90 of 2015.
- (m) Photocopy of Order dated 21 January, 2015 passed by the Hon'ble

Bombay High Court in Petition No.90 of 2015.

- (n) Photocopy of Letter of Intent dated 15 January 2016, addressed by Om Shree Gokul Co-operative Housing Society Limited to Kolte Patil Developers Ltd.
- (o) Photocopy of Order dated 22 July 2016 passed by the Hon'ble Bombay High Court in Petition No.90 of 2015.
- (p) Photocopy of Order dated 18 August 2016 passed by the Hon'ble Bombay High Court in Petition No.90 of 2015.
- (q) Photocopy of Order dated 18 October 2016 passed by the Hon'ble Bombay High Court in Arbitration Petition No.1266 of 2016.
- (r) Photocopy of Order dated 25 October 2016 passed by the Hon'ble Bombay High Court in Arbitration Petition No.1266 of 2016.
- (s) Photocopy of Order dated 26 October 2016 passed by the Hon'ble Bombay High Court in Arbitration Petition No.1266 of 2016.
- (t) Photocopy of Statement of Claim dated 19 November 2016 filed by M/s. Hitech Hafizi Town (A) Developers before the Sole Arbitrator, Mr. Cyrus D. Ardeshir.
- (u) Photocopy of Order dated 20 December, 2016 passed by the Hon'ble Bombay High Court in Arbitration Petition No.1266 of 2016.
- (v) Photocopy of Statement of Defence dated 24 December 2016 filed by Om Shree Gokul Co-operative Housing Society Limited before the Sole Arbitrator, Mr. Cyrus Ardeshir, to the Statement of Claim dated 19 November 2016 filed by M/s. Hitech Hafizi Town (A) Developers.
- (w) Photocopy of Order dated 10 January 2017 passed by the Hon'ble Bombay High Court in Arbitration Petition No.1266 of 2016.
- (x) Original Development Agreement dated 28 March, 2018, made between Om Shree Gokul Co-operative Housing Society Limited of the One Part and Kolte Patil Developers Limited as the Developer of the Other Part and registered with the Office of the Sub-Registrar of Assurances at Borivali under Serial No4146 of 2018.
- (y) Original Power of Attorney dated 28 March, 2018 registered with the Office of Sub-Registrar of Assurances at Borivali under Serial No. 4147 of 2018.

- (z) Original of MCGM sanctioned D.P. Remarks dated 19 July 2018.
- (aa) Search Report dated 23 August 2018 of Mr. Nilesh Vagal.
- (bb) Certified copy of Property Register Card in respect of F.P. No. 761 of Taluka Borivali.

2. **BRIEF HISTORY:**

Based on the aforesaid documents and the information furnished to us, we observe as follows:-

- (i) It appears that originally (i) Mr. Amrish Chandra Jagadish Agarwal, (ii) Mr. Ashokkumar Jagadish Agarwal and (iii) Harishchandra Ratanlal Agarwal, carrying on business under the partnership firm name and style of Agarwal Construction Co. (hereinafter collectively referred to as the "**Owners**") were seized and possessed of and well and sufficiently entitled to all that piece and parcel of land admeasuring 2505.6 sq. mtrs. (as per the Property Register Card) and 2613.24 sq. mtrs. (as per title documents), situate at Plot No. F.P. No. 761, TPS III (Old Plot No. 697-TPS III) having CTS No. 822 and 822/1 of Village Borivali, situate, lying and being at Swami Vivekanand Marg, Borivali (West), Mumbai – 400 092 in the Registration District and Sub-District of Mumbai and Mumbai Suburban (hereinafter referred to as the "**said Land**").
- (ii) It appears that by an Agreement for Sale dated 27 July 1975 executed between the Owners, therein referred to as the Sellers of the One Part and Dyandeo Pandurang Mirajkar, therein referred to as the Purchaser of the Other Part, the Owners agreed to sell to the aforesaid Dyandeo Pandurang Mirajkar, the said Land together with the two buildings to be constructed thereon, at or for the consideration and on the terms and conditions contained therein.
- (iii) It appears that by a Certificate of Sale dated 24 February 1976, granted by the Tax Recovery Officer City IV, Bombay under Rule 65 of the Second Schedule to the Income Tax Act, 1961 and registered with the Office of Sub-Registrar of Assurances at Bombay under Serial No. 6-933 of 1976, the Tax Recovery Officer *inter alia* confirmed the sale of the said Land in favour of Om Shree Gokul Co-operative Housing Society Limited, a co-operative housing society registered under the provisions of Maharashtra Co-operative Society Act, 1961 under Registration No. BOM/HSG/4660 of

1975 and having its registered office at R M Bhattad Marg, Borivali (west), Mumbai - 400 092(hereinafter referred to as the "**said Society**").

- (iv) By an Indenture of Conveyance dated 29 May 1976 executed between the Owners, therein referred to as the Vendors of the First Part, Dyandeo Pandurang Mirajkar, therein referred to as the Confirming Party of the Second Part and the said Society, therein referred to as the Purchasers of the Third Part and registered with the Office of Sub-Registrar of Assurances at Bombay under Serial No. 1537 of 1976, the Vendors therein granted, conveyed and assured and the Confirming Party therein confirmed, unto the said Society, the said Land together with the buildings and structures standing thereon subject to the covenant for production of title documents, at or for the consideration and in the manner contained therein. Under the aforesaid Indenture of Conveyance, the Parties *inter alia* agreed as under:
- a. the Vendors granted to the Purchaser the right of way and the right to lay pipes etc., over the strip of land admeasuring 6.6 m in width, over the (i) land admeasuring 1719 sq. mtrs. and bearing Plot Nos. 698, TPS III, Borivali, (ii) land admeasuring 2787.10 sq. mtrs. and bearing Survey No. 155 and 14 (part), provided that the same shall stand terminated on the access to the public road on the north side becoming available in the manner contained therein;
 - b. the Purchasers granted to the Vendors the right of way and the right to lay pipes etc., over the strip of land admeasuring 6.6 m in width over the said Property, provided that the same shall stand terminated on the access to the public road on the north side becoming available in the manner contained therein.
- (v) It appears that in or around the years 1973 to 1976, the said Society constructed 2 (two) buildings, comprising of 4 (four) wings, viz. A, B, C and D of ground plus three upper floors each (hereinafter referred to as the "**said Buildings**"). The said Land and the said Buildings are hereinafter collectively referred to as the "**said Property**".
- (vi) By a Development Agreement dated 18 August 2010 executed between the said Society, therein referred to as the Society/Owner of the One Part and one M/s. Hitech Hafizi Town (A) Developers (hereinafter referred to as the "**Erstwhile Developer**") therein referred to as the Developers of

the Other Part and registered with the Office of Sub-Registrar of Assurances at Borivali under Serial No. 8040 of 2010, the said Society granted development rights to the Erstwhile Developer to redevelop the said Property by demolishing the said Buildings then standing thereon and consuming and utilizing the development potential by way of FSI/TDR/ Fungible FSI and constructing new building/s on the said Land, on the terms and conditions contained therein. The aforesaid Development Agreement *inter alia* contains the following relevant terms and conditions:

- (a) Each existing member of the said Society, i.e. 63 members (hereinafter referred to as the "**Existing Members**"), shall be entitled to allotment of 30% additional carpet area over and above their respective existing carpet areas, free of cost, as and by way of Permanent Alternate Accommodation in the proposed new building;
 - (b) The Existing Members shall be entitled to monthly compensation, brokerage, etc. until vacant and peaceful possession of their Permanent Alternate Accommodation is handed over to them;
 - (c) The Developers therein shall be entitled to sell the available newly constructed area forming part of the Developer's Allocation therein;
 - (d) The time to complete the construction and development of the Project, was a period of 30 months;
 - (e) In the event of breach of any of the terms and conditions in the Agreement, the said Society shall be entitled to revoke and cancel the Agreement and forfeit the Security Deposit by giving a written notice;
 - (f) In case of delay in completion of development within the time frame of 30 months, the said Society shall give the Developer notice of a period of 6 months. In the event the Developer fails to complete construction of the proposed new building/s, they shall pay mutually agreed liquidated damages to the said Society for a sum of Rs. 10,00,000/- (Rupees Ten Lakh Only) per day for such period of delay.
- (vii) In pursuance of the aforesaid Development Agreement, the said Society has also executed a Power of Attorney 18 August 2010 registered with the Office of Sub-Registrar of Assurances under Serial No. 8041 of 2010 in

favour of the Erstwhile Developer, in order to carry out the development of the said Property, authorising them to do the acts, deeds and things more particularly therein contained.

- (viii) By an Agreement for Sale of TDR dated 1 March 2013 executed between one M/s. Raj Rahim Enterprise, therein referred to as the Assignor of the One Part and the Erstwhile Developer, therein referred to as the Assignee of the Other Part, the Assignor therein agreed to sell and transfer to the Assignee therein, 1680 sq. mtrs. TDR for utilisation of the same for the proposed residential and commercial building to be constructed on the said Land, at or for the consideration and on the terms and conditions contained therein.
- (ix) By a Deed of Rectification dated 10 April 2013 executed between the said Society, therein referred to as the Society of the One Part and the Erstwhile Developer, therein referred to as the Developers of the Other Part, certain terms and conditions of the Development Agreement dated 18 August 2010 was modified, in the manner more particularly contained therein. The aforesaid Deed of Rectification *inter alia* recorded that (i) the existing members shall be entitled to allotment of 30% additional carpet area and (ii) the Erstwhile Developer shall complete the building within 30 months from the date the said Society hands over the entire building to the Erstwhile Developer.
- (x) The MCGM issued Intimation of Disapproval dated 22 April 2013 bearing No. CHE/A-47770/BP(WS)/AR of 2012-2013, in the name of the Erstwhile Developer on behalf of the said Society, on the terms and conditions contained therein.
- (xi) The MCGM issued a Notice dated 27 September 2013 under Section 354 of the Mumbai Municipal Corporation Act, to the said Society, to vacate and pull down the said Buildings since the same were in a dilapidated condition, on the terms and conditions contained therein. In pursuance thereof, the said Society demolished the said Buildings. It appears that certain members of the said Society had initiated legal proceedings against MCGM in respect of the Notice issued under Section 354 of M.M.C. Act before the Hon'ble City Civil Court at Bombay (Borivali, Dindoshi Division) by L. C. Suit No.6088 of 2013 and thereafter filed an Appeal from Order No.30319 of 2013 before the Hon'ble High Court of

Judicature at Bombay. Upon dismissal of the aforesaid Appeal, certain members filed a Special Leave Petition bearing (Civil) No.5747 of 2014 in the Hon'ble Supreme Court, which was dismissed by Order dated 25 February 2014. We have been informed that the aforesaid proceedings have been concluded.

- (xii) It appears that vide a Notice of Termination dated 17 November 2014 addressed by the said Society to the Erstwhile Developer, the said Society terminated the Development Agreement dated 18 August 2010, since the Erstwhile Developer had not complied with the terms and conditions thereof, as more particularly contained therein.
- (xiii) By letter dated 16 December 2014, addressed by Deepak Chitnis – Chiparikar & Co., Advocates of the Erstwhile Developer, to the Advocate of the said Society, the Erstwhile Developer replied to the aforesaid Termination Notice thereby *inter alia* stating that the aforesaid Notice is illegal and bad-in-law and that the Erstwhile Developer is entitled to redevelop the said Property, as more particularly contained therein.
- (xiv) By letter dated 24 December 2014, addressed by Deepak Chitnis – Chiparikar & Co., Advocates of the Erstwhile Developer, to the Advocate of the said Society, the Erstwhile Developer *inter alia* called upon the said Society to appoint an arbitrator in terms of Clause 32 of the Development Agreement.
- (xv) In pursuance thereof, various correspondence was exchanged between the Advocates on behalf of the Erstwhile Developer and the Advocates on behalf of the said Society, regarding the aforesaid dispute.
- (xvi) The Erstwhile Developer filed Arbitration Petition No.90 of 2015 under Section 9 of the Arbitration and Conciliation Act, 1996 before the Hon'ble Bombay High Court against the said Society *inter alia* seeking order of injunction restraining the said Society from parting with/disposing off/creating third party rights in respect of the said Property.
- (xvii) In the aforesaid Petition, the Hon'ble Court was pleased to pass an ad interim order dated 20 January 2015 (hereinafter referred to as “**the said Ad Interim Order**”) directing the parties to maintain status quo as on 20 January 2015 in respect of the said Property and further clarified that in the event the said Society is inviting tenders from the developers, the

tenders shall mention the pendency of the Arbitration Petition No.90 of 2015 and the said Society shall receive bids subject to orders by the Hon'ble Court in the aforesaid Petition.

- (xviii) In a separate Order dated 20 January 2015 the Court directed the 1st Assistant of the Court Receiver to visit the said Property and submit his report setting out as to who was in possession of the said Property.
- (xix) Pursuant thereto, the Court Receiver submitted his Report dated 21 January 2015. We observe that the aforesaid Report states that the Society is in possession of the said Property although the Court Receiver could not ascertain how a key of lock affixed on the suit site on the main entry door was with the Petitioner therein i.e. Erstwhile Developer. By an Order dated 21 January 2015 passed by the Hon'ble Court, the aforesaid Report was taken on record.
- (xx) Thereafter, on 24 June 2015, the Erstwhile Developer filed an Arbitration Application bearing No.203 of 2015 under Section 11(6) of the Arbitration and Conciliation Act, 1996 before the Hon'ble Bombay High Court seeking appointment of an Arbitrator for resolving the dispute between the Erstwhile Developer and the Society.
- (xxi) By an Order dated 25 June 2015 passed by the Hon'ble Court, the Hon'ble Court directed to continue the said Ad-Interim order granting status quo for 2 (two) weeks.
- (xxii) The said Society issued a Letter of Intent dated 15 January 2016, thereby appointing Kolte Patil Developers Ltd. for the redevelopment of the said Land, on the terms and conditions contained therein.
- (xxiii) In the hearing of the Arbitration Petition on 22 July, 2016, the Hon'ble Court was pleased to pass an Order by consent appointing Mr. Cyrus Ardeshir, Advocate as the Sole Arbitrator to decide the dispute arising out of the Development Agreement dated 18 August, 2010 and further directed the parties to appear before the Learned Arbitrator on 23 July, 2016 and further inter-alia ordered (i) The Petition be treated as Petition under Section 17 of the Arbitration and Conciliation Act, 1996 (ii) Order be passed by the Arbitrator within 4 weeks of the Order and (iii) the said Ad Interim Order to continue in the meantime. In view of the same the Arbitration Petition bearing No.90 of 2015 and the Arbitration Application

bearing No.203 of 2015 stood disposed off.

- (xxiv) As the Order was not passed by the Arbitrator within the stipulated period as directed by the Hon'ble Court in its Order dated 22 July 2016, the Hon'ble Court was pleased to pass an Order on 18 August 2016 to extend the time period given to the Learned Arbitrator to pass an award/order by two weeks and the said Ad Interim order was to be continued.
- (xxv) Thereafter, on 31st August, 2016 the Learned Arbitrator was pleased to pass an Order dismissing the application of the Erstwhile Developer under Section 17 of the Arbitration and Conciliation Act, 1996. The Order further recorded that even though no application for stay of this order has been made, there has been the said Ad Interim Order in operation since 20 January 2015 and which is continuing till date and it would be in the interest of justice if the said Ad Interim Order is continued for a period of 4 (four) weeks from 31 August 2016 so as to enable the Erstwhile Developer to file an appeal if so advised. Pursuant to the aforesaid, the Learned Arbitrator directed that the status quo be continued for a period of 6 (six) weeks from 31 August 2016.
- (xxvi) The Erstwhile Developer challenged the Order dated 31 August, 2016 passed by the Learned Sole Arbitrator and filed Arbitration Appeal (L) No. 12 of 2016 with Arbitration Petition bearing No.1266 of 2016 before the Hon'ble Bombay High Court
- (xxvii) In the meantime, the Erstwhile Developer filed its Statement of Claim dated 19 November 2016 before the Sole Arbitrator, Mr. Cyrus D. Ardeshir. In the matter before the Sole Arbitrator, Mr. Cyrus D. Ardeshir the Erstwhile Developer, being the Claimant therein and the said Society, being the Respondent therein, thereby *inter alia* praying as under:
- (a) The Hon'ble Tribunal be pleased to declare that the Agreement for Development dated 18 August 2010 alongwith Irrevocable General Power of Attorney dated 18 August 2010 read with Rectification Deed dated 10 April 2013 are valid, subsisting and binding on the Erstwhile Developer and the said Society;
- (b) The Hon'ble Tribunal be pleased to declare that the Notice of Termination dated 17 November 2014 issued by the said Society, thereby wrongly terminating the Agreement for Development dated

18 August 2010 and revoking the Irrevocable General Power of Attorney dated 18 August 2010 read with Rectification Deed dated 10 April 2013 as illegal, bad in law and void and not binding on the Erstwhile Developer and the said Society relating to the suit properties and the same is liable to be set aside;

- (c) The Hon'ble Tribunal be pleased to pass a decree and judgment thereby directing the said Society and its members and their family members and all persons claiming through, by and/or under the said Society to specifically perform their part of the obligations under the Agreement for Development dated 18 August 2010 alongwith the Irrevocable General Power of Attorney dated 18 August 2010 read with Rectification Deed dated 10 April 2013 relating to the suit properties;
- (d) The Hon'ble Tribunal direct the Respondents to sign and execute a fresh Power of Attorney permitting the Erstwhile Developer to carry out the development and construction work and to represent various authorities for the purpose of getting the plan revalidated or for submitting fresh plan for the purpose of issue of IOD and commencement certificate and also to obtain occupation certificate thereafter and to sign and execute all such documents and writings as may be required to be executed in favour of the Erstwhile Developer so as to enable the Erstwhile Developer to carry out the redevelopment work;
- (e) That in the event the Hon'ble Tribunal is not pleased to grant the discretionary reliefs of specific performance then in that event (i) the said Society be ordered and decreed to pay to the Erstwhile Developer, the sum of Rs. 49,78,43,416/- as and by way of damages, (ii) the sum of Rs. 20,01,69,000/- being the amount spent by the Erstwhile Developer in carrying out the development, together with the further interest at the rate of 24% p.a. from the date of payment till the date of payment and realisation thereof;
- (f) That the Hon'ble Tribunal be pleased to direct the said Society and its members to perform all the consequential acts, deeds and matters, which are required to performed by them in terms of the Agreement for Development dated 18 August 2010 and revoking the

Irrevocable General Power of Attorney dated 18 August 2010 read with Rectification Deed dated 10 April 2013 relating to the suit property;

- (g) If the said Society and its members fail and neglect to perform their part of the obligations under Agreement for Development dated 18 August 2010 and revoking the Irrevocable General Power of Attorney dated 18 August 2010 read with Rectification Deed dated 10 April 2013, then the Arbitral Tribunal be pleased to appoint the Court Receiver, High Court Mumbai as a Receiver for performing those duties and obligations casted upon the said Society;
 - (h) The Hon'ble Tribunal be pleased to permanently restrain the said Society by a permanent order of injunction from dealing with and/or disposing off and/or parting with possession and/or creating any third party rights and/or encumbrances on the suit plot or any portion thereof for the purpose of carrying out the development and construction work thereon;
 - (i) The Hon'ble Tribunal be pleased to restrain the said Society by a permanent order of injunction from in any manner preventing the Erstwhile Developer from continuing and completing the redevelopment work in the suit plot of land;
 - (j) Interim reliefs in terms of thereof;
 - (k) Any other reliefs as may be required.
- (xxviii) By Order dated 20 December 2016 passed by the Hon'ble Court in Arbitration Petition bearing No.1266 of 2016 above referred, the Hon'ble Court directed the Erstwhile Developer to deposit a sum of Rs.10,00,00,000/- (Rupees Ten crores only), within a period of 3 (three) weeks, in order to show their bona fide and in case the Erstwhile Developer fails to deposit this amount, the said Ad Interim Order i.e. the status quo will stands vacated on expiry of 3 weeks.
- (xxix) The said Society (being the Respondent therein) has filed its Statement of Defence dated 24 December 2016 before the Sole Arbitrator, Mr. Cyrus Ardeshir, to the Statement of Claim dated 19 November 2016 filed by the Erstwhile Developer (being the Claimant therein), whereby the said Society has *inter alia* prayed as under:

- (a) The Hon'ble Tribunal be pleased to direct the Erstwhile Developer to pay damages towards loss of rent of a sum of Rs. 1,77,07,950/-, upto November 2014 (as per the Statement annexed at Exhibit 2 thereto), a sum of Rs. 3,01,38,750/- for the period November 2014 to December 2016 (as per the Statement annexed at Exhibit 2 thereto) and further amount of Rs. 12,05,550/- per month from 1 January 2017 till such time as the Erstwhile Developer wrongfully seeks continuation of the order of status quo possession;
 - (b) The Hon'ble Tribunal be pleased to direct the Erstwhile Developer to pay damages towards loss of interest on unpaid corpus amount, amounting to Rs.1,50,07,171 from 25 May 2014 to 17 November 2014 and further upto 31 December 2016 and further interest at the rate of 15% p.a. from 1 January 2017 till such time as the Erstwhile Developer wrongfully seeks continuation of the order of status quo possession;
 - (c) The Hon'ble Tribunal be pleased to direct the Erstwhile Developer to pay a sum of Rs. 5,00,00,000/- as damages for mental agony and inconvenience caused to the members of the said Society;
 - (d) The Hon'ble Tribunal be pleased to direct the Erstwhile Developer to pay a sum of Rs. 25,00,000/- or such other amount as may be determined by the Hon'ble Tribunal on the basis of the actual legal expenses incurred by the said Society;
 - (e) The Hon'ble Tribunal be pleased to award interest at 18% p.a. on all of the aforesaid amounts from the date when such respective amounts were incurred and/or became due and payable till such time as the aforementioned amounts are paid by the Erstwhile Developer;
 - (f) Such other reliefs as the Hon'ble Tribunal may deem fit.
- (xxx) By Order dated 10 January, 2017 passed by the Hon'ble Court in Arbitration Petition No.1266 of 2016; the Hon'ble Court accepted the undertaking of the Erstwhile Developer for complying with the Order dated 20 December, 2017 i.e. for the deposit of the amounts as stated therein on or before 16 January 2017. However, it was clarified that no further extension shall be granted under any circumstances.

- (xxxi) We have been informed that the Petitioner failed to deposit the amount of Rs.10,00,00,000/- (Rupees Ten Crores Only) as directed vide order dated 20 December, 2016 aforesaid. In view thereof, the said Ad Interim Order i.e. the status quo stood vacated.
- (xxxii) Thereafter, the Arbitration Petition bearing No. 1266 of 2016 was taken up for hearing and the Hon'ble Court by its Order dated 27 September 2017, dismissed the Arbitration Petition No.1266 of 2016 and imposed a cost of Rs.50,000/- (Rupees Fifty Thousand Only) on the Erstwhile Developer. The aforesaid Order further records that the Learned Arbitrator Mr. Cyrus Ardeshir recused himself from the aforesaid arbitration proceedings and the Learned Arbitrator Mr.Gautam Mehta is appointed as the Sole Arbitrator thereto. The aforesaid arbitration proceedings are pending and are at the stage of evidence before the Learned Arbitrator Mr. Gautam Mehta.
- (xxxiii) In view thereof, we are of the view that the Society is in the possession of the said Property and there is no restraining order operating against the said Society for undertaking redevelopment of the said Property.
- (xxxiv) The MCGM sanctioned D.P. Remarks dated 19 July 2018 in respect of the said Land, which *inter alia* records that the said Land is in Residential Zone and is affected by a 36.60 m D.P. Road.

3. PROPERTY REGISTER CARD:

It appears from the Property Register Card of the land bearing F.P. No. 761 that (i) area of land is 2505.60 sq. mtrs. (ii) the name of Om Shree Gokul Cooperative Housing Society Limited appears as the owner thereof and (iii) the tenure of the land is reflected as "C" i.e. non-agricultural.

4. DEVELOPMENT AGREEMENT:

- (i) By a Development Agreement dated 28 March, 2018, made between the said Society of the One Part and Kolte Patil Developers Limited as the Developer of the Other Part and registered with the Office of the Sub-Registrar of Assurances at Borivali under Serial No.4146 of 2018, the said Society granted to the Developer therein, development rights to redevelop the said Property by consuming and utilizing the development potential by way of FSI/TDR/Fungible FSI and constructing new building/s on the said

Land, at or for the consideration and on the terms and conditions therein contained.

- (ii) By a Power of Attorney dated 28 March, 2018 registered with the Office of Sub-Registrar of Assurances at Borivali under Serial No. 4147 of 2018, executed by the said Society in favour of Kolte Patil Developers Ltd., enabling it to do all acts, deeds, matter and things in respect of the said Land, in the manner contained therein.

5. SEARCHES:

A search has been conducted in the office of Sub-Registrar of Assurances, by Mr. Nilesh Vagal until the date of 23 August 2018, who has furnished the Search Report dated 23 August 2018, inter alia, in respect of the said Land, the copy whereof is annexed hereto and marked as **Annexure "A"**.

6. PUBLIC NOTICE:

- (i) We had issued public notices on 15 April, 2016 in the (i) Gujarat Samachar, (ii) Loksatta, (iii) Times of India, (iv) Maharashtra Times and (v) Mumbai Samachar newspapers, to invite claims from the public at large in respect of the title of the said Society to the said Land. In reply to the aforesaid Public Notice, we have received the following letters:
- a. Letter dated 23 April 2016 from Agarwal Construction Company claiming that one Jai Gokuldharm C.H.S. Ltd. had filed a Suit No.365 of 2010 in the Bombay City Civil Court, Borivali Division at Dindoshi for conveyance of property and that there is a decree of execution of conveyance of certain properties including the said Properties passed by the Hon'ble Bombay City Civil Court in Suit No.1603 of 2006.
- b. Letter dated 19 April 2006 from U. M. Jhaveri, Advocate and Solicitor representing (a) Khalil Rhmani Sheikh, (b) Vilas V. Pawar, (c) Darshita Rowan Gillies, (d) Ramanlal N. Patel, (e) Sudhir Dutia, (f) Kalpana Anand Sini and (g) Sheetal Mhatre claiming rights under Agreements For Sale entered into by the Erstwhile Developer in their favour in respect of sale of flats in the building proposed to be constructed on the said Land and;

- c. Letter dated 22 April 2016 from Deepak Chitnis – Chiparikar & Co., Advocates representing the Erstwhile Developer lodging objection for entering into any transaction in respect of the said Property given the said Ad Interim Order.
- (ii) By 3 (three) separate Letters dated 10 May 2016, we called upon the aforesaid (i) Agarwal Construction Company, (ii) U. M. Jhaveri and (iii) Deepak Chitnis – Chiparikar & Co. to furnish us copies of documents establishing their claim to the said Property stating that failing the same, it shall be deemed that they have no right, title or interest of any nature whatsoever in respect thereof the said Property. We have not received any reply to our aforesaid letters till date from the aforesaid (i) Agarwal Construction Company and (ii) U. M. Jhaveri and no supporting documents have been furnished by them to us. As regards Letter dated 22 April 2016, the said Ad Interim Order was subsequently vacated as mentioned above.

7. CONCLUSION:

In view of and subject to what is stated hereinabove in our opinion, the said Society i.e., Om Shree Gokul Co-operative Housing Society Ltd. is the owner of the said Land and and subject to the outcome of the pending arbitration proceedings above referred, has free, clear and marketable title thereto.

Subject to the aforesaid, we further observe that Kolte Patil Developers Ltd. is entitled to the development rights in respect of the said Property in terms of the Development Agreement referred to in Paragraph 4 (i) above and is entitled to sell the sale component and receive full consideration in terms thereof.

8. GENERAL:

1. This Title Certificate is issued solely on the basis of the documents provided by you as mentioned above and we have no obligation to update this Title Certificate with any information or replies or documents received by us beyond this date.
2. We are not qualified to and have not independently verified the area of the said Property. We have referred to and retained the admeasurements in Hectors, ares, acres, gunthas, square yards and square meters, as we have found them in various documents.
3. For the purpose of this Title Certificate, we have assumed:

- (i) The legal capacity of all natural persons, genuineness of all signatures, authenticity of all documents submitted to us as certified or photocopies.
 - (ii) That there have been no amendments or changes to the documents examined by us.
 - (iii) The accuracy and completeness of all the factual representations made in the documents.
 - (iv) That all prior documents have been adequately stamped and duly registered.
 - (v) Any statements in the documents, authorization or any certificates or confirmations relied upon by us for issuance of this Title Certificate is correct and otherwise genuine.
 - (vi) Each document binds the parties intended to be bound thereby.
 - (vii) Photocopies provided to us are accurate photocopies of originals.
4. For the purposes of this Title Certificate, we have relied upon information relating to:
- (i) All of the information (including the documents) supplied to us was, when given, and remains, true, complete, and accurate and not misleading.
 - (ii) Boundaries on the basis of the documents provided to us by the clients.
5. For the purposes of this Report, we have relied upon photocopies of documents. We have not taken inspection of the originals of the documents referred to in Clause 1 of this Report.
6. We have carried out searches in the concerned offices of the Sub-Registrar and there is no pending litigation, proceedings, enquiry, etc. before any court of law, tribunal, etc. reflected in the Search Report in respect of the said Property. We have however not carried out any searches in the Courts or tribunals.
7. For the purpose of this Title Certificate, we have relied upon information relating to lineage, if applicable on the basis of revenue records and

information provided to us by you.

8. We are not certifying the boundaries of the said Property nor are we qualified to express our opinion on physical identification of the said Property. We also do not express our opinion on matters related to actual physical use of the said Property.
9. We express no view about the user/reservations/FSI/or developability of said Property.
10. We have not verified issues relating to reservation of the said Property or any portion thereof by Governmental Authorities.
11. We have not verified the market value of the property involved nor whether appropriate stamp duty has been paid on the various documents referred to herein nor do we express any opinion thereon.
12. We are not authorized or qualified to express an opinion relating to plan permissions, approvals or development potential of the said Property.
13. A certificate, determination, notification, opinion or the like will not be binding on an Indian Court or any arbitrator or judicial or regulatory body which would have to be independently satisfied, despite any provision in the documents to the contrary.
14. This Title Certificate is limited to the matters pertaining to Indian Law (as on the date of this Title Certificate) alone and we express no opinion on laws of any other jurisdiction.

Dated this 11th day of June 2019.

For M/s. Hariani & Co.



Partner

Annexure A

1

Nilesh Vagal

39, Chandralok Bldg. 2nd Floor, Aarey Road, Goregaon (W), Mumbai – 62.

Mobile : 9821674863

M/s. Kolte Patil Developers Ltd.

Re property at S.V. Road at village
Borivali being old plot No. 697, TPS III,
Final Plot No. 761, CTS No. 822, Admg
3133.68 sq. yds i.e. 2613.24 sq mts.

OM Shree Gokul Co-op Hs. Ltd.

To

M/s. Kolte Patil Developers Ltd.

Dear Sir,

As per your Instructions, I have taken search of the above referred property at Mumbai & Bnadra Sub R. office from 1965 To 2018 and at Borivali, Goregaon & Kandivali Sub R. Office Computer From 2002 To 2018 and following documents are found.

NB/Vagal
23/8/2018
N.B. Vagal

At Bandra Sub R. Office

1965

Nil

1966 To 1970

Nil

1971 To 1976 Sub To torn pgs.

1977 To 1985 completely Torn

1986 To 1996

Nil

1997 To 2001 Sub To torn pgs.

2002 To 2015

Nil

2016 To 2018 Index II Not

maintained properly.

At Mumbai Sub R. Office

1965 Nil

1966 To 1975 Nil

<u>Schedule</u>	<u>1976</u>	<u>Dt. 02.03.76</u>
1) Land at village Borivali F.P.No. 698, CTS No. 823 TPS III, Admg 2055.81 Sq.yds, i.e. 1719 sq.mt.	<u>Certificate of Sale</u> Shri. Krishna jivaji Gokulnathji Shri. Dixitji Gokulnathji Shri. Kalyanji Gokulnathji	<u>Rdt.10.06.76</u>
2) Land at village Borivali FP No. 697, CTS No. 822, TPS III Admg 3133.88 sq.yds i.e. 2613.24 sq.mt	Shri. Gopinathji Gokulnathji Shri. Mukunraiji Gokulnathji Shri. Mathureshji Gokulnathji Shri Madhavraiji Gokulnathji	
3) land at village Magathana S.No. 14pt & 155 CTS No. 7 Admg. 33747.60 sq.yd, i.e. 2787.10 sq.mt	To Shri Amrishchandra J. Agarwal Shri Ashokkumar J. Agarwal Shri. Harishchandra Agarwal	<u>Mumbai</u> <u>933/76</u>
4) Land at Shimpovali FP No. 693 A, TPS III CTS No. 822/2, Area 2840.75 sq yds, i.e. 2208 sq.mt Index II in torn conditioned .	----- <u>1977 To 1978</u> <u>Nil</u>	

<u>Schedule</u>	<u>1979</u>	<u>Dt. 29.03.76</u>
Land And Construction	<u>Conveyence Rs. 2431146/-</u>	<u>Rdt.07.02.1979</u>
At village Borivali Plot	Amrish Chandra Jagdish Agarwal	
No. 697 TPS III, CTS No.	Ashokkumar Jagdish Agarwal	
822, 822/1, Area 2613.24	Harishchandra Ratanlal Agarwal	
sq.mts i.e.	Partners of Agarwal Construction Co.	
3133.58 sq.yds	&	
(Index II in torn	Dnyandeo Pandurang Mirajkar	
conditioned .)		con.party

To	<u>Mumbai</u>
Shree Gokul Co-op. Hsg.Soc.Ltd.	<u>S-1537/76</u>

1980 To 1985 Sub To torn pgs

1986 To 1997

Nil

1998 To 2002 Sub To torn pgs

2003 To 2018

Nil

At Borivali, Goregaon & Kandivali
Sub R. Office Computer

2002 Nil

2003 To 2009 Nil

<u>Schedule</u>	<u>2010</u>	<u>Dt. 18.08.10</u>
Land and Construction at	<u>Dev. AgRs. 72160000/-</u>	<u>Rdt 18.08.10</u>
village Borivali CTS No.	Om Shree Gokul Co-op H.S. Ltd.	
822, 822/1, FP No. 761	To	
TPS III	M/s. Hightech Town (A) Developers	<u>Borivali 6</u>
	Mohamed Farooq Sarang	<u>8040/10</u>

2011 To 2013 Nil

<u>Schedule</u>	<u>2014</u>	<u>Dt. 04.12.14</u>
Land at village Borivali	<u>Affidavit</u>	<u>Rdt 05.12.14</u>
CTS No. 822, 822/1, FP	Hightech Town (A) Developers	
No. 761 Proposed	Farooq A.W. Sarang	<u>Borivali 1</u>
Residential &		<u>11019/14</u>
Commercial Bldg.		

2015 To 2016

Nil

<u>Schedule</u>	<u>2017</u>	<u>Dt. 04.02.17</u>
Land at Borivali	<u>Notice of Lispendence</u>	<u>Rdt 04.02.17</u>
CTS No. 822, 822/1	M/s. Hightech Hafiji Town A.	
Arbitration petition No.	Developers	<u>Borivali 4</u>
90/2015	Siddique M. Hafiji – Partner	<u>1388/17</u>

<u>Schedule</u>	<u>2018</u>	<u>Dt. 28.03.18</u>
Land and Construction at	Dev. Ag.Rs. 266215000/-	<u>Rdt 28.03.18</u>
village Borivali CTS No.	Om Shree Gokul Co-Op. Hsg Sco. Ltd	
822, 822/1, Old Plot No.	To	
697, Final plot No. 761	Kolte Patil Developer Ltd.	<u>Borivali 5</u>
TPS III, Area 2613.24		<u>4146/18</u>
Sq.mt as per document		
As per property card		
Area 2505.6 Sq.mt.		

Computer Index II from 1965 onwards are not maintained properly . And manual
Index II are Also in torn card.

NB Vagal
23/8/2018
(N. B. VAGAL)