

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

+ **RFA Nos. 744/2002, 190/2003 and 221/2003**

% **25th November, 2011**

RFA 744/2002

% **THE INDURE PRIVATE LIMITED** Appellant
Through : Ms. Yogesh Malhotra, Ms. Vineet
Malhotra and Mr. Rohan Sharma,
Advocates.

versus

**M/S ANSAL PROPERTIES AND
INDUSTRIES LTD.**

..... Respondent
Through : Mr. B.B. Gupta, Mr. Harish Hari
Haran and Mr. Ravjvot Ghuman,
Advocates.

WITH

RFA 190/2003

% **DESEIN PRIVATE LIMITED** Appellant
Through : Ms. Yogesh Malhotra, Ms. Vineet
Malhotra and Mr. Rohan Sharma,
Advocates.

versus

**M/S ANSAL PROPERTIES AND
INDUSTRIES LTD.**

..... Respondent
Through : Mr. B.B. Gupta, Mr. Harish Hari
Haran and Mr. Ravjvot Ghuman,
Advocates.

AND

RFA 221/2003

% **DESEIN PRIVATE LIMITED** Appellant
Through : Ms. Yogesh Malhotra, Ms. Vineet
Malhotra and Mr. Rohan Sharma,
Advocates.

versus

RFA Nos. 744/2002, 190/2003 and 221/2003

M/S ANSAL PROPERTIES AND
INDUSTRIES LTD.

..... Respondent

Through : Mr. B.B. Gupta, Mr. Harish Hari
Haran and Mr. Ravjot Ghuman,
Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J. (ORAL)

1. The challenge by means of these Regular First Appeals (RFAs) filed under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgments of the trial Court dated 14.8.2002 and 5.12.2002. Two judgments being the subject matter of RFA Nos. 190 of 2003 and 221 of 2003 are dated 5.12.2002 and one judgment, subject matter of RFA No. 744 of 2002 is dated 14.8.2002. Since the operative portions of the judgments are the same, i.e. the suits of the appellants/plaintiffs for specific performance were dismissed, all the appeals are disposed of by this consent order.

2. The trial Court has dismissed the suits, firstly, by holding the same to be barred by limitation as the same were filed in the year 1989 although, in

1983 the respondent had written letters that in case the appellants/plaintiffs/proposed buyers did not pay the amount demanded, the amounts already paid will be forfeited. The trial Court has also held that the appellants/plaintiffs failed to prove that the appellants/plaintiffs did not fail to pay the requisite payments at the relevant time as demanded by the respondent/defendant under the contract and therefore it was held that appellants/plaintiffs had committed a breach of contract and were hence not entitled to specific performance being not ready and willing to perform their obligations and which is a sine qua non. The trial Court has also dismissed the suits because the suit lands have already been sold to third parties by duly registered sale deeds/flat buyers agreements, however, these buyers, the present actual owners, have not been made parties, which was a mandatory requirement. This joinder of actual owner in my view was mandatory in view of the decision of the Supreme Court in the case reported as ***Durga Prasad and Anr. v. Deep Chand and Anr., AIR 1954 SC 75***. The trial Court has also held that the suits are time barred with respect to even refund of the amounts already advanced by the appellants/plaintiffs to the respondent/defendant.

3. In view of the above said correct findings and conclusions of the trial

Court, there is no question of setting aside of cancellation of allotment of
RFA Nos. 744/2002, 190/2003 and 221/2003

plots/flats to the appellants/plaintiffs and there is no merit in the appeal.

4. In view of the above, learned counsel for the appellants states that the appellants should atleast be entitled to refund of the amount paid to the respondent along with the interest @ 12% per annum simple. It is argued that the appellants confine their reliefs in the appeals to this aspect. Learned counsel for the respondent states that he has no objection to this course of action and it is agreed that the respondent will pay the amounts which have been paid by the appellants under the different contracts which are the subject matters of the suits back to the appellants along with interest @ 12 % per annum simple. Of course it is also urged that, if the respondent/defendant has refunded certain amounts, the respondent/defendant can adjust the said amounts from the amounts which are now held to be payable.

5. In view of the above, appeals are disposed of with the directions that the impugned judgment is set aside only to the extent of granting a money decree in favour of the appellant/plaintiff in RFA No. 744 of 2002 for ₹1,00,000/- and against the defendant in the suit along with interest @ 12% per annum simple on ₹1,00,000/- with effect from 3.9.1982 till the date of payment, a date of which is agreed to between the parties. With respect to

RFA No. 221 of 2003 a money decree is passed in favor of the
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appellant/plaintiff against the defendants/respondent for ₹32,300/- along with interest @ 12% per annum simple with effect from 1.4.1982 till the date of payment. In RFA No. 190 of 2003, the appellant/plaintiff is held entitled to a money decree of ₹1,00,000/- along with interest @ 12% per annum simple with effect from 3.9.1982, a date which is agreed to by learned counsel for both the parties.

6. It is clarified that the money decrees are for the amounts as afore-stated, however, in case the respondent/defendant has refunded certain amounts to appellants/plaintiffs then to that extent of such amounts, the respondent/defendant will be entitled to adjustment from the money decrees passed in favour of the appellants/plaintiffs. It is also agreed that the amount due to the appellants/plaintiffs shall be paid within three months from today failing which the rate of interest shall become 16% per annum simple.

7. Appeals are accordingly partly allowed to the extent stated above whereby money decrees have been passed. Parties are left to bear their own costs. Trial Court record be sent back.

VALMIKI J. MEHTA, J.

NOVEMBER 25, 2011

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