



2026:DHC:2210



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

Date of decision: 11<sup>th</sup> MARCH, 2026

IN THE MATTER OF:

**I.A. 13055/2025**

IN

+ **CS(COMM) 558/2023**

DR K K SHRIVASTAVA

.....Plaintiff

Through: Mr. Shantanu Parashar, Mr. Harsh Trivedi, Mr. Rohan Malik and Mr. Nitin Kumar, Advocates

versus

STAR INFRATECH PRIVATE LIMITED & ORS .....Defendants

Through: *Appearance not given.*

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

**I.A. 13055/2025**

1. On 21.01.2026, this Court while considering the present application being I.A. 13055/2025 filed by the Plaintiff under Order XIII A of CPC, reserved Orders only to consider as to whether the present Suit is a commercial Suit or not.

2. Shorn of unnecessary details, the facts leading to the filing of the present Suit are as follows:-

- a. Defendant Nos.2 & 3 had approached the Plaintiff for the purpose of re-construction and re-development of a property admeasuring 500 sq.



yards, situated at E-7, East of Kailash, New Delhi – 110065 [**“Suit property”**].

- b. It is stated that, thereafter, a Collaboration Agreement dated 09.05.2018[**“Collaboration Agreement”**] was executed between the Plaintiff-Dr. K. K. Shrivastava and Defendant No.1- Star Infratech Private Limited, represented by Defendant Nos. 2 & 3 for the re-development and re-construction of the Suit Property. The Defendants are the Developers herein.
- c. For a better understanding of the case, it is necessary to reproduce the relevant portion of the Collaboration Agreement dated 09.05.2018 which reads as under:

**“COLLABORATION AGREEMENT**

*This COLLABORATION AGREEMENT is made and executed here at New Delhi on this 09<sup>th</sup> day of May, 2018 By & Between:*

*Dr. K. K SHRIVASTAVA son of late Shri Brij Kishore Shrivastava resident of E-7, East of Kailash, New Delhi hereinafter referred to as the "OWNER" (which expression shall, unless repugnant and opposed to the context hereof, include him, his legal heirs, nominees, executors, successors, legal representatives, administrators and permitted assignees, etc.), of the ONE PART;*

**AND**

*M/s STAR INFRATECH PRIVATE LIMITED, a Private Limited Company, duly incorporated under the Companies Act, 1956 having its registered office at E-310, East of Kailash, New Delhi, through its Director Mr. SANDEEP SONI, duly authorized vide Resolution*



*passed in the Meeting of the Board of Directors held on 7th May, 2018 hereinafter referred to as the "DEVELOPER" (which expression shall, unless repugnant or opposed to the context hereof, include the company, its directors, share holders, their legal heirs, successors, executors, legal representatives, administrators and permitted assignees, etc.) of the OTHER PART.*

*A. WHEREAS Dr. K.K. Shrivastava son of late Shri Brij Kishore Shrivastava is the owner of the Entire Plot of land bearing No. E-7, measuring 500 Square Yards, situated at East of Kailash, New Delhi 110065 (hereinafter referred to as the "SAID PLOT OF LAND") and structure/building constructed thereupon, by virtue of Conveyance Deed dated 10th August, 2015 duly registered in the office of the Sub Registrar-VII, New Delhi on 10th August, 2015 as Document No. 12571 in Additional Book No. I Volume No. 5616 on Pages 29 to 31. (The PLOT OF LAND and the entire house/building constructed thereupon (together with all electrical and sanitary fittings, fixtures, wood work, covered as well as open areas, shafts, sewers, electricity and water connections and appurtenances whatsoever appurtenant thereto or enjoyed therewith shall hereinafter collectively referred to as "THE SAID PROPERTY", which expression shall include subsequent construction, re-construction, development, addition and alteration carried out or to be carried out therein subsequently.*

*B. AND WHEREAS the OWNER is desirous of getting the SAID PROPERTY re-constructed and redeveloped and for the purpose approached the DEVELOPER for carrying out the construction of building afresh consisting of Basement, Stilt Floor, Ground Floor, First Floor, Second Floor & Third Floor with Terrace/ Roof (The Proposed Building) over the plot beneath the*



*Said Property No. E-7, East of Kailash, New Delhi 1110065 after demolishing the old existing structure.*

*C. AND WHEREAS the OWNER and DEVELOPER have agreed to construct and develop the SAID PROPERTY by constructing a Basement, Stilt Floor, Ground Floor, First Floor, Second Floor & Third Floor with Terrace, after demolishing the old existing structure on the terms and conditions hereinafter appearing.*

*NOW THEREFORE IT IS HEREBY AGREED, DECLARED, AND CONVEYED BY AND BETWEEN THE PARTIES HERETO AS FOLLOW:*

- 1. That the subject matter of this Collaboration Agreement is the SAID PROPERTY bearing No. E-7, East of Kailash, New Delhi 1110065 for utilizing the same for construction of the building consisting of Basement, Stilt Floor, Ground Floor, First Floor, Second Floor and Third Floor with Terrace.*
- 2. The parties agree that the DEVELOPER shall reconstruct and redevelop the SAID PROPERTY at their own cost and expenses and with their own resources. After demolishing the old existing building/structure, the DEVELOPER shall construct a new /fresh building comprising of Basement, Stilt Floor, Ground Floor, First Floor , Second Floor & Third Floor with Terrace as per agreed plans and specifications as detailed in the Annexure A attached hereto and duly signed by the parties. The debris/malba after demolition of the building shall belong to the DEVELOPER.*
- 3. That it is hereby agreed that the entire financial commitment for the construction and development of the SAID PROPERTY and construction of floors over*



***it will be the exclusive and full responsibility of the DEVELOPER and the OWNER shall not invest any amount at any time whatsoever or be responsible for any consequences as a result of this new construction , in any manner whatsoever at present or any time in future.***

***Similarly, the OWNER shall not claim for any amount or consideration for the land from the DEVELOPER, except what has been agreed to be paid here under.***

***4. That the OWNER has handed over/ delivered the complete vacant physical possession of the SAID PROPERTY to the DEVELOPER.***

***5. The OWNER through the DEVELOPER shall file/apply and get the fresh building plan sanctioned from the MCD/SDMC (duly approved by the OWNER), the expenses of which shall be paid/borne by the DEVELOPER.***

***6. That all rates, levies and taxes due and payable up to the date of execution of this Collaboration Agreement in respect of the SAID PROPERTY hereby agreed to be developed by the DEVELOPER shall be the exclusive liability of the OWNER. Thereafter the liability in this behalf shall devolve exclusively on the OWNER or his nominee/s or transferee/s of their respective portion(s) proportionately and house tax shall also be paid separately according to the respective portion(s) held by them. However, the water and electricity charges during construction period shall be paid and borne by the DEVELOPER.***

***7. That the DEVELOPER agrees to prepare building plan in accordance with the building bye-laws as applicable on the SAID PROPERTY (with permissible deviation) or as may be prescribed by the authority or***



*authorities concerned from time to time. The DEVELOPER shall make its full efforts for obtaining permission for the maximum FAR- to be covered on the SAID PROPERTY.*

*8. That as mentioned above, the project shall consist of Basement, Stilt Floor, Ground Floor, First Floor, Second Floor and Third Floor with Terrace. The parties hereto have agreed to divide and own the floor(s) /portion(s) separately in the following manner:-*

*I. OWNER'S SHARE:-*

- 1) ENTIRE BASEMENT FLOOR;*
- 2) ENTIRE GROUND FLOOR;*
- 3) ENTIRE SECOND FLOOR;*
- 4) ENTIRE THIRD FLOOR;*
- 5) EXCLUSIVE OWNERSHIP AND USAGE RIGHTS OF THE ENTIRE TERRACE OVER AND ABOVE THE ENTIRE THIRD FLOOR;*
- 6) 75% SHARE/PORITION OF THE ENTIRE STILT AREA [ASEARMARKED];*
- 7) USE OF COMMON AREAS, STAIRCASE, LIFT, BACKCOURTYARD, WITH FREE INGRESS AND EGRESS TO THE SAID PORTIONS OF THE SAID PROPERTY;*
- 8) 77.5% UNDIVIDED, INDIVISIBLE AND IMPARTIBLE OWNERSHIP RIGHTS IN THE SAID PLOT OF LAND MEASURING 500 SQUARE YARDS, BEARING NO. E-7, SITUATED AT EAST OF*



**KAILASH, NEWDELHI.**

**II DEVELOPER SHARE:-**

- 1) ENTIRE FIRST FLOOR;**
- 2) 25% SHARE/PORION OF THE ENTIRE STILT AREA [AS EARMARKED];**
- 3) USE OF COMMON AREAS, STAIRCASE, LIFT, BACKCOURTYARD, WITH FREE INGRESS AND EGRESS TO THE SAID PORTIONS OF THE SAID PROPERTY;**
- 4) 22.5% UNDIVIDED, INDIVISIBLE AND IMPARTIBLE OWNERSHIP RIGHTS IN THE SAID PLOT OF LAND MEASURING 500 SQUAREYARDS, BEARING NO. E-7, SITUATED AT EAST OF KAILASH, NEWDELHI.**

*And it is agreed that in addition to the floor allocation as specified above the DEVELOPER would pay a sum of Rs. 75,00,000 /- (Rupees Seventy Five Lac Only) as proportionate cost of land and existing building for its share and also for equalizing its share in the allocation of the floor in the Said Property.*

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*14. That the OWNER in discharge of his obligations and in lieu of the valuable consideration received by him from the DEVELOPER & also in lieu of the cost of construction incurred/to be incurred & for the services rendered/to be rendered in constructing the building, have appointed and authorized the DEVELOPER to sell, transfer and dispose of the Entire First Floor with 25% SHARE/PORION OF THE ENTIRE STILT AREA [as earmarked] along with 22.5% undivided,*



*indivisible & impartible land rights underneath the said newly constructed property for the said floor and also to commonly use along with the other occupants/ owners of the building the common area facilities such as passage, staircase, one separate underground, one separate over headwater tank, sewer lines, space for electric & water meters etc. in/ of the SAID PROPERTY falling in the share of the DEVELOPER, without any objection, hindrance and claim of whatsoever and undertake not to cancel or revoke the same under any circumstances.*

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*15. That it is hereby agreed, understood, acknowledged and so recorded that the DEVELOPER shall be free and entitled to book, allot flat/floor, falling to their share immediately after execution of this agreement. The DEVELOPER shall be exclusively entitled to DEVELOPER'S allocation/ share in the building with the exclusive right to sell, transfer or deal with or to dispose off the same and to make booking, to receive advance payment and full sale consideration from the intending buyer(s) in their own name, enter into agreement to sell in respect of the DEVELOPER'S allocation/share without any right, claim or interest therein whatsoever of the OWNER and the OWNER shall be exclusively entitled to deal with the OWNER'S allocation without any reservation from the DEVELOPER.*

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*19. That Two separate Lifts shall be installed in the said building by the DEVELOPER i.e. one lift for the exclusive use of the owners/ occupants of the Basement, Ground Floor and First Floor and the second lift for the exclusive use of the*



*owners/occupants of the Second Floor and Third Floor. The maintenance cost of the said Lifts as well as proportionate cost of electricity for their use will be paid by the respective floor owners of the said building.”*

- d. The possession of the Suit Property was handed over to the Developers, building plans were sanctioned, rents were being paid by the Defendants to the Plaintiff in terms of the Collaboration Agreement dated 09.05.2018. Occupation Certificate was issued by MCD on 04.02.2022. It is the case of the Plaintiff that Defendants failed to carry out re-construction and re-development in terms of the Collaboration Agreement and the said work is still incomplete. It is the case of the Plaintiff that the Suit Property has been handed over to the Plaintiff in an incomplete state resulting in filing of the present Suit.
3. While hearing the application filed by the Plaintiff under Order XIII A of CPC, a question arose as to whether Order XIII A of CPC would be applicable to the present case or not in view of the stand taken by the Defendants that the present Suit is not a commercial Suit?
4. Learned Counsel appearing for the Plaintiff states that the present dispute, which arose out of the Collaboration Agreement, would come within the four corners of Commercial Courts Act, 2015 [“CC Act”]. He states that under the Collaboration Agreement, the Defendant No.1 is a builder and its work is that of a contractor and, therefore, the present dispute which arose out of the Collaboration Agreement is in the nature of a commercial dispute. In support of his contention, he places reliance upon Sections 2(1)(c)(vi) and 2(1)(c)(vii) of CC Act which read as under:



**“2. Definitions.—(1) In this Act, unless the context otherwise requires,—**

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*(c) “commercial dispute” means a dispute arising out of—*

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*(vi) construction and infrastructure contracts, including tenders;*

*(vii) agreements relating to immovable property used exclusively in trade or commerce;*

5. Learned Counsel for the Plaintiff also places reliance upon a Judgment passed by a Co-ordinate Bench of this Court in Raj Kumar Gupta v. Jagan Nath Bajaj, 2022 SCC OnLine Del 2995 wherein the dispute also arose out of a Collaboration Agreement in respect of a residential building as in the present case. In the said case, an application under Order VII Rule 11 of CPC had been filed stating that the dispute is not a commercial dispute. Paragraph Nos.12 & 13 of the said Judgment, which indicate the grounds taken in the application filed under Order VII Rule 11 of CPC and the contentions of the Plaintiff therein to state that the dispute is in the nature of a commercial dispute, read as under:

*“12. The aforesaid applications are premised on the following grounds:*

*i. That the present suit as filed by the plaintiffs does not fall within the category of a commercial dispute under Section 2(1)(c) of the Commercial Courts Act, 2015 as the property in question is a residential property. Reliance in this regard is placed on the judgment in Ambalal Sarabhai*



*Enterprises Limited v. K.S. Infraspace LLP, (2020) 15 SCC 585.*

- ii. That the present suit is not maintainable on account of non-compliance with Section 12 A (1) of the Commercial Courts Act, 2015 in as much as the plaintiffs have not taken recourse to pre-institution mediation.*
- iii. Plaintiffs have not valued the suit properly for the purposes of Court Fees and jurisdiction. The market value of the two floors of the property bearing no. E-59, South Extension Part 1 is about Rs. 6 crores but the plaintiffs have valued the suit at only Rs. 2.15 crores.*
- iv. The Property Development Agreement dated 19<sup>th</sup> October, 2018 does not bear the signatures of all the parties and is not registered document.*

*13. No reply has been filed on behalf of the plaintiffs. However, oral submissions have been made. Counsel for the plaintiffs submits that:*

- i. In view of the fact that it is a Property Development Agreement entered into between the parties which involves re-development/reconstruction, the present suit is covered under Section 2 (1) (vi) of the Commercial Courts Act. Reliance is placed on the judgment of the Andhra Pradesh High Court in *Blue Nile Developers (P) Ltd. v. Movva Chandra Sekhar*, 2021 SCC OnLine AP 3964.*
- ii. In view of the urgent interim reliefs sought in the present suit, Section 12 A of the Commercial Courts Act, 2015 would not be applicable to the present case.*
- iii. The suit has been correctly valued in terms of the aforesaid Property Development Agreement dated*



*23<sup>rd</sup> October, 2018 entered into between the parties.*

*iv. The aforesaid Property Development Agreement is not required to be registered.”*

6. After considering the arguments of both sides, the Co-ordinate Bench of this Court came to the conclusion that the dispute therein is a commercial dispute. The Co-ordinate Bench of this Court in Raj Kumar Gupta (supra) observed as under:

*“18. I am in respectful agreement with the view taken by the Andhra Pradesh High Court. A restrictive meaning cannot be given to the phrase ‘construction and infrastructure contracts’. The aforesaid phrase would include both ‘construction contracts’ as well as ‘infrastructure contracts’ and cannot be given a restrictive meaning to include only infrastructure contracts involving construction. This becomes clear from the use of the words ‘including tenders’, which would imply that all tenders relating to construction contracts as well as infrastructure contracts would be covered under the scope of commercial disputes.*

*19. In the present case the plaintiff seeks specific performance of the Property Development Agreement, in terms of which the plaintiffs were to construct the property. The plaintiffs, being the builders are required to pay Rs. 2,15,00,000/- crores to the defendants, being the owners of the property and carry out construction on the suit property at their own expense. In lieu thereof, the plaintiffs would be entitled to two floors of the building to be constructed and the remaining floors are to go to the defendants. Clearly, construction is the core of the aforesaid agreement and the dicta in Blue Nile Developers (supra) would be squarely applicable.*



*20. In the plaint it has been stated that the plaintiffs are in the business of developing the private properties belonging to the third parties in accordance with the property development agreement/collaboration agreement inter se. The present agreement is in the nature of a collaboration agreement, which would also qualify as a 'joint venture' agreement under Section 2 (1) (c) (xi) of the Commercial Courts Act. Black's Law Dictionary 7<sup>th</sup> Edition defines 'joint venture' as 'a business undertaking by two or more persons engaged in a single defined project'.*

*21. The subject matter of the suit is specific performance of the said agreement. Therefore, in my view it would be covered under the definition of 'commercial dispute' both under Section 2(1) (c) (vi) and Section 2(1) (c) (xi) of the Commercial Courts Act."*

7. On the basis of the aforesaid judgment - Raj Kumar Gupta (supra), the learned Counsel for the Plaintiff contends that the present case is squarely covered by the said Judgment passed by the Co-ordinate Bench of this Court and, therefore, the present dispute is a commercial dispute.

8. *Per contra*, learned Counsel for the Defendant No.2 places reliance upon a Judgment passed by the Apex Court in Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP, (2020) 15 SCC 585 and more particularly on the following paragraphs:-

*"36. A perusal of the Statement of Objects and Reasons of the Commercial Courts Act, 2015 and the various amendments to the Civil Procedure Code and insertion of new rules to the Code applicable to suits of commercial disputes show that it has been enacted for*



*the purpose of providing an early disposal of high value commercial disputes. A purposive interpretation of the Statement of Objects and Reasons and various amendments to the Civil Procedure Code leaves no room for doubt that the provisions of the Act require to be strictly construed. If the provisions are given a liberal interpretation, the object behind constitution of Commercial Division of Courts viz. putting the matter on fast track and speedy resolution of commercial disputes, will be defeated. If we take a closer look at the Statement of Objects and Reasons, words such as “early” and “speedy” have been incorporated and reiterated. The object shall be fulfilled only if the provisions of the Act are interpreted in a narrow sense and not hampered by the usual procedural delays plaguing our traditional legal system.*

*37. A dispute relating to immovable property per se may not be a commercial dispute. But it becomes a commercial dispute, if it falls under sub-clause (vii) of Section 2(1)(c) of the Act viz. “the agreements relating to immovable property used exclusively in trade or commerce”. The words “used exclusively in trade or commerce” are to be interpreted purposefully. The word “used” denotes “actually used” and it cannot be either “ready for use” or “likely to be used” or “to be used”. It should be “actually used”. Such a wide interpretation would defeat the objects of the Act and the fast tracking procedure discussed above.*

*38. On 3-11-2017, a Memorandum of Understanding was executed between the appellant-plaintiff, respondent-defendant and Ketan Bhailalbhair Shah, second respondent. As per the terms of MoU, parties executed a deed of conveyance of the land. A mortgage deed was executed simultaneously along with the MoU with respect to the part of the land admeasuring 15,000 sq ft in favour of the plaintiff. It*



*was understood between the parties that Respondent 1 would apply for change of land use permission for the land in question on signing of the MoU. Mortgage deed was executed by Respondent 1 in favour of the appellant in order to ensure performance of obligations under the MoU. But the said mortgage deed was not presented for registration.*

**39.** *It appears that the trial court has proceeded under the footing that the parties to the suit more particularly, the appellant-plaintiff seems to be carrying on business as estate agent and to manage land, building, etc. and the very object as enumerated in Memorandum and Articles of Association of the appellant-plaintiff company established that the property in question is being used exclusively in trade or commerce rather in the business of the plaintiff. As rightly pointed out by the High Court, there is nothing on record to show that at the time when agreement to sell came to be executed in 2012, the property was being exclusively used in trade and commerce so as to bring dispute within the ambit of sub-clause (vii) of Section 2(1)(c) of the Act. Merely because, the property is likely to be used in relation to trade and commerce, the same cannot be the ground to attract the jurisdiction of the Commercial Court.*

**40.** *In Ujwala Raje Gaekwar v. Hemaben Achyut Shah [Ujwala Raje Gaekwar v. Hemaben Achyut Shah, 2017 SCC OnLine Guj 583] , Special Civil Suit No. 533 of 2011 was instituted for declaration that the sale deed valued at Rs 17.76 crores executed by the appellant-original Defendant 1 in favour of Respondent 4 be declared illegal and also, for permanent injunction with respect to the land in question. The appellants-defendants thereon filed an application that in sale deed, it has been clearly mentioned that the agreement relating to immovable*



*property used exclusively in trade or commerce and falls within the meaning of Section 2(1)(c)(vii) of the Commercial Courts Act and that the matters above, the value of rupees one crore are to be transferred to the Commercial Court. Trial court rejected the said application which was challenged before the Gujarat High Court. The Gujarat High Court held that the aim, object and purpose of establishment of Commercial Courts, Commercial Divisions and Commercial Appellate Divisions of the High Court is to ensure that the cases involved in commercial disputes are disposed of expeditiously, fairly and at reasonable cost to the litigant, and if such a suit which is as such arising out of the probate proceedings and/or is dispute with respect to the property are transferred to the Commercial Division/Commercial Court, there shall not be any difference between the regular civil courts and the Commercial Division/Commercial Courts and the object for the establishment of the Commercial Division/Commercial Courts shall be frustrated.*

**41.** *In Vasu Healthcare (P) Ltd. v. Gujarat Akruti TCG Biotech Ltd. [Vasu Healthcare (P) Ltd. v. Gujarat Akruti TCG Biotech Ltd., 2017 SCC OnLine Guj 724 : AIR 2017 Guj 153] , referred to in extenso by my learned Brother, it was held that: (SCC OnLine Guj para 33)*

*“33. ... On plain reading of the relevant clause, it is clear that the expression “used” must mean “actually used” or “being used”. If the intention of the legislature was to expand the scope, in that case the phraseology used would have been different as for example, “likely to be used” or “to be used”. The word “used” denotes “actually used” and it cannot be said to be either “ready for use” or “likely to be used”; or “to be used”.”*



*We entirely agree with the above purposive interpretation adopted by the Gujarat High Court.*

*42. The object and purpose of the establishment of Commercial Courts, Commercial Divisions and Commercial Appellate Divisions of the High Court is to ensure that the cases involved in commercial disputes are disposed of expeditiously, fairly and at reasonable cost to the litigants. Keeping in view the object and purpose of the establishment of the Commercial Courts and fast tracking procedure provided under the Act, the statutory provisions of the Act and the words incorporated thereon are to be meaningfully interpreted for quick disposal of commercial litigations so as to benefit the litigants especially those who are engaged in trade and commerce which in turn will further economic growth of the country. On the above reasonings, I agree with the conclusion arrived at by my esteemed Brother A.S. Bopanna, J.”*

9. It is contended by learned Counsel for Defendant No.2 that since the Suit Property is a residential property, the aforesaid judgment -Ambalal Sarabhai Enterprises Ltd. (supra) passed by the Apex Court would squarely apply to the present case and, therefore, the present dispute cannot be said to be a commercial dispute.

10. Heard learned Counsel appearing for the Parties and perused the material on record.

11. In the opinion of this Court, the issue as to whether Collaboration Agreement under which a portion of a Property is to be given to the developer is a commercial dispute or not, has been settled by a Division Bench of this Court in Asif Ali Khan v. Manoj Kumar, **2024 SCC**



**OnLineDel 2083.** In the said Judgment, the Division Bench of this Court dealt with a Collaboration Agreement under which certain portions of the property were to be given to the developer. The relevant portions of the said Judgment reads as under:

*“2. The appellant had instituted the said suit - CS (COMM) No. 482/2022 captioned Asif Ali Khan v. Manoj Kumar - for recovery of sum of Rs. 55,00,000/-. The appellant claims that the respondent had entered into a Collaboration Agreement dated 22.06.2016 (hereafter Collaboration Agreement) with the owners of the property bearing no. 260 & 260A, Khasra No. 210 min., Village Hauz Rani, Tehsil Hauz Khas, Malviya Nagar, New Delhi -110017, admeasuring 573 sq. yds (hereafter the subject property). In terms of the Collaboration Agreement, the subject property was required to be demolished and a new building was required to be raised by the respondent. Further, in terms of the Collaboration Agreement, the respondent was entitled to accept bookings for sale of separate portions of the subject property.*

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*7. We have heard the learned counsel for the appellant.*

*8. The principal controversy is whether the said flat, which was agreed to be purchased by the appellant in terms of the Agreement to Sell, is (or would be) a commercial property. Admittedly, the Agreement to Sell does not describe the said flat or the subject property as a commercial property. More importantly, the description of the said flat in the Agreement to Sell clearly indicates that the first floor*



*of the subject property, which was subject matter of transaction under the Agreement to Sell, is a residential property. The same is evident from the description of the property which, as noticed above, comprises of three bed rooms, one drawing/dining room, three bathrooms, kitchen, staircase, lift with one car parking.*

*9. It is also relevant to note that there is no material on record to indicate that the land, on which the subject property was agreed to be built, is permitted to be used for a commercial purposes.*

*10. The learned counsel for the appellant contends that in a residential colony certain commercial use/activity is permissible. Illustratively, he refers the use of premises by a doctor. The fact that residential properties may be permitted to be used by professionals to carry on their profession does not change the nature of those properties. The same would remain a residential property and not become a commercial property. Thus, we find no merit in the aforesaid contention.*

*11. The learned counsel appearing for the appellant submits that the disputes involved in the present petition would also be covered as a commercial dispute under Clause (vi) of Section 2(1)(c) of the CC Act. The said clause reads as under:*

*“(vi) construction and infrastructure contracts, including tenders;”*

*12. The Agreement to Sell is in the nature of a contract for sale and purchase of immovable property; it is not a construction contract as contemplated under*



*Clause 2(1)(vi) of the CC Act. Merely, because the payment of instalments of the purchase consideration is linked to the stage of construction, does not change the nature of the Agreement to Sell to a construction contract. A plain reading of the Agreement to Sell indicates that it is an agreement for purchase of a flat. In terms of the Agreement to Sell, the respondent had agreed to deliver the possession of the said flat on or before December, 2017 in a semi furnished stage - with fan, light, geyser, exhaust fan, Kent RO, chimney, modular kitchen, one wardrobe extra. Notwithstanding the clear terms of the Agreement to Sell, the learned counsel submits that since the Collaboration Agreement was for redevelopment of the subject property, the Agreement to Sell is required to be considered in the same light. The said contention is insubstantial. It is the appellant's case that the respondent was entitled to sell a portion of the property, which was agreed to be redeveloped in terms of the Collaboration Agreement.*

*13. The learned counsel appearing for the appellant, at this stage, seeks to advance the contention, which is in variation with the pleadings in the plaint. He submits that since the first floor of the property fell into the share of the owners, the Agreement to Sell must be considered as a construction contract. He submits that as the Collaboration Agreement was for development of the subject property and the respondent was merely acting as an agent of the owners. This contention is also insubstantial apart from being in variation with the pleadings. Whether the said flat would fall to the share of the developer (the respondent) or the owner of the subject property makes little difference to the nature of the dispute involved. As noted above, the Agreement to Sell is a contract for sale and purchase of a residential flat; not a construction contract.*



12. A perusal of the aforesaid Judgment indicates that an Agreement to Sell was entered into between the parties therein pursuant to the Collaboration Agreement, where certain portions of the Suit Property are to be sold by the Builder/Developer. The Division Bench of this Court took a view that the nature of the Agreement being one for sale of property and not that of a construction Agreement, the same will not fall within the purview of a commercial dispute. Similarly, in the present case, a Collaboration Agreement was entered into by the parties herein, whereby the Developer taken the form of an owner of the certain shares of the Suit Property, which he may put such shares for sale. The Division Bench of this Court in Asif Ali Khan (supra) held that a dispute arising out of such an Agreement cannot fall within the ambit of commercial dispute. Moreover, the said case - Asif Ali Khan (supra) is binding on this Court.

13. A perusal of the Collaboration Agreement indicates that the Developer/Defendants were to bear the entire expenses for the construction and development of the Suit Property and the Plaintiff was not to spend any money. After the Suit Property is constructed, the Suit Property is to be divided between owner's share i.e., entire basement, ground floor, second floor, third floor of the Suit Property and the Developer's share i.e., entire first floor of the Suit Property. The effect of the Collaboration Agreement is that the Developer/Defendants after constructing the entire Suit Property by using their own funds will become the owner of the entire first floor of the Suit Property and, therefore, the Collaboration Agreement assumes the character of an Agreement to Sell of the Suit Property. Unlike a contract entered into between the owner and the contractor wherein the contractor's



job is only to construct the property at the expenses being borne by the owner only, then the dispute arising out of such a contract becomes a commercial dispute. However, in the present case, the Developer/Defendants have agreed to purchase the entire first floor of the Suit Property at the cost being computed by the clauses of the Collaboration Agreement.

14. In the opinion of this Court, the present dispute, arising out of the Collaboration Agreement, is not a commercial dispute as the Judgment - Raj Kumar Gupta (supra) passed by the Co-ordinate Bench of this Court has been impliedly overruled by the Division Bench of this Court in the Judgment - Asif Ali Khan (supra).

15. Resultantly, the application being I.A. 13055/2025 filed by the Plaintiff under Order XIII A of CPC would not be maintainable as the present Suit cannot be treated as a commercial Suit. I.A. 13055/2025 stands dismissed.

**CS(COMM) 558/2023 & I.A. 15522/2025**

List before the Ld. Joint Registrar on 11.05.2026.

**SUBRAMONIUM PRASAD, J**

**MARCH 11, 2026**

*S. Zakir/SM*