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

% ***Reserved on: 20th Feburary, 2026***
Pronounced on: 13th May, 2026

\+ **RFA 195/2021, CM APPL. 48521/2024**

HOUSING DEVELOPMENT FINANCE
Corporation Limited
The Capital Court, Olof Palme Marg,
Munirka, New Delhi .....Appellant
Through: Mr. Sourav Kumar Jena, Advocate
Versus

MR. PANAKJ SAINI
S/o Shri Sat Prakash Saini
Pocket - F 23/C,
GTB Enclave, New Delhi - 110093. .....Respondent
Through: Mr. Anil Kumar Sharma and Mr. Manish Jain, Advocates

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular First Appeal under Order XLI Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been filed against the Judgment and decree dated 14.11.2019, whereby *the Suit filed by the Plaintiff for Recovery of Rs. 50,52,340/- along with Pendente lite and interest @ 18% p.a., was dismissed.*

2. The Plaintiff/Appellant had filed *CS No. 57928/16* for Recovery of Rs. 50,52,340/- along with *Pendente lite* and interest @ 18% p.a.

3. ***The brief facts, as per Plaint, are*** that the Plaintiff Company is duly incorporated under the Companies Act, and is engaged in the business of

granting loans, especially in the category of housing loans and commercial loans. The Defendant approached Plaintiff Company for purchasing a flat in a housing project. The Plaintiff company, after appraising the request, sanctioned a sum of Rs. 52,00,000/- as loan to the Defendant, for the purchase of property i.e. Shubhkamana Homes Tower, D3, Unit D3/C-9, 9th floor, GH - 05, Sector - 137, Noida Expressway 201301. It was under the Plaintiff company's variable rate (Resident) Home Loan Scheme.

4. A Loan Agreement dated 29.06.2013, was executed between the Plaintiff and the Defendant. The tenure of the Loan, as per the Loan Agreement, was 240 months, which equated monthly installments (EMI) payable were Rs. 51,567/- per month. An amount of Rs. 48,77,500/- was disbursed at the rate of 10.40% p.a. A loan account no. 608548486, was allotted to the Defendant. As per Clause 2.6 of the Loan Agreement, Defendant was to pay fixed sums as Equated Monthly Installments (EMI) and Pre-Equated Monthly Installments (PEMI) towards repayment of the principal loan amount and accrued interest. Furthermore, the Defendant agreed to pay, as per the Clause 2.7(b) of the said Loan Agreement, an additional interest and any other charges applicable under the Plaintiff's policy, in the event of a repayment delay or default.

5. Furthermore, apart from the said Loan Agreement dated 29.06.2013, the Defendant also executed a demand Promissory Note dated 29.06.2013, for the sum of Rs 52,00,000/-, in favour of the Plaintiff Company.

6. The Defendant, last paid the installment of the EMI, towards the loan on 15.01.2016. Thereafter, the Plaintiff sent various demand Notices and reminders to the Defendant, but no repayment of the installments was done by the Defendant.

7. As per the Loan Statement maintained by the Plaintiff, the outstanding amount due from the Defendant till 29.02.2016, is as under:

Principal Outstanding	Rs.46,89,572/-
Emi Outstanding	Rs. 3,38,583/-
Additional Interest	Rs.22,135/-
Incidental Charges	Rs.2,050/-
Total Amount Due	Rs.50,52,340/-

8. The Plaintiff company sent a Loan Recall Notice/Legal Notice dated 23.02.2016 calling upon the Defendant to make payments towards the outstanding loan amount. However, the Defendant failed to comply with the said Legal Notice dated 23.02.2016.

9. *The Plaintiff thus, filed a Suit for Recovery of Rs. 50,52,340/- along with Pendente lite and interest @ 18% p.a.*

10. The **Defendant in his Written Statement** took a defence that the Plaintiff has not come to court with clean hands and deliberately suppressed the fact about the Tripartite Agreement dated 14.06.2013 between the Plaintiff, M/s Subhkamna Build tech Pvt. Ltd. and the Defendant; and since the M/s Shubhkamna Build tech Pvt. Ltd. was not impleaded as a party to the Suit, therefore the Suit of the Plaintiff is defective due to non-joinder of necessary parties.

11. It was submitted that after approaching M/s Subhkamna Buildtech Pvt. Ltd. i.e. the Developer, to purchase a said property, the Developer's officials introduced him to the Plaintiff. Both parties allegedly induced the Defendant into the loan, through deceptive home loan policies. Under this collusive arrangement, the Defendant was assured he would not be liable for

installments until possession was delivered i.e. 01.11.2014. Further, as per the Builder-Buyer Agreement, the Developer was liable to pay a penalty of Rs.5/- per sq. ft. per month, for any delay beyond the 36 months and 6 months as a grace period ending on 01.11.2014. Furthermore, a separate Agreement/Memorandum of Understanding (MOU) dated 01.02.2015, stating that the Developer would deposit EMI amounts into the Defendant's account for payments to the Plaintiff, was executed.

12. Further, it was also contended by the Defendant that as per the clauses of tripartite agreement, in the case of any default under the loan agreement, allotment of the said property will be cancelled, and further, in case of cancellation of the allotment, for any reason, the entire amount advanced by Plaintiff to the Defendant, will be refunded by the developer i.e. the M/s Shubhkamna Build tech Pvt. Ltd to the Plaintiff i.e. HDFC.

13. The **Plaintiff in its Replication** denied the averments made by the Defendant in his Written Statement and averred that the Suit of the Plaintiff was based on the loan agreement and promissory note dated 29.06.2013. executed in favour of the Plaintiff, at the time of granting the loan amount, for the purchase of the said property. The Tripartite Agreement dated 14.06.2013 was executed amongst the parties, only to secure the rights of the Plaintiff in the said property. Further, It is submitted that the Plaintiff is not responsible for the completion of the project as the Para 4 of the Tripartite Agreement dated 14.06.2013 itself states that *"whereas the Borrower has, represented that the Developer is of his choice and that he has satisfied himself with regard to integrity, capability for quality construction of the Developer and the Developer's ability for timely completion and on time delivery of the project"*.

14. The **Issues on the Pleadings were framed on 08.12.2016**, which are as under:-

> *"1. Whether this suit is bad for non-joinder of M/s Subhkamna Buildtech Pvt. Ltd. in the light of tripartite agreement? OPD.*
> *2. Whether plaintiff and the builder M/s. Subhkamna have joined hands to defraud the defendant? OPD.*
> *3. Whether plaintiff is entitled to recovery of Rs.50,52,340/- along with interest @ 18%? OPP.*
> *4. Relief."*

15. **The Plaintiff in support of his case examined Sh. Diganta Baurah as PW-1,** tendered his evidence by way of affidavit Ex. Pw1/X, who deposed on the similar lines as the Plaint and relied on relevant documents.

16. The Defendant i.e. Sh. Pankaj Saini examined himself as DW-1, and tendered his evidence by way of Affidavit Ex. DW1/A, who reaffirmed the defence as taken in the Written Statement and relied on relevant documents.

17. The **learned District Judge after appreciating the evidence** observed that the Defendant was compelled to sign on a format of Tripartite Agreement dated 14.06.2013, in favor of HDFC, which purported to mortgage a flat that never actually came into existence; the terms were pre-settled between the Plaintiff and the Developer, leaving the Defendant with no power to negotiate. Furthermore, the Agreement stipulated that the Plaintiff must first recover the outstanding amount from the Developer; the Defendant's liability was strictly secondary. Despite this, there is no evidence on record to suggest the Plaintiff made any effort to seek recovery from the Developer before initiating action against the Defendant.

Therefore, the learned Additional District Judge, dismissed the Suit for Recovery filed by the Plaintiff.

18. Aggrieved by the **Aggrieved by the Impugned Judgment** dated 14.11.2019, the present Appeal has been preferred by the Plaintiff/Appellant ***on the grounds*** that the learned Trial Court erringly held that the Tripartite Agreement dated 14.06.2013, was the main contract governing the relationship between the Appellant and the Respondent. However, the Tripartite Agreement is supplemental to the main Agreement i.e. the Loan Agreement dated 29.06.2013. The sanction, disbursement and recovery of the EMI are made under the Loan agreement and not the Tripartite agreement.

19. The learned Trial Court erred in not appreciating that the Respondent signed the disbursement form, and consented for the disbursement. Further, the M/s Subhkamna Build tech Pvt. Ltd. had issued a Letter dated 22.05.2013, whereby, the Respondent was called upon to pay balance loan amount of Rs. 53,39,375/- by 22.06.2013.

20. The liability of Loan under the Loan Agreement dated 29.06.2013 is not be governed by clause 9 of the Tripartite Agreement; hence, it the Respondent's liability to pay the Appellant and not of the Builder. Further, the Loan Agreement nowhere provides that in case of default in repayment, it is the Builder's/Developer's liability to repay the Loan.

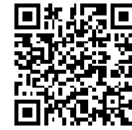
21. Further, the learned Trial court erred in holding that the liability of the Respondent was secondary and the liability of M/s Subhkamna Build tech Pvt. Ltd., was primary because the Appellant is the *dominus litis* and thus, the Apellant has a right to choose the party, from whom, it could recover the loan amount.

22. The Respondent's Written Statement directly contradicts the terms of the MOU executed between himself and M/s Subhkamna Build tech Pvt. Ltd. The learned Trial Court failed to consider the legal effect of this MOU, which demonstrates that the Respondent voluntarily agreed to terms fundamentally at odds with the Loan Agreement. Consequently, the findings and observations against the Appellant in the Impugned Judgment, are perverse, as they ignore the contractual obligations set forth in the MOU dated 01.02.2015.

23. The learned Trial Court wrongly observed that the Tripartite Agreement is a standardized format of HDFC, which all of its customers are compelled to sign. However, this was never the case of the Respondent, as per the averments made by the Respondent in his Written Statement.

24. The **Respondents has filed their Written Submissions** wherein the Defendant/ Respondent reiterated the stand taken in the Written Statement and stated that PW-1, Diganta Baurah i.e. during his cross-examination, admitted that the loan proceeds were disbursed directly to the Builder, i.e. M/s Subhkamna Buildtech Pvt. Ltd., despite, as mentioned in the Loan Agreement explicitly requiring disbursement to the Borrower. Whilst the Plaintiff relied on a request letter Ex. PW-1/D1, PW1 conceded that this document is undated and contains no mention of a request to disburse funds to the Builder. Furthermore, the Defendant categorically denied his signature on the said Letter.

25. PW1, further admitted, that the correct EMI was Rs.48,369/- instead of Rs.51,567/-, as previously stated in the Plaint, and acknowledged that the amortization sheet Ex. PW1/5, is incomplete as it fails to reflect all EMIs paid to the Plaintiff. PW1 also confirmed the existence of the Tripartite



Agreement dated 14.06.2013 Ex. PW-1/D2, and admitted that the Plaintiff had accepted three EMIs from the Builder between April, 2015 and April 2016, along with two additional EMIs during FY 2016-17. Further, it was submitted that the Defendant intimated the Plaintiff Company about the dispute with the builder i.e. M/s Subhkamna Build Tech Pvt. Ltd. and therefore, he will not be paying the EMIs on behalf of the builder.

Submissions heard and record perused.

26. Admittedly, the Respondent obtained a housing loan from the Appellant for purchase of said property. A Loan Agreement dated 29.06.2013 and the Tripartite Agreement dated 14.06.2013 were executed, as part of the same transaction.

27. The Respondent's defence rests on three aspects: **first**, the transaction was a builder-subvention scheme where EMIs were to be paid by the Developer/Builder till possession; **second**, that under the Tripartite Agreement dated 14.06.2013, the primary obligation to refund the loan amount, on default of payment or cancellation of allotment, was upon the builder; **and third**, the non-impleadment of M/s Shubhkamna Build Tech Pvt. Ltd. i.e. the Builder/Developer, as a party in the present Suit.

28. The Appellant, on the other hand, had confined the Suit to the Loan Agreement only, urging that the Defendant's liability is independent under the Tripartite Agreement, which was merely a security arrangement to secure the rights of the Plaintiff in the said property, and being *dominus litis*, the Plaintiff was not obliged to sue the builder/developer.

Nature Of Transaction and Status of Tripartite Agreement:

29. The Appellant has claimed that the Loan Agreement dated 29.06.2013 Ex.PW-1/3 (Colly.), alone governs the relationship between the

parties, and that the Tripartite Agreement dated 14.06.2013 Ex.PW-1/D2, is only a security document, to secure the rights of the Plaintiff in the said property, and does not determine any primary liability on the part of Builder/Developer. This contention of the Appellant, is however, misplaced.

30. The Tripartite Agreement records that the Builder Buyer Agreement for the said property, the Defendant's approach to the Plaintiff for a home loan, and that the said property shall be mortgaged in favour of the Plaintiff, as security for that loan. Clause 1 expressly incorporates these, as a part of the Tripartite Agreement.

31. The Clause 6 of the Tripartite Agreement provides that *"HDFC shall at the request of the Borrower disburse the balance sale consideration by way of cheque drawn in favour of the Developer, directly to the Developer"*. This is not a mere facilitative clause; it operationalizes Article 2.5 of the Loan Agreement, wherein the Plaintiff is authorized to disburse the amount in favour of the borrower, or the builder/developer, or such other person as the Plaintiff may decide, and thereby gives contractual shape to the disbursement arrangement. For better understanding relevant paragraphs of Tripartite Agreement dated 14.06.2013, is reproduced as under:

> *"**6.** That HDFC shall at the request of the Borrower disburse the balance sale consideration by way of cheque drawn in favor of the Developer, directly to Developer. Any balance payment or any other payment due and payable as per the terms of the Agreements between the Developer and the Borrower towards the flat / residential apartment shall be made by the Borrower himself to the Developer.*
>
> ***7.** That the Developer shall not hand over the actual and physical possession of the said*

flat/residential apartment to the Borrower before execution and registration of the said deed and the original registered sale deed shall be submitted to HDFC directly by the Developer.to be kept by HDFC towards security for the said loan.

8. *That if the Borrower fails to pay the balance amount representing the difference between the loan sanctioned by HDFC and the actual purchase price of the flat / residential apartment, or in the event of death of the Borrower or* ***in the event of cancellation of the residential apartment for any reason whatsoever the entire amount advanced by HDFC will be refunded by the Developer to HDFC forthwith.*** *The Borrower hereby subrogates all his rights for refund with respect to the said residential apartment in favor of HDFC.*

9. *Further if the Borrower commits a breach of any of the terms and conditions of this Tripartite Agreement it shall be treated as an event of default under the Agreement for Sale / Allotment cum Agreement for sale or any. Such agreement or document signed by and between the Borrower and the Developer for the sale of the said residential apartment.*

That in the event of occurrence of default under the Loan Agreement which would result in the cancellation of the Allotment as a consequence thereof and / or for any reason whatsoever if the allotment is cancelled; any amount payable to the Borrower on account of such cancellation shall be directly paid to HDFC*. However, it is further agreed between the Parties that such payment made by the Developer directly to HDFC shall not absolve the Borrower from his liability to pay the residual amount, if any, from the outstanding under the Loan Agreement.*

> *That the Borrower agrees that it unconditionally and irrevocable subrogates its right to receive any amount payable by the Developer to the Borrower in the event of cancellation in favor of HDFC and that the act of payment by the Developer to HDFC under this clause shall amount to a valid discharge of the Developer of its obligation to pay the Borrower such cancellation amount.*
>
> *Further that the parties agree that the Developer shall in no circumstances forfeit any amount over and above the amount equivalent to the Borrowers contribution towards the purchase consideration paid to the Developer. Borrower's contribution for the purposes of this clause shall mean and include the difference between the total cost of the residential apartment and the Loan amount as mentioned above."*

32. Pertinently, *Clause 8* states that if the borrower fails to pay the balance amount or if the allotment is cancelled, the entire amount advanced by the Plaintiff, will be refunded by the Developer/builder to the Plaintiff. However, *Clause 9* provides that any amount payable upon such cancellation shall be paid directly by the Developer to the Plaintiff, while clarifying that any such payment shall not absolve the Borrower from his liability to pay the residual amount, if any, from the outstanding amount under the Loan Agreement.

33. These clauses squarely deal with the default in repayment/cancellation of the allotment, and they place a primary repayment obligation upon the Developer with the borrower's liability, being residual.

34. In the present case, PW-1 i.e. Sh. Diganta Baurah has admitted that the disbursement of the amount was in fact, made to the builder. The EMIs

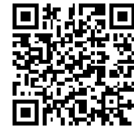
for a certain period, were paid by the builder on behalf of the Defendant. However, the amortization sheet Ex.PW-1/5, does not fully reflect the EMIs paid, and that even the EMI figure pleaded in the Plaint, is not correct itself. These admissions contradict the Appellant's attempt to characterize the transaction as a *"Standard Bilateral Loan"*, independent of the Builder's/Developer's involvement.

35. In Canara Bank v. Sanjeev Sharma & Ors., 2025:DHC:5640-DB, a Division Bench of this Court, dealt with a similar structure of a housing loan supported by a Tripartite Agreement, under which disbursement was made directly to the builder and the builder undertook to refund amounts in the event of cancellation. It was held by this Court that the Tripartite Agreement is an intrinsic part of the composite Loan arrangement and that *"the various documents and Agreements form a composite whole and cannot be sought to be separated in the manner as claimed"*. The Court rejected the lender's contention that *"the Tripartite agreement was only relied upon to show its right over the flat, and instead treated it as central to the transaction."*

36. In the present case, it is evident that the Loan Agreement and Tripartite Agreement are two limbs of one composite builder-linked loan arrangement. The Tripartite Agreement is not just a security document, it governs disbursement, defines the role of the builder in holding and refunding the loan amount; and structures the very remedy the Plaintiff should pursue on default of payment or cancellation of allotment.

Necessary Party, Dominus Litis & Order I Rule 10 CPC:

37. The next aspect to be looked into is whether the builder i.e. M/s Subhkamna Build tech Pvt. Ltd., was a necessary party to the Suit. It is trite that a "Necessary Party" is one without whom no effective decree can be



passed, and whose absence would result in a decree that is either unworkable or liable to multiplicity of proceedings. A "Proper Party" is one in whose absence an effective order can be made, but whose presence enables the Court to completely and effectively adjudicate the controversy.

38. The Appellant asserted that the principle of *dominus litis* should be applied in the present case, which indicates that the Plaintiff is ordinarily free to choose its adversaries. That Supreme Court in *Nak Engineering Company Pvt. Ltd. V. Tarun Keshrichand Shah and Others*, 2026 SCC OnLine SC 4 and in *Gurmit Singh Bhatia Versus Kiran Kant Robinson and Others,* (2020) 13 SCC 773, wherein it was held that it is subject to the overriding power of the Court under Order I Rule 10 CPC to add or strike parties to ensure that all questions in the Suit, can be effectively decided and multiplicity of proceedings avoided.

39. In the present case, under *Clauses 8 and 9 of the Tripartite Agreement,* a direct, contractual obligation is cast upon the builder to refund the entire amount advanced by the Plaintiff, in the event of cancellation or failure to pay the balance consideration, with the Defendant being subrogated to Plaintiff's rights against the builder. The rights claimed by Plaintiff in the Suit, and the rights which Plaintiff has reserved to itself under these Clauses, are inextricably inter-linked.

40. Therefore, the builder in the present case is not a mere proper party, whose presence would only be convenient. It is a necessary party *to determine whether the Plaintiff was first required to invoke the refund mechanism against the Builder, and, if so, at what amount, if any, survives as a residual liability against the Respondent*. Thus, the doctrine of *dominus litis* cannot, come to the aid of the Appellant. The freedom of a Plaintiff to

choose his Defendants does not extend to omitting a party, whose presence is necessary for a complete and binding adjudication.

Borrower's liability and effect on the Suit:

41. The Respondent's attempt to argue that he has no liability whatsoever under the Loan Agreement, cannot be accepted in absolute terms. He applied for the loan, signed the Loan Agreement and executed a demand promissory note as well. The mere presence of builder obligations does not, *ipso facto*, extinguish the Defendant's contractual promise to repay.

42. At the same time, it cannot be ignored that the loan was disbursed directly to the builder; and also, the builder paid EMIs to the Plaintiff; and further, the refund mechanism in case of default or cancellation is expressly routed through the builder. Therefore, the builder is not an incidental stranger, but a central obligor alongside the Defendant.

43. Further, PW-1 in his cross examination has admitted that the EMI figure pleaded in the Plaint was incorrect, and the amortization sheet Ex. PW-1/5 did not fully reflect the EMIs paid by the Defendant. The several installments were paid by the Builder. In such cases, even if the Suit was otherwise maintainable, the Appellant ***would not be entitled to a decree for the amount claimed, without a proper reconciliation of accounts and due credit for the EMIs paid by the Builder***.

Conclusion:

44. In view of the foregoing discussion, the learned Trial Court was justified in holding that the transaction, both the Loan Agreement dated 29.06.2013 and the Tripartite Agreement dated 14.06.2013, was composite. The Builder is a necessary party to the Suit, and the Appellant has failed to

establish its entitlement to the precise amount claimed, in the absence of the Builder and in the evidentiary discrepancies as noted above.

45. Thus, **Appellant has not been able to point out any infirmity in the Impugned Judgment** dated 14.11.2019.

46. Hence, there is **no merit in the Appeal**, which is hereby, dismissed. Pending Applications, if any, stands disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 13, 2026
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