

**IN THE HIGH COURT AT CALCUTTA  
COMMERCIAL APPELLATE DIVISION  
ORIGINAL SIDE**

**Before:**

**The Hon'ble Justice Arijit Banerjee  
And  
The Hon'ble Justice Om Narayan Rai**

**APOT 265 of 2025  
WITH  
CS-COM 108 of 2025  
IA NO.GA-COM 1 of 2025**

**Hatisala Developers Pvt. Ltd.  
Vs.  
The Statesman Limited & Anr.**

**AND**

**APOT 268 of 2025  
WITH  
CS-COM 108 of 2025  
IA NO.GA-COM 1 of 2025**

**Merlin Projects Ltd.  
Vs.  
The Statesman Limited & Anr.**

|                                                                                            |                                                                                                                                                                                                                        |
|--------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| For the Appellant in APOT 265 of 2025                                                      | : Mr. S.N. Mookerjee, Sr. Adv.<br>Mr. Ratnanko Banerji, Sr. Adv.<br>Mr. Kanishk Kejriwal, Adv.<br>Mr. Soumyadeb Sinha, Adv.<br>Mr. Rajarshi Banerjee, Adv.<br>Mr. Dhruv Chadda, Adv.<br>Ms. Suranjana Chatterjee, Adv. |
| For the Respondent No. 2 in<br>APOT 265 of 2025<br>& For the Appellant in APOT 268 of 2025 | : Mr. P. Chidambaram, Sr. Adv.<br>Mr. Jishnu Chowdhury, Sr. Adv.<br>Ms. Rajshree Kajaria, Adv.<br>Mr. Uttam Sharma, Adv.<br>Mr. Dharav Shah, Adv.<br>Mr. Abhidipto Tarafdar, Adv.                                      |
| For the Respondent No. 1<br>In APOT 265 of 2025 &<br>APOT 268 of 2025                      | : Mr. Samrat Sen, Sr. Adv.<br>Mr. Suman Kr. Dutt, Sr. Adv.<br>Mr. Sakabda Roy, Adv.<br>Mr. Dipranjan Mukhopadhyay, Adv.                                                                                                |

Mr. S. N. Dutt, Adv.  
Mr. Souvik Ghosh, Adv.

Hearing Concluded on : 22.09.2025

Judgment on : 26.09.2025

**Om Narayan Rai, J.:-**

1. Both the defendants in a suit being C.S. (COM) No. 108 of 2025 instituted by “The Statesman Limited” (hereafter “Statesman”), have appealed against an ad interim order dated September 9, 2025 passed by an Hon’ble Single Judge of this Court on an application for injunction being GA-COM 1 of 2025 taken out in the said suit.
2. APOT 265 of 2025 has been filed by Hatisala Developers Private Limited (hereafter “Hatisala”) which is the defendant no. 2 in the suit. APOT 268 of 2025 has been filed by Merlin Projects Limited (hereafter “Merlin”) which is the defendant no. 1 in the suit.
3. Since both the appeals assail the same order i.e. the *ex-parte* ad interim order dated September 9, 2025 passed in GA-COM 1 of 2025, therefore, the said appeals were taken up and heard analogously and are being dealt with by a common order. It may be recorded that since all the papers which were there before the Hon’ble Single Judge are there before us as well, therefore, by consent of the parties we have heard the appeal itself instead of hearing the application for injunction.

**FACTS OF THE CASE:-**

4. To begin with, a very brief summary of the case run by Statesman in its plaint may be noted :-

- a) Statesman is the owner of a building named “Statesman House” which stands on a plot of land measuring approximately 4 Bighas 6 Sataks 15 Chittaks and 7 Sqft.
- b) Sometime in the year 2019 Statesman was called upon by the State Bank of India to pay up a sum of Rs.33.70 Crore by March 31, 2019, towards repayment of the credit facilities that Statesman had availed from State Bank of India.
- c) In order to generate funds for the purpose of such repayment, Statesman decided to develop and lease out portions of the Statesman House through a Joint Development Agreement and for such purpose Statesman entered into a Joint Development Agreement with Merlin.
- d) In furtherance of the understating of Statesman and Merlin, five documents were executed on the same day i.e. on March 26, 2019 – i) Joint Development Agreement (hereafter “JDA”) ii) Power of Attorney (hereafter “POA”) iii) Deed of Mortgage iv) Deed of Guarantee and v) Deed of Declaration.
- e) In terms of the JDA, the net sales revenue generated from the sale proceeds/rental (in case of lease or tenancy) of units of the project was to be divided between Statesman and Merlin with Statesman getting 52.5% share and Merlin 47.5%.
- f) Merlin obtained sanctioned plan for the purpose of constructing the building on November 22, 2019 and Merlin was handed over possession of the property for the purpose of developing the same.
- g) Having taken possession as aforesaid, Merlin did not update Statesman about the status of the construction/project despite repeated requests.

- h) In or about May 20, 2023, Merlin expressed its desire to exit the project at a consideration acceptable to Merlin wherefor both the parties set off to search an investor.
- i) On or around October 20, 2023 Statesman and Merlin entered into an agreement with one Ms. Shalini Gujral who agreed to take over the project at a price of 290.95 Crore on November 20, 2023 and accordingly, a Memorandum of understanding was entered into between Statesman, Ms. Shalini Gujral and Merlin on November 21, 2023.
- j) Ms. Salini Gujral, however, ultimately backed out from the project in December 12, 2023 after issuing a letter through her learned Advocate to Statesman stating that it had been found that Merlin had created an encumbrance over the subject property by availing loan to the tune of Rs.50 Crore from Axis Bank against the pledge of the entire property.
- k) Statesman was unaware of such transaction, which was wholly unauthorised, however, upon being asked, Merlin confirmed of having availed such credit facility
- l) On May 10, 2024 a meeting was held between Statesman and Merlin when it was agreed that Merlin would complete the project and apply for completion certificate by June 15, 2024.
- m) However, Merlin failed to keep its promise and the completion certificate could not be obtained within the time indicated. The parties had meetings on several dates thereafter and ultimately in terms of the decision taken in a meeting held on July 05, 2024, Statesman entered into an agreement with Trent Limited on November 30, 2024 and thereby rented out/leased out the anchor space in the scheduled property measuring about 36000 sq.

ft. to Trent Limited. A sum of Rs.81,25,425/- was paid by Trent Limited initially to Merlin and thereafter upon execution and registration of the final lease agreement, a further sum of Rs.1,62,50,950/- was also paid by Trent Limited directly to Merlin, which it has retained against its dues.

- n) On July 2, 2025 Statesman received an email from Merlin whereby Statesman was informed that Merlin had sold, transferred and conveyed the property being premises no. 4 Chowringhee Square in its entirety (save and except 1500 sqft reserved for the office of Statesman on the 3<sup>rd</sup> floor) to Hatisala.
- o) On July 7, 2025 Merlin disclosed the deed of conveyance whereby the aforesaid property was sold to Hatisala which suggests that Merlin sold, transferred and conveyed the said property in favour of Hatisala on the basis of the minutes of the meeting held on May 10, 2024 although the minutes of the meeting held on May 10, 2024 do not record any such authority having been conferred upon Merlin by Statesman.
- p) Statesman thereafter caused searches and enquiries to be made and came to learn that Hatisala is a company which was incorporated on December 30, 2023 with an authorised capital of Rs.1 Lakh and paid up capital of Rs.10,000/- only and that the authorised capital of Hatisala was increased to Rs.50 Lakh only on May 20, 2025.
- q) Having found that fraud had been practised upon Statesman, Statesman approached this Court by instituting CS (COM) 108 of 2025 praying *inter alia* for the following reliefs:-

“a) Decree of declaration that the agreement of 26.03.2019 and the power of attorney dated 26.03.2019 executed by the Plaintiff in favour of Defendant No. 1 in respect of premises no. 4, Chowringhee Square, Post Office – GPO Kolkata, Police Station –

*Bowbazar, Kolkata – 700001 measuring about 4 Bighas 6 Sataks 15 Chittaks and 7 Sq ft (more or less) situated within aforesaid jurisdiction, be adjudged void and be delivered up and cancelled;*

*b) Decree for declaration that the deed of conveyance dated 27.06.2025 executed by the Defendant No. 1 in favour of Defendant No. 2 in respect of premises no. 4, Chowringhee Square, Post Office – GPO Kolkata, Police Station – Bowbazar, Kolkata – 700001 measuring about 4 Bighas 6 Sataks 15 Chittaks and 7 Sq ft (more or less) situated within aforesaid jurisdiction, be adjudged void and be delivered up and cancelled;*

*c) Decree of declaration that the plaintiff is sole and absolute owner of premises no. 4, Chowringhee Square, Post Office- GPO Kolkata, Police Station – Bowbazar, Kolkata – 700001 measuring about 4 Bighas 6 Sataks 15 Chittaks and 7 Sq ft (more or less) situated within aforesaid jurisdiction, particulars where of mentioned in the schedule;*

*d) Decree of declaration that the plaintiff has a right to redeem the mortgage created in respect of premises no. 4, Chowringhee Square, Post Office – GPO Kolkata, Police Station – Bowbazar, Kolkata – 700001 measuring about 4 Bighas 6 Sataks 15 Chittaks and 7 Sq ft (more or less) situated within aforesaid jurisdiction;*

*e) Decree of perpetual injunction restraining the defendants and each one of them from dealing with, disposing of and encumbering and or creating any third party interest or interfering with the possession of the plaintiff in respect of any portion of premises no. 4, Chowringhee Square, Post Office – GPO Kolkata, Police Station – Bowbazar, Kolkata – 700001 measuring about 4 Bighas 6 Sataks 15 Chittaks and 7 Sq ft (more or less) situated within aforesaid jurisdiction, by virtue of deed of conveyance dated 27.06.2025 or otherwise.”*

**5.** In connection with the said suit Statesman filed an application praying *inter alia* for order of injunction restraining the defendants in the suit (i.e. Merlin and Hatisala) from giving effect to the deed of conveyance dated June 27, 2025 and or dealing with or disposing of and or alienating and or creating any third party interest on the strength of the said deed of conveyance as also from changing the nature and character of the suit property being premises no. 4 Chowringhee

Square and interfering with the position of Statesman in respect of the said property.

6. The said application was pressed *ex-parte* before the Hon'ble Single Judge and after hearing the learned Advocates appearing for Statesman, the Hon'ble Single Judge has by the order impugned restrained the appellants before us "*from changing nature and character of the property, alienating the property and interfering with the possession of the plaintiff over the suit property till October 28, 2025*". Hence the two appeals.

**SUBMISSIONS ON BEHALF OF HATISALA:-**

7. Mr. Mookerjee, learned Senior Advocate appearing for the Hatisala criticised the order impugned by submitting that the same was perverse inasmuch as the same had been passed without properly appreciating Clauses 8 and 13 of the POA and Clauses 21 to 23 of the JDA. It was submitted that the JDA, the POA and the minutes of the meeting held on May 10, 2024 read cumulatively would lead to the inescapable conclusion that Merlin had been given authority to sell the entirety of the premises which was to be developed in terms of the Joint Development Agreement executed on March 26, 2019.
8. Mr. Mookerjee took us through Clauses 21 to 25 of the POA and submitted that the same read meaningfully, clearly indicate that Statesman had given power and authority to Merlin to enter into agreement for sale and to execute conveyance in respect of the saleable units of the project.
9. Mr. Mookerjee placed Clause 8.5(v) of the Joint Development Agreement to buttress his contention that power to sell or transfer saleable spaces/units of the project had indeed been accorded to Merlin by Statesman. He then took us through minutes of the meeting held on May 10, 2024 and submitted that

during the said meeting it was agreed that if Statesman failed to pay a sum of Rs.160 Crore together with further sums of Rs.42,76,785/- on account of dues payable to CESC limited and Rs.19,42,616/- on account of office shifting expenses and such other sums as mentioned in Clause b of the minutes of the meeting, then in terms of Clause c thereof Merlin would be entitled to dispose the projects in its entirety for recovery of its dues at its sole discretion and in any manner whatsoever without any reference to Statesman.

**10.** It was submitted by Mr. Mookerjee that although the aforesaid submissions were made before the Hon'ble Single Judge and the same appear to have been briefly noted at paragraphs 31 to 33 of the order impugned the same have not been dealt with in the order impugned. It was submitted that non-consideration of the submission recorded by the Hon'ble First Court while passing an order adverse to the person on whose behalf such submission were made, should be treated as perversity in law.

**11.** Mr. Mookerjee invited our attention to the Memo of consideration appended to the conveyance deed executed in favour of Hatisala (at page 393 of Volume-III of the stay application) to demonstrate that Hatisala had purchased the subject property for a valuable consideration of Rs.235,00,00,000/- (Rupees Two Hundred and Thirty Five Crore). It was then submitted that having thus purchased a property for valuable consideration, Hatisala had been left remediless in view of the order impugned inasmuch as Hatisala had been enjoined from dealing with the property purchased by it for valuable consideration and with notice to the vendor through its agent i.e. Constituted Attorney. It was submitted that the allegation of fraud that has been levelled



against the defendant in the suit had no basis inasmuch as Statesman was aware of the transaction.

- 12.** In order to fortify his submissions that Statesman had authorised Merlin by way of a valid POA to transfer the property and to execute conveyance on behalf of Statesman he invited our attention to the deed of lease executed on March 6, 2025 by Statesman in favour of Trent and pointed out that the authorised signatory on behalf of Statesman as well as Merlin was one Mr. Vishal Jain- an employee of Merlin. He then took the Court to the minutes of the meeting held on May 10, 2024 and showed that the same Mr. Vishal Jain had represented Merlin in the said meeting as well. It was then shown that the same person had represented Statesman and executed on its behalf in favour Hatisala. It was submitted that the order impugned should be set aside.

**SUBMISSIONS ON BEHALF OF MERLIN:-**

- 13.** Mr. Chidambaram, learned Senior Advocate appearing for Merlin submitted that the order impugned was clearly without jurisdiction. It was submitted that it is settled law that an injunction seeker must mandatorily demonstrate that he is in possession of the suit property. It was submitted that if the person seeking injunction is not in possession of the suit property and still seeks to get an order of injunction then such person must pray for a decree for recovery of possession.
- 14.** He took us through the plaint and submitted that there was no averment in the plaint that Statesman was in possession of the property in question. He then placed paragraph 11 of the plaint and submitted that the said paragraph had listed five documents that had been executed between Statesman and Merlin while making provision for a sixth document without mentioning what the sixth

document was. He insinuated that the sixth document was a letter of possession whereby Statesman had given possession of the subject property to Merlin. It was submitted that since Statesman knew that declaration of such document would impede Statesman's prayer for injunction, the same was not produced or indicated in the said paragraph.

- 15.** In support of his submission that possession was a necessary pre-condition for seeking an order of injunction, Mr. Chidambaram relied on the judgments of the Hon'ble Supreme Court, in the cases of ***Ramji Rai & Ors. vs. Jagdish Mallah (Dead) Through L.Rs. & Ors.***<sup>1</sup> and ***Thimmaiah vs. Shabira & Ors.***<sup>2</sup>.
- 16.** He dittoed the submissions made by Mr. Mookerjee and submitted that the Hon'ble Single Judge has wrongly concluded that the minutes of the meeting held on May 10, 2024 had the effect of substituting or amending the Development Agreement. It was submitted that the minutes of the meeting only elaborated what was already there in the Development Agreement and there was neither any modification nor amendment far less substitution thereof.

**SUBMISSIONS ON BEHALF OF STATESMAN:-**

- 17.** Mr. Sen, learned Senior Advocate appearing for Statesman submitted that the order impugned was unexceptionable. He submitted that the Joint Development Agreement was necessitated in view of the fact that Statesman required funds to repay the credit facility that it had availed of from the State Bank of India. It was submitted that the JDA was entered into for the purpose of generation of funds. It was then submitted that in order to secure the repayment of the financial

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<sup>1</sup> MANU/SC/8755/2006

<sup>2</sup> (2008) 4 SCC 182

assistance taken from Merlin, Statesman had also mortgaged the said premises with Merlin.

**18.** He then took us through the definition Clause/interpretation Clause in the JDA and asserted that the expression “premises” and “project” were differently defined by the parties.

**19.** He took us through several Clauses of the JDA to drive home the point that the intention of the parties was that the developer’s right to transfer was restricted only to units which pertained to the project and there was nothing in the premises that could have been sold, transferred or conveyed by the developer i.e. Merlin. We have been shown the portions of the JDA which record the *owner’s representations* and the *developer’s representations* and it has been demonstrated by Mr. Sen at all places the *owner’s representations* have been recorded as being made in connection with the premises and the *developer’s representations* have been recorded as being made in connection with the project. He sought to convey that usage of such definite expressions like “premises” in conjunction with owner and “project” in conjunction with the developer was with the sole intent to convey the idea that except the “project” nothing more could have been touched by Merlin.

**20.** Mr. Sen questioned the due diligence of Hatisala in entering into such an agreement without taking the actual owner into confidence. He submitted that the minutes of the meeting held on May 10, 2024 did not give any authority to Merlin to sell the subject property to Hatisala or to anyone else in full. Inviting our attention to Clauses 6.2, 6.4, 6.5 and 8.5 (i) to (iv) of the JDA, Mr. Sen submitted that the rights of the developer and the owner were distinctly recognised and there is no provision in the JDA whereby and whereunder any

right can be said to have been conferred on Merlin to convey and sell the entirety of the premises to a third party.

**21.** It was further submitted that the JDA also provided for leases to be executed and that if leases were executed, then upon expiry of lease, the area leased out would certainly come back to the owner i.e. to Statesman. Such a provision in the Joint Development Agreement clearly indicated that no power had been given by Statesman to Merlin to sell the subject premises.

**22.** It was then submitted that in any case even if it is assumed that the minutes of the meeting held on May 10, 2024 conferred any right on Merlin to sell the subject property on behalf of Statesman to a third party, Merlin could not have executed such sale merely on the strength of such minutes of the meeting because the same run counter to the clear intent of not authorising Merlin to sell any portion of the premises as evidenced by the JDA inasmuch as JDA is a registered document and the same could not be annulled or varied on the strength of an unregistered minutes of the meeting.

**23.** It was also asserted that since a mortgage had been created in respect of the said property by Statesman in favour of Merlin, Statesman had a right to redeem in terms of Section 60 of Transfer of Property Act, 1882 (hereafter “the said Act of 1882) and that being so the conveyance executed by Merlin in favour of Hatisala was clearly in the teeth of the provision of Section 60 as well as abrogative of Statesman’s right to redeem.

**24.** He further submitted that the JDA clearly specified that there was a parking space which could not be sold in any manner. Such being the situation the said space could not have been sold at all.

25. It was also submitted that given the nature of the right conferred upon the developer in the JDA and the authority given to it through the POA, Merlin could have at best created a lease or assignment but an out and out sale was legally impermissible for Merlin. Mr. Sen further submitted that the transaction of sale of the entire property has taken place for a sum of Rs.235 Crore only while a deal for the same property one year back was for a sum of Rs.350 Crore. It was submitted that the raw deal raises eyebrows and suggests foul play.
26. In support of his submission regarding right of redemption, Mr. Sen relied on the judgment in the case of **Seth Ganga Dhar vs. Shankar Lal & Ors.**<sup>3</sup>. In order to demonstrate that Statesman remained in *de jure* possession although not in physical possession upon handing over the property to Merlin, Mr. Sen relied on the judgment in the case of **Principal Commissioner of Income-tax vs. Infinity Infotech Parks Ltd.**<sup>4</sup>. In order to assert that the discretion exercised by a Court in passing an order of injunction should not be lightly interfered with, Mr. Sen relied on **Ramakant Ambalal Choksi vs. Harish Ambalal Choksi & Ors.**<sup>5</sup>. Mr. Sen also relied on the judgment in the case of **Sm. Muktakesi Dawn & Ors. vs. Haripada Mazumdar & Anr.**<sup>6</sup> for the proposition that doctrine of *lis pendens* is not enough to take fullest care of the plaintiff's interest vis-à-vis transfer during pendency of proceeding and as such injunction should be granted in fit cases. Reliance was placed on **Chandrakant Shankarrao Machale vs. Parubai Bhairu Mohite**<sup>7</sup> to contend that a registered document could not be varied by an unregistered document.

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<sup>3</sup> 1958 SCC OnLine SC 151

<sup>4</sup> 2018 SCC OnLine Cal 16878

<sup>5</sup> (2024) 11 SCC 351

<sup>6</sup> 1987 SCC OnLine Cal 51

<sup>7</sup> (2008) 6 SCC 745

27. He finally requested us not to interfere with the order impugned.

**REJOINDER AND SURREJOINDER SUBMISSIONS BY PARTIES:-**

28. Mr. Mookerjee, learned Senior Advocate appearing for Hatisala submitted that the provision for Section 60 of the said Act of 1882 would not apply to the present conveyance inasmuch as the present conveyance has not been done by Merlin as a mortgagee but the same has been executed in the name of Statesman who is the mortgagor, therefore such transaction should be treated as one done by the owner and not by a mortgagee. Inviting our attention to Clause 13.1 of the JDA, it was submitted that the distinction between project and premises sought to be made by Mr. Sen was in reality non-existent inasmuch as in terms of the said provisions, project meant the total transferable units of the project and not only the developer's interest. It was further submitted that the minutes of the meeting held on May 10, 2024, was a step in accordance with Clause 13.1 of the JDA.

29. It was further submitted that the construction of the project was complete and that completion certificate had also been issued but the same was suppressed before the Hon'ble Single Judge. Mr. Mookherjee also relied on the judgment in the case ***Ramakant Ambalal Choksi*** (supra) and submitted that the same supported the appellants more than the respondent. It was submitted that the principles stated in the said judgment have not at all been followed by the Hon'ble Single Judge while passing the order impugned.

30. Mr. Chidambaram, learned Senior Advocate supplemented the submissions of Mr. Mookherjee and handed up to Court a list of dates which too indicates that various important documents had been suppressed from Court.

31. Mr. Sen, learned Senior Advocate representing Statesman reiterated his submissions and took us through a chart appended to the Stay Application. He contended that even of the sale proceeds that have been received by Merlin from Hatisala a paltry sum has been sought to be paid to Statesman.

32. This was disputed by the learned Advocates for Merlin and it was contended that Statesman is being paid according to its entitlement.

**ANALYSIS & DECISION:-**

33. We have heard the learned Advocates for the respective parties and considered the material on record.

34. The Hon'ble Single Judge has found that Statesman has made out a strong *prima facie* case. We begin by testing that first. Statesman has asserted that since project and premises have been differently defined, Merlin has no right to sell anything that falls beyond the bracket of project. The definitions of the two expressions as used by the parties in the JDA therefore need to be noticed:-

***“PROJECT-** shall mean the upgradation as per plan already submitted with KMC & other statutory authorities for their approval of the existing building on the said Premises, by undertaking necessary addition, alteration, renovation and conversion of the existing Building and upgrading, infrastructure and facilities thereof including construction of new block thereon and the common areas, amenities and facilities therein in terms of this agreement by the Developer as its cost and expenses.*

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***SAID PREMISES-** shall mean All That the piece and parcel of land containing an area of 4 Bighas 6 cottahs 15 chittacks 7 square feet be the same a little more or less and the existing building thereon namely “Statesman House”, situated at and being premises no.4, Chowringhee Square, Post Office- GPO, Kolkata, Police SATATION – Bowbazar, Kolkata – 700001.”*

35. Having noticed the definitions of the expression **SAID PREMISES** and **PROJECT** we *prima facie* find that the said two expressions denote two different states of the same property. To our mind, again *prima facie*, while the expression

**SAID PREMISES** denotes the land with the existing building (prior to the same being developed in terms of the JDA) the expression **PROJECT** indicates the developed building upon the construction and upgradation being complete. Since the owner i.e. Statesman was handing over the property to Merlin for development, it was quite obvious for Statesman to make representations in respect of the property in its then existing only. Likewise, since the Developer i.e. Merlin was to develop the property, its representations must be in respect of the developed property. Therefore the two expressions clearly relate to the same property.

36. Our aforesaid view would stand fortified by Clause J of the preamble of the JDA which clearly evinces that the intent of the parties was to develop the entire premises. Clause J is quoted hereinbelow:-

*“Pending settlement of the said dues of the bank, the parties have negotiated in between themselves, whereby, the parties have agreed to commercially exploit the Said Premises and the Developer in consideration of necessary addition, alteration, renovation and conversion of the existing Building upgrading its infrastructure and facilities including construction of new block wherever necessary thereon and extend necessary cooperation to the owner to enable them to comply with the order dated 8<sup>th</sup> February, 2018 passed by the Learned Debts Recovery Tribunal – I, Kolkata, (hereinafter referred to as the “Project”), on the terms and conditions recorded herein.”*

37. The argument of Mr. Sen that since the two expressions are indicative of different corporeal rights Merlin could not have exercised any right to transfer the subject property to Hatisala lacks appeal, more so when it is not in dispute before us that completion certificate of the building has been granted.

38. We now need to see whether Merlin had been granted any authority to transfer the subject property to anyone. From the submissions of the parties that have been recorded hereinabove, it would be apparent, as it should have been quite



obviously, that two diametrically opposite views have been projected. While the appellants contend that upon a cumulative reading of the JDA, POA and the minutes of the meeting held on May 10, 2024 it would be evident that Merlin had been authorised to sell the entirety of the subject property, the Statesman's version is that the authority to transfer that vested in Merlin by dint of the JDA and POA was only limited to the **PROJECT** nothing at all beyond that.

**39.** In this connection the relevant Clauses of the JDA may be noticed first:-

*"6.2 By virtue of the rights hereby granted and in consideration of sharing the Net Sales Revenue, the Developer is irrevocably appointed and authorised by the Owner to execute the said Project and jointly with the Owner deal with the Units/spaces either on outright sale basis or on short term leasing/rentals.*

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*8.5 The Owner shall grant to the Developer and/or nominees a General Power of Attorney simultaneously with the execution of this Agreement for the following purposes :-*

- i) All purposes for obtaining sanction of plan including additions/alterations/modifications thereof;*
- ii) For obtaining various necessary permissions and sanctions from different authorities in connection with or related to the sanction plan and construction and completion of the Project and also pursuing and following up the matter with all authorities in this regard;*
- iii) For obtaining temporary and permanent connections of water, electricity, drainage, sewerage, gas, lifts etc., in the said premises and use and enjoyment of the Saleable Spaces and other spaces, areas, rights and benefits at the said premises.*
- iv) To create mortgage of the said Premises for availing construction finance.*
- v) To negotiate for sale/transfer in respect of the saleable spaces/Units of the project and to enter into agreement for sale, transfer, lease out, let out, conveyance/transfer/lease deed or to grant any other right in respect of various portions of saleable spaces/Units of the Project and to receive earnest money or consideration from time to time and to sign and give valid and effectual receipts or discharges thereof. To sign and execute necessary documents for availing loan by the prospective purchasers/transferees for purchasing/acquiring unit in the said Project.*

*Apart from the aforesaid General Power of Attorney the Owner shall execute such other Power of Attorney as may be required by the Developer in the matter of implementation of the Project.”*

**40.** Clauses 13.1 and 13.6 of the JDA under the caption ***DEALING WITH SPACES IN THE PROJECT:-***

**13.1.** *The principal policy decisions regarding the marketing and transfer of the Project (i.e. the total transferable constructed Units in the Project) including deciding the transfer price and revising the same from time to time shall be taken by the Developer with the concurrence of the Owner, which shall be decided by the Owner and the Developer on a monthly or such other basis as may be deemed necessary by the Parties. The sale considerations in respect of the sale of the Units of the Project shall be collected by the Developer & be deposited in a separate bank account to be opened for such purpose (in short called “Project Marketing Account”. No other bank account shall be used for deposit of the sale considerations from the Project. The Developer shall furnish to the Owner a statement of monthly sales & collection during the month by the 7<sup>th</sup> day of the next month. Upon receipt of such statement the Developer shall settle the accounts for that month with the Owner which shall thereafter not be challenged unless manifest error or mission is detected. Disbursement of the Net Sale Proceeds, i.e., after deducting from the gross amount to be received from the prospective allottees, all the deductibles which include Extract Development Charges, GST or any other present or future taxes payable on transfer of the units, stamp duty, registration fees and other alied cotss and expenses deposits etc, to the parties in the ratio mentioned above will be made within 7<sup>th</sup> day from the of submission of monthly sales account*

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**13.6.** *The Developer for self and as constituted attorney of the Owner shall execute and register with the appropriate registering authorities Deeds of Conveyance or other document for transferring and/or demising of any Unit/space in the project as aforesaid unto and in favour of the intending allottees and the cost for stamp duty and registration charges in respect thereof shall be borne by the allottees as the case may be”*

**41.** In this connection, we may now notice Clause 24 of the POA also. The same reads thus:-

*“To execute conveyance/conveyances in respect of the saleable spaces of the project to either in favour of the Purchaser or its nominee or nominees in such part or parts as the*

*Purchaser may desire and to receive consideration money and sign and give valid and effectual receipts or discharges thereof.”*

**42.** A cumulative reading of the aforesaid Clauses gives a *prima facie* impression that Merlin was authorised to transfer or convey any or all units or spaces in the project. The expression “units” has been defined in the JDA in the following manner:-

*“UNITS – shall mean existing building or space to be utilized as shop, office, restaurants, work place or for undertaking any other lawful commercial activity in the “Project”.*

**43.** The definition of the expression **UNITS** *prima facie* suggests that all the spaces in the project which could be commercially utilized would qualify for being called a saleable space or unit. In that view of the matter all the spaces in the project that could be commercially utilized could be transferred by Merlin while acting as an agent of Statesman.

**44.** Mr. Sen had submitted that the parking spaces could not be transferred at all. Such submission initially appeared to be very convincing in view of the provisions of Clause 6.4 of the JDA. However, upon juxtaposing the definitions of the two expressions “Parking Spaces” and “Units” and reading them along with the other clauses of the JDA with special emphasis and POA extracted herein above we are persuaded not to agree with Mr. Sen.

**45.** In this connection the definition of Parking space and Clause 6.4 of the JDA may be noticed:-

*“PARKING SPACE –shall mean all the spaces whether open or covered, of the Project expressed or intended to be reserved for parking of motor cars/two wheelers.*

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**6.4** *The Parking Space of the New Building though to be owned by the Owner and the Developer in their respective proportion as aforesaid, shall be utilized by the parties on “pay and park basis” to be operated by the Developer in consultation with the Owner*

*and share the net income after deducting operating expenses related to parking as per agreed ratio.”*

**46.** Indeed the provisions of Clause 6.4 convey an intent of retention of the owner's share of the said space by Statesman but then the definition of parking space which indicates *all the spaces whether open or covered, of the Project expressed or intended to be reserved for parking of motor cars/two wheelers* read with the definition of unit which includes *space to be utilized as shop, office, restaurants, work place or for undertaking any other lawful commercial activity in the “Project”* does indicate that parking space could also be a unit. Clause 13.6 of the JDA reserves authority to Merlin to *execute and register with the appropriate registering authorities Deeds of Conveyance or other document for transferring and/or demising of any Unit/space in the project both for self and as constituted attorney of the Owner* (i.e. Statesman). Therefore in our *prima facie* view, it cannot be said that the parking space could not have been transferred at all.

**47.** In such connection, we may also notice the provision for Owner's Allocation and the Developer's Allocation in the JDA:-

**“OWNER'S ALLOCATION** shall mean 52.5% (fifty two and half percent) of the Net Sales Revenue generated from the sale proceeds/rental (in case of lease/tenancy) of Units of the Project comprising of various units and/or area in the building on the Said Premises **TOGETHER WITH** the share in the same proportion in car parking spaces (open, covered or mechanical) **TOGETHER WITH** the undivided proportionate impartible part of share in the said Land attributable thereto **AND TOGETHER WITH** the share in the same proportion in all Common Areas, Facilities and Amenities and the signage space.

**DEVELOPER'S ALLOCATION** – shall mean 47.5% (forty seven and half percent) of the Net Sales Revenue generated from the sale proceeds/rental (in case of lease/tenancy) of Units of the Project comprising of various units and/or area in the building on the Said Premises **TOGETHER WITH** the share in the same proportion in car parking spaces (open, covered or mechanical) **TOGETHER WITH** the undivided proportionate impartible

*part of share in the said Land attributable thereto **AND TOGETHER WITH** the share in the same proportion in all Common Areas, Facilities and Amenities and the signage space.”*

- 48.** The import of the two allocations only differ in proportion of the sharing proceeds be it sale or rental. A meaningful reading thereof would *prima facie* indicate that it was an open option for the parties to agree as to whether Merlin would sell/transfer the entirety of the project and then the parties would share the sale proceeds thereof or Merlin would lease out certain portions and parties would share the rental proceeds thereof. There does not appear to be any total clog on transfer of the parking spaces.
- 49.** That being the situation, the observation of the Hon’ble Single Judge that Merlin had not been granted any authority to transfer the subject property is, in our *prima facie* view, not correct.
- 50.** It has been observed by the Hon’ble Single Judge that the minutes of the meeting had the effect of substituting the JDA. Such observation would also for the same reason not hold ground. We agree with the submission of Mr. Mookherjee that the minutes of the meeting were only a recording of the decision taken in terms of Clause 13.1 of the JDA and the conveyance in favour of Hatisala was an act in furtherance of such decision.
- 51.** The submission of Mr. Sen that Statesman has a right to redeem in terms of Section 60 of the said Act of 1882 does not also work in favour of Statesman in the facts and circumstances of the instant case. Right to redeem would be available to the mortgagor against the mortgagee only if the mortgagor seeks to redeem the mortgaged property from the hands of the mortgagee. In the instant case the transfer has been done in the name of Statesman itself i.e. the

mortgagor itself. *Prima facie*, it is a case of extinguishment of right to redeem by the act of parties. In order to appreciate the matter more appropriately, we may refer to section 60 of the said Act of 1882. The same is extracted hereinbelow:

**60. Right of mortgagor to redeem.**—*At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage - money, to require the mortgagee*

*(a) to deliver to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee],*

*(b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and*

*(c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:*

*Provided that the right conferred by this section has not been extinguished by act of the parties or by decree of a Court.*

*The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.*

*Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.*

**Redemption of portion of mortgaged property.**—*Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except only where a mortgagee, or, if there are more mortgagees than*

*one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgager.*

**52.** The proviso to section 60 of the said Act of 1882 clearly indicates that the right conferred by the said section can be extinguished by the act of parties. The execution and registration of conveyance in favour of Hatisala by Merlin while acting on behalf of Statesman on the strength of the JDA, the POA and the minutes of the meeting dated May 10, 2024 are *prima facie* suggestive of such an act of the parties which may have extinguished Statesman's right to redeem. Here again, we find substance in the submission of Mr. Mookherjee that the right to redeem would have been available to Statesman had the sale been done by Merlin alone.

**53.** While on the subject one aspect pointed out by Mr. Mookerjee, appearing for Hatisala needs to be noticed. We were shown the deed of lease executed on March 6, 2025 by Statesman in favour of Trent Ltd. and pointed out that the authorised signatory on behalf of Statesman as well as Merlin was one Mr. Vishal Jain - an employee of Merlin. The same Mr. Vishal Jain is also a signatory to the minutes of the meeting held on May 10, 2024 on behalf of Merlin. It was also shown that the same Mr. Vishal Jain has also represented Statesman and executed the Deed of Conveyance on behalf of Statesman in favour of Hatisala.

**54.** As regards the deed of lease executed by Statesman in favour of Trent Limited, Statesman has made the following statements at paragraph 31 of their plaint:

31. Pursuant to the decisions taken on 05.07.2024, sometime in October-November 2024 the plaintiff by itself and without any involvement whatsoever of the defendant no. 1 negotiated and finalized the lease of the anchor space in the scheduled property (measuring about 36,000 Sq Ft) with Westside, a brand owned by Trent

Limited of the Tata group. Pursuant thereto a term sheet was executed on 30.11.2024 and a payment of one month's lease rental being an amount of Rs. 81,25,425/- was paid by Trent to the defendant no. 1 directly. The final lease agreement was executed and registered on 06.03.2025, and in terms thereof, Trent Limited paid a sum of Rs. 1,62,50,950/- to defendant no. 1, and the Defendant no. 1 has retained the same against its dues. A copy of the said lease agreement dated 06.03.2025 is annexed hereto and marked "M". The defendant no. 1 was also aware that various big brands are negotiating and/or showing interest in the said Commercial spaces.

**55.** Now since it has been demonstrated before us that the said lease deed was executed by Mr. Vishal Jain on behalf of Statesman and it is Statesman's assertion itself in the plaint that such deed was executed without involvement of Merlin (despite Mr. Vishal Jain being the employee of Merlin i.e. Sales Head Commercial and Leasing, Merlin Group) then when the same person has also executed the conveyance in favour of Hatisala as the authorised signatory of Statesman it *prima facie* belies Statesman's claim of the sale in favour of Hatisala having been done without its notice. The said aspect is further fortified in the light of the fact that the said Mr. Vishal Jain has also signed the minutes of the meeting held on May 10, 2024 on behalf of Merlin where the Statesman and Merlin decided that in case Statesman failed to fulfil its commitment of payment of Merlin's dues as indicated in the minutes of the said meeting, Merlin would be entitled to dispose of the project in its entirety for recovery of its dues without any reference to the owner. Statesman therefore does not have a *prima facie* case good enough to get an order of injunction.

**56.** A fair reading of the JDA would reveal that the parties had intended that the project would be shared in the ratio of 52.5% : 47.5% between Statesman and Merlin. The decision as to whether such sharing would be only in money or only in property or in both was to be taken in terms of Clause 13.1 of the JDA. *Prima*



*facie*, such decision appears to have been taken by the minutes of the meeting held on May 10, 2024. In such view of the matter, we are *prima facie* satisfied that balance of convenience and inconvenience does not tilt in favour of Statesman and no irreparable loss and injury would be suffered by Statesman if the injunction as prayed for is not granted to it. In fact Statesman's remedy *prima facie* lies in damages and if that be so injunction is usually not the relief permitted in the interim. The blanket injunction of the nature granted by the Hon'ble Single Judge, therefore, should not have been granted.

**57.** Now the judgments cited by the parties may be noticed. The judgement of the Hon'ble Supreme Court in the case of **Seth Ganga Dhar** (supra) is an authority for the proposition that a mortgagee has a right to redeem the mortgaged property which cannot be abrogated by any term in the mortgage agreement. The said principle is indeed salutary but it is *prima facie* not applicable to the facts of the present case in the case at hand it *prima facie* appears that the said right has been extinguished by the act of parties.

**58.** **Infinity Infotech Parks Ltd** (supra) holds that possession of a developer over a property does not necessarily mean that such possession has been taken in part performance of a contract under section 53A of the said Act of 1882. It was held therein that in such cases the owner should be deemed to be in de jure possession while the developer would be in de facto possession. The said judgment had been cited to counter the submission of Mr. Chidambaram that no injunction could have been granted in favour of person who was not in possession unless such person had made a prayer for recovery of possession. The judgment in the case of **Infinity Infotech Parks Ltd** (supra) would not help the respondent in the case at hand inasmuch as in the present case we are

*prima facie* satisfied that injunction as granted by the Hon'ble Single Judge should not have been granted in favour of the respondent in view of the discussion made hereinabove.

**59.** As regards the judgment in the case of **Sm. Muktakesi Dawn** (supra), the same is an authority for the proposition that in fit cases injunction must be granted to protect the interest of a person since the doctrine of *lis pendens* is not always sufficient or good enough to take fullest care of such persons interest vis-à-vis transfer. The said judgment would not help the respondent for the simple reason that in the case at hand the respondent has not been able to make out a *prima facie* case and the balance of convenience and inconvenience leans in favour of the appellants and not in favour of the respondent as would be evident from the preceding section of this judgment.

**60.** The judgment in the case of **Chandrakant Shankarrao Machala** (supra) has been cited for the proposition that terms of a registered instrument can be altered or varied only by a registered document and not by an unregistered document. The same does not come to the aid of the respondent inasmuch as in the case at hand, we have found *prima facie* that there is no alteration or variation of the terms of the JDA by the minutes of the meeting held on May 10, 2024 and that the said minutes are actually in furtherance of the JDA.

**61.** The judgment in the case of **Ramakant Ambalal Choksi** (supra) indeed helps the appellants more than the respondent. In the said case after considering a number of authorities, the Hon'ble Supreme Court has succinctly summarised laid down the principles which are required to be followed by an Appellate Court while exercising its jurisdiction under Order 43 of the Code of Civil Procedure.

Paragraphs 21, 25, 26, 31 and 33 of the said report are quite edifying. The same are extracted hereinbelow:

21. *With regard to (a), this Court held thus: (Wander case [Wander Ltd. v. Antox India (P) Ltd., 1990 Supp SCC 727] , SCC p. 733, para 14)*

*“14. ... In such appeals, the appellate court will not interfere with the exercise of discretion of the court of the first instance and substitute its own discretion, except where the discretion has been shown to have been exercised arbitrarily or capriciously or perversely, or where the court had ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. ... The appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below.... If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion.”*

25. *What flows from a plain reading of the decisions in Evans [Evans v. Bartlam, 1937 AC 473 (HL)] and Charles Osonon [Charles Osonon & Co. v. Johnston, 1942 AC 130 (HL)] is that an appellate court, even while deciding an appeal against a discretionary order granting an interim injunction, has to:*

*(a) Examine whether the discretion has been properly exercised i.e. examine whether the discretion exercised is not arbitrary, capricious or contrary to the principles of law; and*

*(b) In addition to the above, an appellate court may in a given case have to adjudicate on facts even in such discretionary orders.*

26. *The principles of law explained by this Court in Wander [Wander Ltd. v. Antox India (P) Ltd., 1990 Supp SCC 727] have been reiterated in a number of subsequent decisions of this Court. However, over a period of time the test laid down by this Court as regards the scope of interference has been made more stringent. The emphasis is now more on perversity rather than a mere error of fact or law in the order granting injunction pending the final adjudication of the suit.*

31. *The appellate court in an appeal from an interlocutory order granting or declining to grant interim injunction is only required to adjudicate the validity of such order applying the well-settled principles governing the scope of jurisdiction of the appellate court under Order 43CPC which have been reiterated in various other decisions of this Court. The appellate court should not assume unlimited jurisdiction and should guide its powers within the contours laid down in Wander case [Wander Ltd. v. Antox India (P) Ltd., 1990 Supp SCC 727] .*

33. The burden is on the plaintiff, by evidence aliunde by affidavit or otherwise, to prove that there is “a prima facie case” in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition precedent for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Only prima facie case is a substantial question raised, bona fide, which needs investigation and a decision on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the court would result in “irreparable injury” to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely, one that cannot be adequately compensated by way of damages. The third condition also is that “the balance of convenience” must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject-matter should be maintained in status quo, an injunction would be issued. Thus, the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit. (See *Dalpat Kumar v. Prahlad Singh* [*Dalpat Kumar v. Prahlad Singh*, (1992) 1 SCC 719])

**62.** We have respectfully followed the principles laid down in the said judgment.

We have interfered with the order impugned inasmuch as we have found that the injury complained of by the Statesman is one for which the remedy sounds in damages. We have found that the discretion exercised by the Hon’ble Single Judge is not based on sound principles inasmuch as the plaintiff in the case at hand has failed to show any prima facie case.

**63.** The judgments in the case of **Ramji Rai** (supra) and **Thimmaiah** (supra) are authorities for the proposition that an injunction restraining interference with

possession will not be granted in favour of a person who is not found to be in possession.

- 64.** Since we are *prima facie* convinced that the order impugned could not have been passed, we set aside the order dated September 09, 2025 and allow both the appeals. APOT 265 of 2025 and APOT 268 of 2025 stand disposed of along with the connected applications.
- 65.** We clarify that the observations in this judgment and order are *prima facie* and have been made only for the purpose of deciding these appeals. None of the observations shall have any bearing on the trial of the suit or on the final decision that the learned Single Judge arrives at in the interlocutory application pending before His Lordship.
- 66.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

**I agree.**

**(Arijit Banerjee, J.)**

**(Om Narayan Rai, J.)**

**Later:**

- 67.** After the judgment is pronounced in open Court, learned Advocate for the respondent no.1/plaintiff prays for stay of operation of the order. The prayer is considered and refused.

**I agree.**

**(Arijit Banerjee, J.)**

**(Om Narayan Rai, J.)**