

# M. T. MISKITA & Co.

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Ref. No. 97/2017

28<sup>th</sup> July, 2017

## Certificate Of Title

To:

**Kalpataru Properties Private Limited**

101, Kalpataru Synergy,

Opp. Grand Hyatt,

Santaacruz (East),

Mumbai 400 055

Dear Sirs:

(1). You instructed us to investigate and certify the title of Middle Income Group Co-operative Housing Society Bandra (East) Group-V Limited, a co-operative housing society registered under the Maharashtra Co-operative Societies Act, 1960, vide no. BOM/HSG/8045 of 1983 ("**Society**"), to the: (a) land, admeasuring approximately 6,999.01 square metres, bearing Survey No. 341 (part) and C.T.S. No. 629 (part) of Village Bandra (East), Mumbai Suburban District, situate at MIG Colony, Gandhi Nagar, Bandra (East), Mumbai 400 051 ("**Land**") granted on lease to the Society by the Maharashtra Housing Area And Development Authority ("**MHADA**"), (b) eleven buildings earlier standing upon the Land and since demolished ("**Old Buildings**"), (c) adjoining tit bit lands admeasuring in the aggregate approximately 460.27 square meters, and three adjoining scheme Recreation Grounds bearing No. 9, admeasuring approximately 569.98 square meters, No. 10, admeasuring approximately 288 square meters and No. 11 admeasuring approximately 206.61 square meters, admeasuring in the aggregate approximately 1,064.59 square meters (collectively, "**Adjoining Lands**"), (d) Office Building Plot Nos. 10 and 11, admeasuring 344.76 square meters and 378.26 square meters respectively (collectively, "**OB Plots**"), and, (e) peripheral lands (including pathways) admeasuring in the aggregate approximately 530 square meters, to the Land (collectively, "**Peripheral Lands**"). The Land, the Old Buildings, the Adjoining Lands, the OB Plots and the Peripheral Lands are hereinafter, wherever the context may require, collectively referred to as the "**Property**", the Land and the Old Buildings are more particululary described **Firstly** in the **Schedule** hereunder written, the Adjoining Lands and Peripheral Lands are more particululary described **Secondly** in the **Schedule**

hereunder written and the OB Plots are more particularly described **Thirdly** in the Schedule hereunder written.

(2). We have undertaken the following investigation of title:

(a). we caused searches to be undertaken by our search clerk, Shrinivas A. Chipkar, in the relevant Sub-Registries from the year 1972 upto June, 2017, pursuant to which he issued his Search Report dated 15<sup>th</sup> July, 2017 ("**Search Report**"). Mr. Chipkar has, in the Search Report, stated that some records for certain periods are either not maintained properly or torn;

(b). we published public notices inviting claims to the Property, in the Mumbai editions of: (i) Free Press Journal, on 7<sup>th</sup> June, 2017, and, (ii) Navshakti, on 7<sup>th</sup> June, 2017. No claims, or notices, have been received by us, till date, in response to the same; and,

(c). we have perused copies of: (i) title documents and other records furnished to us in respect of the Property, (ii) documents and writings executed in relation to the grant of the rights and entitlements to yourselves to re-develop the Property, (iii) certain records, confirmations, permissions and approvals, and data issued by you and the project architect, in respect of the Property and its re-development, and (iv) representations made by the Society with respect to its title to the Property and other related matters.

(3). Based upon the aforesaid investigation, we have set out hereinbelow a brief devolution of title in respect of the Property, and certain relevant matters/facts concerning the re-development:

(a). By and under the Indenture of Lease dated 28<sup>th</sup> February, 2008, made by and between the MHADA as Lessor of the One Part and the Society as Lessee of the Other Part, registered in the Office of the Sub-Registrar of Assurances at Andheri, vide Serial No. BDR-1/2186 of 2008 ("**Indenture of Lease**"), MHADA demised the Land unto the Society for a term of ninety years commencing on and from 16<sup>th</sup> May, 1977, upon the covenants and conditions, and at or for the lease rent, reserved therein.

(b). By and under the Deed of Sale dated 28<sup>th</sup> February, 2008, made by and between MHADA as Vendor of the One Part and Society as the Purchaser of the



Other Part, registered in the Office of the Sub-Registrar of Assurances at Andheri vide Serial No. BDR1-2187 of 2008 ("**Deed of Sale**"), MHADA conveyed to the Society, the Old Buildings at or for consideration and upon the terms, conditions and covenants recorded and contained therein.

(c). By and under the Re-development Agreement dated 22<sup>nd</sup> May, 2012, made by and between the Society of the One Part and yourselves as the Developer of the Other Part, registered in the Office of the Sub-Registrar of Assurances at Andheri No. 3, MSD, Bandra, vide Serial no. BDR-9/7669 of 2012 ("**Agreement**"), the Society granted to you the rights and entitlements in respect of the re-development of the Property and at or for consideration and upon the terms, conditions and provisions recorded and contained therein. The Society also executed in your favour, the Power of Attorney dated 22<sup>nd</sup> May, 2012, registered in the Office of Sub-Registrar of Assurances at Andheri No. 3, MSD, Bandra vide Serial No. BDR-9/7670 of 2012, containing powers and authorities to, inter alia, facilitate the re-development. It should be clarified that the Society had also agreed, under the Agreement, to grant to you rights in respect of the development of Recreational Ground Area No. 8 (Part) admeasuring approximately 166.25 square meters ("**R.G. Area No. 8 (Part)**"), subject to MHADA/MHADB agreeing to grant on lease to the Society, R.G. Area No. 8 (Part). As the R.G. Area No. 8 (Part) has not, as yet, been agreed to be granted on lease to the Society and does not presently form a part of the re-development, this Certificate of Title does not deal with the same.

(d). Pursuant to the execution of the Agreement, correspondence was exchanged between you, MHADA/its predecessor and the Society in respect of the OB Plots, including: (i) offer letter bearing reference no. CO/MB/RDC/NOC/F-984/600/2013 dated 30<sup>th</sup> March, 2013 addressed by Chief Officer, Mumbai Housing And Area Development Board being the predecessor of MHADA ("**MHADB**") to the Society, (ii) offer letter bearing reference no. CO/MB/REE/NOC/F-984/2027/2013 dated 24<sup>th</sup> October, 2013, addressed by Chief Officer, MHADB to the Society ("**Second Offer Letter**"), (iii) letter bearing reference no. REE/MB/1705/2013 dated 7<sup>th</sup> September, 2013, addressed by the Resident Executive Engineer Mumbai Board of MHADA to the Society with a copy to yourselves ("**MHADA's Letter**"), (iv) letter dated 12<sup>th</sup> November, 2013, addressed by you to the Resident Executive Engineer MHADB, (v) the letter bearing reference no. CO/MB/REE/130/2014 dated 4<sup>th</sup> February, 2014, with the plans annexed thereto, addressed by Resident Executive Engineer, MHADB to the Executive Engineer, Building Proposal



Department (WS) of the Municipal Corporation of Greater Mumbai ("MCGM"), with a copy to you and the Society, and (vi) letter bearing reference no. CO/MB/REE/NOC/F-984/707/2014 dated 27<sup>th</sup> June, 2014 issued by the MHADB to the Executive Engineer, Building Proposal Department (WS), MCGM ("27<sup>th</sup> June, 2014 NOC"), under which MHADA permitted the re-location and amalgamation of the OB Plots on a portion of the Land, ("Relocated OB Plot") which Relocated OB Plot would be an independent plot exclusively held by MHADA and upon which a residential building will be constructed for MHADA, having the built-up area stated therein (including Fungible FSI). Further, under such correspondence, the existing OB Plots have been permitted to be developed along with the remaining Land (that is, excluding the Relocated OB Plot) and MHADA has accepted your/Society's request to adjust MHADB's share in the built-up areas in Peripheral Lands as referred to in the Second Offer Letter, against the Society's share in the built-up areas in the Relocated OB Plot as referred to in MHADA's Letter, such that the remaining built up area (BUA) of MHADA, that is, 116.94 square meters ("MHADA's BUAs"), would be provided in the New Buildings (as defined and described in the Agreement), and the Society shall hand over to MHADA, the MHADA BUA's.

(e). MHADB granted its no objection to the re-development of the Land, the Adjoining Lands and the Peripheral Lands under its letter bearing reference no. MB/RDC/NOC/F-984/1882/2012 dated 23<sup>rd</sup> November, 2012, read with letter bearing reference no. CO/MB/REE/NOC/F-984/669/2014 dated 18<sup>th</sup> June, 2014, read with the 27<sup>th</sup> June, 2014 NOC, and read with its letter bearing no. CO/MB/REE/NOC/F-984/1877/2016, dated 17<sup>th</sup> December, 2016 addressed to the Executive Engineer, Building Proposal Department (WS), MCGM, upon the terms and conditions set out therein.

(3). By and under the Offer Letter bearing reference no. CO/MB/Arch/NOC/file-984/6691/2006, dated 18<sup>th</sup> December, 2006 read with the No Objection Certificate bearing reference no. MB/RDC/NOC/F-984/1882/2012 dated 23<sup>rd</sup> November, 2012, read with Offer Letter bearing reference no. CO/MB/RDC/NOC/F-984/600/2013 dated 30<sup>th</sup> March, 2013, read with the Offer Letter bearing reference no. CO/MB/REE/NOC/F-984/2027/2013 dated 24<sup>th</sup> October, 2013, read with the No Objection Certificate bearing reference no. CO/MB/REE/NOC/F-984/669/2014 dated 18<sup>th</sup> June, 2014, read with the No Objection Certificate bearing reference no. CO/MB/REE/NOC/F-984/707/2014 dated 27<sup>th</sup> June, 2014, read with the Offer Letter bearing reference no. Co/MB/REE/NOC/F-

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984/551/2016 dated 31<sup>st</sup> March 2016, read with the No Objection Certificate bearing reference no. CO/MB/REE/NOC/F-984/1877/2016 dated 17<sup>th</sup> December, 2016 read with subsequent offer letters, all issued by the MHADB, it has been recorded, inter alia, that: (i) all the terms and conditions of the lease deed are binding on the Society, (ii) lease rent and additional lease rent will be payable in respect of the following portions of the Adjoining Lands, that is, R.G. Area No. 9, R.G. Area No. 10 and R.G. Area No. 11 and nominal lease rent (which you have informed us, has been paid), and (iii) a supplemental lease agreement will be executed in respect of the Land, the Adjoining Lands and the Peripheral Lands on as "as is where is" basis, and all the additional buildable areas prior to the receipt of the Occupation Certificate (in respect of the re-development). Such supplemental lease agreement will also contain a rectification in respect of the Land, the Adjoining Lands and the Peripheral Lands prior to the receipt of the Occupation Certificate;

(4). You have informed us that the Society has delivered to you the quiet, vacant and peaceful physical possession of the Property, for re-development, as recorded in the Society's letter dated 14<sup>th</sup> January, 2017 addressed to you. You have informed us that, you have demolished the Old Buildings.

(5). You and the Society have separately represented to us that: (a) there were proceedings earlier filed/instituted in respect of the Society, and/or the re-development of the Property, which were disposed of earlier under various final orders, that such final orders were not challenged and attained finality, and there are no orders which subsist, or operate, in relation to such disposed of proceedings, and (b) there are certain pending proceedings in respect of the re-development of the Property, filed/instituted by certain members of the Society, the Society, yourselves, and others, as follows (collectively "Proceedings") that is: (i) Writ Petition no. 1110 of 2015 filed by Pooja Constructions against MHADA & Ors. in the Hon'ble Bombay High Court, seeking reliefs in relation to the amalgamation and relocation of the OB Plots, (ii) Writ Petition No. 710 of 2017 filed by the Society against certain members of the Society and Ors., in the Hon'ble Bombay High Court, in respect of vacation of such members' premises, in which the said members were directed by the Hon'ble Court to vacate their respective premises, and in respect of which you have informed us that they have, in fact, vacated the same. Two Notices of Motion Nos. (L) No. 608 of 2016 and (L) No. 731 of 2016 respectively, were filed therein and one Contempt Petition No. 89 of 2016 filed in pursuance thereof, (iii) Appeal No. 22 of 2016 and Appeal No. 23 of 2016 and certain miscellaneous application therein filed before the National Green Tribunal, Western Zone Bench, Pune, challenging the environmental clearance granted in respect of the re-development and for staying the same, (iv) Complaint No. LA/ COM/1433/2016 filed by Suresh Bhagwat, Hemant Kulkarni and



Arun Rawal, Complaint No. LA/ COM/ 2262/2016 filed by Anil V. Tharthare & Ors. and Complaint No. LA/ COM/ 2266/2016 filed by Mrs. Trupti Bala Sawant, all filed against MCGM and MHADA before Hon'ble Lokayukta, Mumbai, inter alia, challenging the then pending eviction proceedings under Section 95-A of Maharashtra Housing Area Development, Act, 1976, in which the interim stay of the said Section 95A proceedings referred above, and granted by Learned Lokayukta vide its Order dated 16<sup>th</sup> June, 2016 were stayed by Hon'ble Bombay High Court vide its Order dated 4<sup>th</sup> August 2016 in said Writ Petition and further proceedings in the said Complaints before Lokayukta were stayed vide the Order of Hon'ble Bombay High Court dated 11<sup>th</sup> August 2016 in the said Writ Petition. (v) Complaint No. LA/ COM/2292/2016 filed by Trupti Bala Sawant, MLA and Complaint No. LA/ COM/2292 /2016 filed by Pooja Constructions against MHADA & Ors. in respect of allotment of OB Plots to Pooja Constructions, hearing whereof has been stayed by Hon'ble Bombay High Court vide its Order dated 26<sup>th</sup> August 2016 in the Writ Petition No. 710 of 2017 and (vi) Writ Petition (L) No. 818 of 2017 filed by the Society and yourselves against a demand made by MCGM for payment of development charges in respect of the redevelopment of Property. You and the Society have further represented to us that, in respect of the aforesaid disposed of proceedings, as well as the Proceedings, there are no adverse orders that have been passed therein which affect the re-development and/or the Property. We have examined certain orders furnished to us in respect of the disposed of proceedings, and the Proceedings, and also undertook an online search upon the website of the Hon'ble Bombay High Court (in respect of those of the aforesaid proceedings that have been filed therein), and based upon such perusal and searches, and the aforesaid representations of you and the Society, it appears that as on date there are no orders passed therein which adversely affect the re-development of the Property.

(6). With respect to the key approvals in respect of the re-development furnished to us, you have informed us that pursuant to the Agreement, you submitted initial building plans to MCGM on behalf of the Society, and obtained from MCGM, the Intimation of Disapproval bearing no. CHE/WS/1172/H/337(NEW), dated 2<sup>nd</sup> December, 2014, ("IOD"). The initial plans were amended, and revised plans submitted to the MCGM, in respect of the re-development have been sanctioned by the MCGM, vide its letter bearing no. CHE/WS/1172/H/337(NEW), dated 29<sup>th</sup> July, 2015, issued in favour of the Project Architect. The MCGM has also issued its Commencement Certificate bearing reference no. CHE/WS/1172/H/337(NEW) on 19<sup>th</sup> May, 2017. The plans in respect of the Relocated OB Plot were approved vide letter bearing reference no. CHE/WS/1235/H/337(NEW) dated 14<sup>th</sup> January, 2015 issued by the Executive Engineer, Building Proposal, MCGM to the Resident Executive Engineer (MHADB), MHADA with a copy to the Project Architect. You have also informed us that all other necessary approvals, sanctions and permissions



from all concerned authorities as required till date, in respect of the re-development have been obtained, are in force, and you are in compliance therewith.

(7). In exercise of the rights and powers granted to you under the Agreement, you have, as co-mortgagor under the Deed of Simple Mortgage dated 23<sup>rd</sup> August, 2016, registered in the Office of the Sub-Registrar of Assurances at Andheri-2 vide Serial No. BDR-4/7549 of 2016, ("**Mortgage Deed**"), inter alia, created in favour of Housing Development Finance Corporation Limited ("**HDFC**"), a first mortgage and charge over your share of saleable FSI arising out of the Land, the Adjoining Lands and the Peripheral Lands. You will also have to comply with the condition of the loan availed of by you from HDFC and the covenants and conditions of the Mortgage Deed.

(8). Broadly, the scheme of re-development of the Property as envisaged under the Agreement and in letters and approvals issued from time to time by MHADB/MCGM and other concerned authorities, inter alia, involves you providing, in the new buildings to be constructed by you: (a) for the benefit of the present members of the Society, the Members' Flats and the Society Car-parking Spaces (as respectively defined and described in the Agreement), and (b) to MHADA, certain flats and premises to be constructed through utilisation of MHADA's BUAs as described in paragraph (3)(d) hereinabove and certain car-parking spaces. You will retain as your property and asset, the remaining/balance flats and car-parking spaces in such new buildings (respectively, "**Developer's Flats**" and the "**Developer's Car-parking Spaces**"), and will be entitled to allot and sell the Developer's Flats, and charge, collect and appropriate to yourself the consideration and benefits in respect thereof, and allot the use and benefit of the Developer's Car-parking Spaces as an amenity thereto, in terms of the Agreement. Further, after you recommend (in writing) your allottees and purchasers to the Society for membership, the Society has agreed, under the Agreement, to admit them to its membership subject to their complying with certain conditions and in accordance with applicable laws and regulations. No separate, or new, co-operative society or other entity or organisation is intended to be, or will be formed, and the Society will continue to hold title as referred to herein.

(9). On the basis of our aforesaid investigation, and subject to the Proceedings and other matters referred above, and hereinbelow, we are of the opinion that:-

- (a). the title of the Society to the Land and the Old Buildings is good and marketable, and free from encumbrances, subject to: (i) the covenants and conditions of the Indenture of Lease and Sale Deed, (ii) the rights and entitlements



in respect of the re-development granted to you under the Agreement, (iii) the approvals, permissions, sanctions and NOCs obtained, and to be obtained, and the undertakings and indemnities executed/registered in favour of concerned authorities, in respect of the re-development, and the terms thereof, and (iv) the Relocated OB Plot ultimately ceasing to be part of the Land leased to the Society under the Lease Deed, as at the relevant time the same will be resumed by MHADA under an appropriate writing.

(b). the Society is entitled, as provided in correspondence addressed by MHADB, to obtain a lease of the Adjoining Lands and Peripheral Lands, subject to compliance with the terms, conditions, rules and regulations in respect thereof, including those set out in the letters referred to in paragraph (3) above.

(c). you are entitled to undertake the re-development of the Property as envisaged under the Agreement and allot and sell on "ownership basis", and/or grant leases, licenses and/or tenancies, or otherwise transfer, deal with, alienate, or dispose of, the Developer's Flats and the Developer's Car-parking Spaces, in accordance with the Agreement, applicable laws and regulations, and the consents, permissions, approvals and sanctions obtained and to be obtained in respect of the re-development.

The Schedule Above Referred To  
(Description of the Property)

Firstly:

All that piece and parcel of non-agricultural leasehold land admeasuring approximately 6,999.01 square metres (which includes the Relocated OB Plot admeasuring 723.02 square meters), bearing Survey No. 341 (part) and C.T.S. No. 629 (part) of Village Bandra (East), Mumbai Suburban District, situate at MIG Colony, Gandhi Nagar, Bandra (East), Mumbai 400 051 together with the Old Buildings (since demolished).

Secondly:

All that piece or parcel of non-agricultural adjoining tit bit lands admeasuring in the aggregate approximately 460.27 square meters, and three adjoining scheme Recreation Grounds bearing No. 9. admeasuring approximately 569.98 square meters, No. 10,

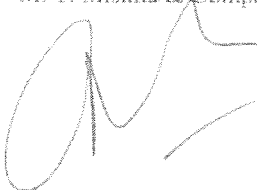


admeasuring approximately 288 square meters and No. 11 admeasuring approximately 206.61 square meters, admeasuring in the aggregate approximately 1,064.59 square meters and peripheral lands (including pathways) admeasuring in the aggregate approximately 530 square meters forming part of the Land more particularly described Firstly hereinabove in this Schedule.

Thirdly:

All that piece or parcel of non-agricultural leasehold being Office Building Plot Nos. 10 and 11, admeasuring 344.76 square meters and 378.26 square meters respectively, abutting the Land more particularly described Firstly hereinabove in this Schedule.

Your faithfully,  
M. T. Miskita & Company



Partner