



2026:DHC:3509



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

Date of decision: 23<sup>rd</sup> APRIL, 2026

IN THE MATTER OF:

I.A. 11294/2022

IN

+ CS(OS) 7/2019

DEEPAK GUPTA

.....Plaintiff

Through: Mr. Sandeep Jindal and Ms. Akansha  
Bharti, Advocates for Plaintiff

versus

ASHOK GUPTA AND ORS.

.....Defendants

Through: Mr. Anil Pruthi, Advocate for  
Defendant No.1.

Ms. Seema Gupta, Advocates for D-2  
& 3

**CORAM:**

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

**JUDGMENT**

**I.A. 11294/2022**

1. The instant application has been filed on behalf of the Defendant No. 1 under Order VII Rule 11 of the CPC for rejection of plaint.
2. The instant suit filed by the Plaintiff for directing Defendant No.1 to specifically perform his part of the agreement to sell dated 15.06.2018 by transferring the suit property bearing Entire First Floor of House No.76, Sharda Niketan, Pitampura, New Delhi in the name of the Plaintiff through registered sale deed and to hand over the actual vacant physical possession of the suit property to Plaintiff and other consequential reliefs.
3. The facts of the case, as discernible from the Plaint, are as follows:-



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- a. Defendant No. 2 is a registered owner of the entire first floor of the House No. 76, Sharda Niketan, Pitampura, New Delhi without roof rights, built up on the land area admeasuring 185 sq. yds. (*hereinafter referred to as the "Subject Property"*).
- b. A Collaboration Agreement dated 20.08.2015 has been entered into between the Defendant No. 1 (developer/builder) and Defendant No. 2 for the development of the Subject property and *via* which Defendant No. 1 has also derived his rights and titles in the Subject property.
- c. As per Clause 9 of the Collaboration Agreement, the Defendant No. 2 was given the share of upper Ground Floor, Second Floor, Third Floor with roof rights with undivided 3/4<sup>th</sup> share of stilt parking, whereas Defendant No. 1 was given the share of First Floor without roof rights with undivided 1/4<sup>th</sup> share of Stilt Parking i.e., the Subject Property
- d. Accordingly, the Defendant No. 1 offered to sell the Subject Property to the father of the Plaintiff herein for a sale consideration of Rs. 2,10,00,000/-. The Plaintiff who agreed to purchase the Subject Property had paid the amount of Rs. 29,00,000/- as earnest money and part consideration on 30.05.2016. Thereafter, in many instalments, the father of the Plaintiff, during his lifetime, had paid a sum of Rs. 1,45,00,000/-. The father of the Plaintiff passed away on 10.01.2018.
- e. As per the agreement, the time of completion and peaceful possession of the Subject Property was to be handed over by the Defendant No. 1 on or before 30.08.2017. However, due to non-completion of the same, the Defendant No. 1 repeatedly sought for extensions from the father of the Plaintiff when he was alive.



- f. In lieu of the demise of the father of the Plaintiff, for the sake of completion of the project, a new Agreement to Sell dated 15.06.2018 entered into between the Defendant No. 1 and the Plaintiff. As per the said agreement, the date of completion of the project was extended from 30.08.2017 to 30.08.2018.
- g. It was acknowledged by the Defendant No. 1 in the said agreement that a payment of Rs. 1,45,00,000/- was already made towards the Defendant No. 1 and that a remaining amount of Rs. 65,00,000/- was to be made. In the meanwhile, the Plaintiff has paid a sum of Rs. 15,00,000/- by way of cheques.
- h. Thereafter, the time period for completion of the transaction was extended from 30.08.2018 to 31.10.2018. However, despite several reminders from the Plaintiff to oblige with its part of the performance, the Defendant No. 1 has repeatedly denied.
- i. Hence, the instant plaint is filed seeking specific performance.
4. Learned Counsel for the Applicants/Defendant No. 2 and 3 submitted that the instant plaint ought to be rejected on the ground that the Defendant No. 1 derived its rights from the underlying Collaboration Agreement between the Defendant No. 1 and Defendant No. 2. It is submitted that as per the terms of the Collaboration Agreement, Defendant No. 1 cannot make a sale deed with regards to the Subject Property to any party until and unless the floors allotted to them are completed. Since the same is not completed, the Defendant No. 1 cannot perform its part of the performance towards the Plaintiff, therefore, the instant plaint is liable to be rejected.
5. It has been further contended that the Agreement to Sell is hit by Section 14(1)(d) of the Specific Relief Act, 1983 (*hereinafter referred to as*



“SRA”) as the same falls within the ambit of “determinable” contracts.

6. *Per Contra*, learned Counsel for the Plaintiff states that the Defendant No. 1 had derived his right to make a sale deed for the Subject Property as per the Collaboration Agreement. Moreover, the Defendant No. 2 and 3 did not object to the Agreement to Sell. It is submitted that as per Clause 10 of the Collaboration Agreement, the Defendant No. 1 can proceed to make a sale deed of the Subject Property in favour of other parties if mutually agreed. It is submitted that since the Defendant No. 2 and 3 did not object to the Agreement to Sell, the same was “mutually agreed” and therefore, the application for rejection of plaint on this ground is unfounded.

7. Heard the learned counsel for the parties and perused the material on record.

8. For the sake of convenience, the Collaboration Agreement dated 20.08.2015 is reproduced hereinunder:

“ **COLLABORATION AGREEMENT**

*This Collaboration Agreement is made and executed on 20-08-2015, at Delhi, by and between **SMT. KRISHNA MITTAL** WIFE OF SHRI BRIJ KISHORE MITTAL RESIDENT OF 76, SHARDA NIKETAN, PITAM PURA, DELHI, hereinafter called First Party of the one part.*

\*\*\*AND\*\*\*

**SHRI ASHOK GUPTA** SON OF SHRI HARI RAM GUPTA RESIDENT OF 11. TARUN ENCLAVE, PITAM PURA, DELHI, hereinafter called Second Party of the other part.

*The expression First Party and Second Party shall mean and include the parties, irrespective legal heirs,*



successors, administrators, legal representatives, executors, nominee's and assignees.

Whereas the First Party is absolute owner in possession of **PROP, NO.76. AREA MEASURING 181.94 SO. YARDS, SIZE 27'3"X60", SITUATED AT SHARDA NIKETAN PITAM PURA, DELHI-34,** (hereinafter called the Property).

And Whereas the First Party is unable to renovate the above mentioned property due to insufficient funds with them, the first party approached the Second Party for re-construction after demolition on the said property as per the plan and the Second Party has agreed to do construction and finishing work on STILT PARKING, UPPER GROUND FLOOR, FIRST FLOOR, SECOND FLOOR AND THIRD FLOOR, on the terms & conditions as mentioned below:-

**NOW THIS COLLABORATION AGREEMENT WITNESSES AS UNDER:**

1. That the first party has handed over the vacant, peaceful and physical possession of the above said property to the second party on 15-07-2015.
2. That the Second Party will construct the STILT PARKING, UPPER GROUND FLOOR, FIRST FLOOR, SECOND FLOOR AND THIRD FLOOR on the above said plot after demolition of the existing structure.
3. That the second Party shall complete the building and shall hand over the vacant possession within 24 MONTHS from the date of handing over the possession of the existing building by the owner to the second party.
4. That all the costs including providing and fixing of all material and labour cost etc. shall be borne and



*paid by the Second Party. In case of any mishappening with the labour or any action by labour or any other person/department, shall be borne and paid by the second party and the first party shall not be responsible for the same in any circumstances, whatsoever.*

*5. That all the expenses like M.C.D., D.D.A., ETC, with regard to the construction shall be borne and paid by the second party & all previous dues before the date of this agreement and demands will be borne by the First Party and thereafter by the Second Party till possession is handed over to First Party and any income tax on capital gain amount & service will be paid by the second party if applicable.*

*6. That the first party shall co-operate with the second party at any time for the purpose of sanction of map, construction and to sign the documents with regard to the same without any extra claim.*

*7. That all the Govt. dues. House tax. TPDDL dues, Water and Sewer development charges or any other dues, upto date shall be borne and paid by the first party and thereafter by the second party till possession is handed over to the first party.*

*8. That the First Party has assured the Second Party that the property in question is freehold in nature and is free from all encumbrances, such as prior sale, gift will, lien, litigation, lease, loan, surety, security, acquisition, etc.*

*9. That the proportions falling to the share of the parties in the newly constructed building shall be as under:-*

***FIRST PARTY ALLOCATION:-***



**A. UPPER GROUND FLOOR**

**B. SECOND FLOOR**

**C. THIRD FLOOR WITH ROOF RIGHTS WITH UNDIVIDED 3/4TH SAHRE OF STILT PARKING**

**SECOND PARTY ALLOCATION:-**

**FIRST FLOOR WITHOUT ROOF RIGHTS WITH UNDIVIDED 1/4TH SAHRE OF STILT PARKING**

**10. That the First Party is bound to execute the proper Sale Deed of First Floor without roof rights, in favour of Second Party or his nominee at the time of Completion of the floors of first party or mutually agreed.**

**11. That the Second Party has paid a sum of Rs. 36,00,000/- (RUPEES THIRTY SIX LACS ONLY) AT THE TIME OF POSSESSION AND AGREEMENT in the following manner:-**

**RS. 8,,00,000/- BY CH. NO. 093287 DT. 30-07-2015  
RS. 8,,00,000/- BY CH. NO. 093288 DT. 01-08-2015  
BOTH ARE DRAWN ON THE FEDERAL BANK LTD.,  
PITAM PURA, DELHI.**

**RS. 20,,00,000/- BY CASH**

**12. That the second Party will use the material for construction as per annexure.**

**13. That second party shall pay the rent @50,000/- per month as rent for delayed period for completion of the building.**

**14. That this deal is irrevocable and will not be cancelled in any circumstances.**



*IN WITNESSES WHERE OF this Collaboration Agreement has been signed and executed by the First & Second Parties after reading and understanding the contents thereof without any pressure or influence of anybody else on them at Delhi, on in the presence of the marginally noted witnesses.”*

(emphasis supplied)

9. It is also pertinent to reproduce the relevant portions of the Agreement to Sell dated 15.08.2018. The same reads as under:-

*“6) That the FIRST PARTY do hereby reiterates, admits, accepts and acknowledges that he has already obtained total amount of Rs. 1,45.00,000/- (Rupees one crore forty five lac only) towards the earnest money and part sale consideration with respect to the SCHEDULE PROPERTY. Hence, the remaining part payment of Rs.65,00,000/- (Rupees sixty five lac only) is balance to be paid towards the sale consideration of the SCHEDULE PROPERTY by the SECOND PARTY.*

*7) That on the requests and promises of the FIRST PARTY, the extended time period of one year from the original date of completion of agreement i.e. 30.08.2017 has been mutually agreed between the present parties which now shall be 30.08.2018. It is specifically mentioned that the time is the essence of the present agreement and no party shall deviate from the newly agreed date to complete respective part performance pertaining to the agreement.*

*8) That the SECOND PARTY has issued three bank cheques to the FIRST PARTY as further part payment for sale consideration SCHEDULE PROPERTY as follows:*

*a) Cheque No. 000065 dated 15.06.2018 for an amount Rs.5,00,000/- (Rupees five lac only);*

*b) Cheque No. 000066 dated 15.07.2018 for an amount*



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*of Rs.5,00,000/- (Rupees five lac only);*

*c) Cheque No. 000067 dated 15.08.2018 for an amount of Rs.5,00,000/- (Rupees five lac only).*

*Total amounting to Rs. 15,00,000/- (Rupees fifteen lac only) and all three cheques drawn on HDFC Bank, Saraswati Vihar, Pitampura, New Delhi.*

*9) That the FIRST PARTY do hereby admits, accepts and acknowledges the receipt of aforesaid three cheques total amounting to Rs. 15,00,000/- (Rupees fifteen lac only). On receipt of the money realised from these cheques the total part sale consideration of Rs. 1,60,00,000/- (Rupees one crore sixty lac only) shall have reached to the FIRST PARTY and the net balance amount of Rs.50,00,000/- (Rupees fifty lac only) shall remain payable by the SECOND PARTY to the FIRST PARTY towards the sale consideration of the SCHEDULE PROPERTY.*

*10) That the balance amount of Rs.50,00,000/- (Rupees fifty lac only) shall be paid by the SECOND PARTY to the FIRST PARTY at the time of execution and registration of the Sale Deed and thus completing the sale transaction of the schedule property on or before 30.08.2018 or any grace period as may otherwise be provided.*

*11) That on the requests and promises of FIRST PARTY, it has been mutually agreed between the parties that a further grace time period of two months i.e. September and October 2018 may be allowed to the FIRST PARTY by the SECOND PARTY, in case of any unforeseen event beyond his control to complete the sale transaction with respect to the SCHEDULE PROPERTY, strictly on the monthly penalty and compensatory cost of Rs.2,50,000/- (Rupees two lac fifty thousand only) for each defaulting month. Thus, the time period to complete the present sale*



*transaction may further be extended upto 31.10.2018 by the SECOND PARTY on the written request of the FIRST PARTY only on the payment of aforesaid month-wise penalty and compensatory costs and not otherwise.*

*12) That in case of any default on part of the FIRST PARTY within the stipulated time period to complete the sale transaction, and to execute and register the Sale Deed in favour of the SECOND PARTY, and to hand over the vacant, peaceful, lawful actual possession of the SCHEDULE PROPERTY, the FIRST PARTY shall be liable to pay the damages, costs, compensation, mesne profits, interests, loss of profits, and all other incidental/ancillary monies to the SECOND PARTY.*

*13) That it has been mutually agreed between the parties that in case of the default on part of the FIRST PARTY, in any manner whatsoever, the FIRST PARTY shall be liable to pay the SECOND PARTY within one fortnight of the default the following amounts. The FIRST PARTY shall make payment of Rs.58,00,000/- (Rupees fifty eight lac only) towards the double of the amount of the earnest money Rs.29,00,000/- (Rupees twenty nine lac only) to the SECOND PARTY for his breach of contract, penalty, costs, damages, compensation, loss of profits, mesne profits etc. The FIRST PARTY shall make repayment of all the amounts obtained by him from the SECOND PARTY (and his deceased father) towards the part sale consideration of the SCHEDULE PROPERTY alongwith the interest @ 02% p.m. (two percent per month) calculated on monthly compounding basis from the respective date of payment till the actual date of repayment.*

*14) That the repayment amounts shall be calculated as per the details mentioned in the preceding para, since the same have been liquidated and decided at once in this agreement. In case, said amount is not paid by the FIRST*



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*PARTY to the SECOND PARTY within 15 days of default, then the SECOND PARTY shall be entitled to sue the FIRST PARTY for recovery of aforesaid amounts before the competent Court of Law in accordance with applicable laws/rules. The FIRST PARTY shall not dispute this agreement regarding his liability to repay the SECOND PARTY the total amounts calculated as per details mentioned hereinabove, in case of the default on his part in any manner whatsoever. All the claims, pleas, averments, defence, statements etc. of the FIRST PARTY for such contest shall deemed to be abandoned and waived off.”*

10. The instant suit is one for specific performance of the Agreement to Sell dated 15.08.2018 by the Plaintiff, who is the buyer. The Plaintiff entered into with an agreement into sell with Defendant No.1, who is the builder. Defendant No.2 is the owner of the property. There is no privity of contract between the Plaintiff and Defendant No.2.

11. A perusal of the Collaboration Agreement indicates that only Defendant No.2 is bound to execute the proper sale deed of First Floor without roof rights in favour of Defendant No.1 and his nominee at the time of completion of First Floor of Defendant No.2 or mutually agreed, being the owner of the property.

12. There is nothing to indicate that the portion of Defendant No.2, i.e., stilt parking, upper ground floor, first floor, second floor and third floor has been completed and handed over to Defendant No.2. In the absence of the same, it cannot be said that Defendant No.2 would be bound to execute the sale deed in favour of the Plaintiff. In any event, Defendant No.1 is not the owner of the property and therefore, could not have entered into an Agreement to Sell for the property of which he is not the owner.



13. There is no cause of action against Defendant No.1 or Defendant No.2 as Defendant No.1 is not the owner of the property and there is no privity of contract between the Plaintiff and Defendant No.2. The plaint, therefore, has to fail on the ground that it does not show any cause of action either against Defendant No.1 or Defendant No.2.

14. Section 13 of the SRA defines the rights of a purchaser or lessee against person with no title or imperfect title. The said Section is being reproduced and reads as under:

*“13. Rights of purchaser or lessee against person with no title or imperfect title.—(1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter), has the following rights, namely:—*

- (a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;*
- (b) where the concurrence of other person is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;*
- (c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage*



*and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;*

*(d) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lesser in the property which is the subject-matter of the contract.”*

15. In the opinion of this Court, Defendant No.1 has yet not acquired the right to sell the property. The Plaintiff can compel the Defendant No.1 to sell the property only when the Defendant No.1 gets a right to sell the property. Clause No. 9 of the Agreement between the Defendant No.1 and Defendant No.2 gives a right to Defendant No.1 to compel Defendant No.2 to execute the sale deed only after the portion of the property fallen to the share of Defendant No.2, is completely handed over to Defendant No.2.

16. Admittedly, the building has not been constructed. The Defendant No.2 has yet not taken the possession of the property to which he is entitled to. Section 13 is therefore, cannot inure to the benefit of the Plaintiff.

17. As far as the alternate relief i.e., Prayer No. ‘g’ is concerned, the basis for the same is given in Paragraph No.29 of the Plaint which reads as under:

*“29) That the defendant no.1 in the agreement to sell dated 15/06/2018 in para number 13 had agreed that in case of default on his part, he shall be liable to pay the plaintiff an amount of Rs. Fifty eight lakh (towards the double of earnest money of Rs. twenty nine lakh) and shall make the repayment of all the other amounts obtained the by him from the plaintiff with interest at the rate of two percent per month calculated on*



*monthly compounding basis from the respective date of payment till the actual date of repayment. The plaintiff has calculated the interest amount for the part sale consideration of Rs. 1,31,00,000/- rupees one crore thirty one lac only which had been made by the plaintiff and his father during the relevant time to the defendant no. 1 towards the purchase price of the suit property. By using the monthly compounding interest formula at the rate of 2% per month from the respective date of payment by the plaintiff to the defendant no.1, an amount of Rs.90,94,865/- rupees ninety lac ninety four thousand eight hundred sixty five only as been calculated as interest amount upto 07/01/2019 on the part payment of sale consideration paid by the plaintiff to the defendant no.1. Therefore, the total amount payable by defendant no. 1 to the plaintiff against the payment of the part sale consideration of Rs. 1,31,00,000/- rupees one crore thirty one lac only is presently amounted to Rs.2,21,94,865/- rupees two crore twenty one lac ninety four thousand eight hundred sixty five only (as on 07.01.2019 at the time of filing this suit) besides the amount of Rs. 58,00,000/- rupees fifty eight lac only towards the double amount of Rs.29,00,000/- rupees twenty nine lac only as the earnest money deposit. Hence, an amount of Rs.2,79,94,865/- rupees two crore seventy nine lac ninety four thousand eight hundred sixty five only (as on 07.01.2019 at the time of filing this suit) by the defendant no.1 to the plaintiff in alternative to the specific performance of the agreement to sell dated 15/06/2018 regarding the transfer of the suit property by the defendant no.1 to the plaintiff, with interest pendent-lite an future interests.”*

18. Perusal of the said Paragraph indicates that the amount of Rs.2,79,94,865/- has been calculated in accordance with the Agreement to



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Sell dated 15.08.2018 which cannot be specifically enforced for the reason that Defendant No.1 was not the owner of the property and therefore, could not have been entitled to this Agreement to Sell till he has completed the construction or at least that part of the construction which fell to the share of Defendant No.2. Since the alternate relief depends only on the Agreement to Sell, which could not have been entered into at all between the Plaintiff and the Defendant No.1, as the Defendant No.1 was not the owner, the instant Suit cannot even continue for Prayer No. 'g' and therefore, the Plaint has to be rejected in toto.

19. The Plaint is, therefore, rejected under Order VII Rule 11(a) of the CPC.

20. This Court, therefore, is not making any observation as to whether the Plaintiff can file a fresh suit or not for claiming damages or for recovery of the amount which has already been paid by the Plaintiff to the Defendant No.1.

**SUBRAMONIUM PRASAD, J**

**APRIL 23, 2026**  
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