



2025:DHC:9337



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Date of decision: 15<sup>th</sup> October, 2025*+ **CS(OS) 666/2018 & I.A. 17760/2018****JAGWINDER SINGH KHURANA AND ANR. ....Plaintiffs****Through: Mr. Saurav Kumar, Advocate.****versus****SMT. TEJINDER KAUR BAWEJA & ANR. ....Defendants****Through: Mr. Mandeep Singh Vinaik, Amicus  
Curiae.****CORAM:****HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)**

1. The present suit has been filed seeking specific performance of Agreement to Sell dated 15<sup>th</sup> June, 2018 (hereinafter 'Agreement'), which was entered into between the plaintiffs and the defendants for the purchase of entire first floor and second floor with roof/terrace rights in the built-up property on a plot of land measuring 344 sq. yds. in freehold *Plot No.18 in Block J-13, Rajouri Garden New Delhi*.

2. In terms of the aforesaid Agreement, the total sale consideration was Rs. 4,50,00,000/-, out of which a sum of Rs. 2,25,00,000/- had been paid at the time of execution of Agreement to Sell, *i.e.* on 15<sup>th</sup> June, 2018 and the balance amount of Rs. 2,25,00,000/- was to be paid on or before 31<sup>st</sup> December, 2019 upon execution of the sale deed in respect of the aforesaid



property and handing over of the possession and original title documents by the defendants to the plaintiffs.

3. The plaintiffs made a further payment of Rs. 87,00,000/- to the defendants on various occasions through RTGS/Cheque. The proof of the same has been filed by the plaintiffs, which has been marked as Exhibit PW-1/4 and Exhibit PW-2/4. It is the case of the plaintiff that upon payment of the said money, the date of execution of the sale deed would be advanced.

4. The plaintiffs approached the defendants with the balance sale consideration of Rs. 1,38,00,000/- in and around November 2018. However, the defendants did not come forward for the execution of the sale documents.

5. In these circumstances, the plaintiff filed the present suit on 19<sup>th</sup> December 2018, seeking following prayers:

- a) pass a decree of specific performance in favour of plaintiff and against the defendant directing defendant to specifically perform his obligations under receipt cum agreement dated 15.06.2018 and against receipt of balance sale consideration of Rs. 1.38 Crores, execute and register sale deed of the property entire first floor and entire 'second floor with roof/terrace rights and above admeasuring 344 sq yards out of built up property built on free hold plot no. 18 in Block J-13, situated in the colony known as Rajouri Garden, New Delhi are of Village Tatarpur, Delhi State Delhi in favour of plaintiff and handover vacant and peaceful possession of the said property to the plaintiff and also deliver the original title documents of the suit property to the plaintiff **and in the alternative**, if for any reason this Hon'ble Court comes to a conclusion that the aforesaid decree of Specific Performance cannot be passed in favour of plaintiff, a decree for Rs. 4.5 crores may be passed in favour of plaintiff and against the defendant as refund of part payment and damages.*



- b) *pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*
- c) *Cost of suit may also be awarded in favour of plaintiff.*

### **PROCEEDINGS IN THE SUIT**

6. *Vide* order dated 21<sup>st</sup> December 2018, the defendants were restrained from selling, transferring, mortgaging, alienating and/or creating any third-party interest in respect of the suit property.
7. The defendants were served through substituted service, however despite service the defendants failed to appear. Hence, *vide* order dated 9<sup>th</sup> January, 2020, the defendants were proceeded against *ex parte*.
8. The plaintiffs filed their *ex parte* evidence. The original Agreement to Sell dated 15<sup>th</sup> June, 2018, has been exhibited as PW1/1, whereas the printout of the ledger account of the statement of plaintiff no.1 along with an affidavit under Section 65B of the Indian Evidence Act, has been exhibited as Exhibit PW 2/4.
9. The plaintiffs' evidence was closed *vide* order dated 24<sup>th</sup> January 2022.
10. The matter was heard on 27<sup>th</sup> August 2025, on which date Mr. Mandeep Singh Vinaik was appointed as an *Amicus Curiae* by this Court.

### **ANALYSIS AND FINDINGS**

11. The defendants have failed to take any requisite steps to contest the present suit. Since the defendants have failed to enter appearance or file any written statements, despite having suffered an *ad* interim injunction order, it is evident that they have no defence to put forth on merits.
12. The plaint has been duly verified and is also supported by the affidavit



of the plaintiff. In view of the fact that no written statements have been filed on behalf of the defendants, all the averments made in the plaint have to be taken to be admitted. Further, since no affidavit of admission/denial has been filed on behalf of the defendants in respect of the documents filed with the plaint, in terms of Rule 3 of the Delhi High Court (Original Side) Rules 2018, the same are deemed to have been admitted.

13. The plaintiffs have placed on record the Agreement to Sell and proof of payment of a sum of Rs. 3,12,00,000/- in terms of the said Agreement to Sell.

14. A perusal of the aforesaid Agreement would show that the defendant had clearly agreed to sell the aforesaid property in favour of the plaintiff for a consideration of Rs. 4,50,00,000/-. Further, the defendant had received a substantial amount of that consideration, *i.e.* Rs. 2,25,00,000/- as earnest money from the plaintiffs. Despite the same, the defendant failed to perform his obligations in terms of the Agreement. Clearly, the defendant has acted in breach of the aforesaid Agreement.

15. The *Amicus Curiae* appointed by this Court has placed before this Court his submissions along with judgments.

16. It has been pointed out by Mr. Mandeep Singh Vinaik, learned *Amicus Curiae*, that neither any material has been placed on record nor any averment has been made by the plaintiffs to establish their financial capacity in order to prove the readiness and willingness of the plaintiffs to perform their part of the aforesaid Agreement.

17. It is further pointed out that in terms of Section 16(c) of the Specific Relief Act, 1963, the plaintiff must aver the performance of, or readiness



and willingness to perform, the contract according to its true construction.

*“16. Personal bars to relief.—Specific performance of a contract cannot be enforced in favour of a person*

*(a)..*

*(b)..*

*(c) [who fails to prove] that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.*

*Explanation.—For the purposes of clause (c),—*

- (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;*
- (ii) the plaintiff [must prove] performance of, or readiness and willingness to perform, the contract according to its true construction.”*

18. A perusal of the documents filed by the plaintiffs, which includes only the ledger accounts of the plaintiffs, would show only those payments that have already been made by the plaintiffs to the defendants. However, nothing has been placed on record to show that the plaintiffs are both ready and willing to perform their obligations under the Agreement and to pay the balance amount to the defendants.

19. In these facts and circumstances, the plaintiffs are not entitled to a relief of specific performance of the aforesaid Agreement and the only fair relief that can be granted is compensation in terms of money. Reference may be made to the judgment of this Court in ***Ashoka Nanda v. Mohinder Kumar Sharma and Anr.***<sup>1</sup> wherein the appeal filed by the plaintiff in suit

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<sup>1</sup> 2018 SCC OnLine Del 7651



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for specific performance was dismissed for failing to prove his readiness and willingness, which is a *sine qua non* under Section 16(c) of the Specific Relief Act, 1963 and the decision of the Trial Court for passing a money decree was upheld.

20. Counsel for the plaintiffs, on instructions, submits that the plaintiffs would be satisfied with the alternate relief of a refund of money already paid by the plaintiff to the defendants towards the said Agreement.

21. Accordingly, a money decree of Rs. 3,12,00,000/- is passed in favour of the plaintiffs and against the defendants.

22. The plaintiffs shall also be entitled to interest @ 9% per annum from 1<sup>st</sup> January, 2019.

23. The suit is decreed in the aforesaid terms. Pending application stands disposed of.

24. Let the decree sheet be drawn up.

25. This Court appreciates the assistance of Mr. Mandeep Singh Vinaik, learned *Amicus Curiae*.

**AMIT BANSAL, J**

**OCTOBER 15, 2025**

*Vivek/-*