

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

% Judgment reserved on: 06.08.2012  
Judgment delivered on: 13.08.2012

+ CS(OS) 722/2011

MAUVARI NAGAMANI ..... Plaintiff  
Through: Mr. Harkirat Sawhney and Ms. Samprikth  
Ghosal, Advocates  
versus

M/S AJS BUILDERS(PVT) LTD ..... Defendant  
Through: None.

And

+ CS(OS) 723/2011

S.P. WAHI & ANOTHER ..... Plaintiff  
Through: Mr. Harkirat Sawhney and Ms. Samprikth  
Ghosal, Advocates  
versus

M/S AJS BUILDERS(PVT) LTD ..... Defendant  
Through: None

And

+ CS(OS) 724/2011

V.K. SRIVASTAV ..... Plaintiff  
Through: Mr. Harkirat Sawhney and Ms. Samprikth  
Ghosal, Advocates  
versus

M/S AJS BUILDERS(PVT) LTD ..... Defendant  
Through: None

And

+ CS(OS) 725/2011

SATISH WADHAWAN ..... Plaintiff  
Through: Mr. Harkirat Sawhney and Ms. Samprikth  
Ghosal, Advocates

versus

M/S AJS BUILDERS(PVT) LTD ..... Defendant

Through: None

And

+ CS(OS) 726/2011

SUBHASH WADHAWAN ..... Plaintiff

Through: Mr. Harkirat Sawhney and Ms. Samprikth Ghosal, Advocates

Versus

M/S AJS BUILDERS(PVT) LTD ..... Defendant

Through: None

And

+ CS(OS) 727/2011

ALKA MANAKTALA ..... Plaintiff

Through: Mr. Harkirat Sawhney and Ms. Samprikth Ghosal, Advocates

versus

M/S AJS BUILDERS(PVT) LTD ..... Defendant

Through: None

And

+ CS(OS) 728/2011

RAM DEO SINGH ..... Plaintiff

Through: Mr. Harkirat Sawhney and Ms. Samprikth Ghosal, Advocates

versus

M/S AJS BUILDERS(PVT) LTD ..... Defendant

Through: None

And

+ CS(OS) 729/2011 M.V RAO

Through: Mr. Harkirat Sawhney and Ms. Samprikth Ghosal, Advocates

versus

M/S AJS BUILDERS(PVT) LTD ..... Defendant

Through: None

And

+ CS(OS) 730/2011

SANGEETA BHATIA ..... Plaintiff

Through: Mr. Harkirat Sawhney and Ms. Samprikth Ghosal, Advocates

versus

M/S AJS BUILDERS(PVT) LTD ..... Defendant

Through: None

And

+ CS(OS) 731/2011

GEETA BHATIA ..... Plaintiff

Through: Mr. Harkirat Sawhney and Ms. Samprikth Ghosal, Advocates

versus

M/S AJS BUILDERS(PVT) LTD ..... Defendant

Through: None

And

+ CS(OS) 732/2011

HARSH VERMA ..... Plaintiff

Through: Mr. Harkirat Sawhney and Ms. Samprikth Ghosal, Advocates

versus

M/S AJS BUILDERS(PVT) LTD ..... Defendant

Through: None

**CORAM:**  
**HON'BLE MR. JUSTICE V.K.JAIN**

**JUDGMENT**

**V.K.JAIN, J.**

1. By this order, I shall dispose of all the eleven suits, referred to above , since they all involve common issues.

**CS(OS) No.722/2011**

2. The plaintiff in suit no. 722 /2011 Ms. Mauvari Nagamani booked two residential plot admeasuring 240 sq. Yards in AJS City situated on National Highway No. 1, GT Karnal Road, Gaunar, Sonapat (Haryana ) @5950 per sq. Yard and paid a sum of Rs4,30,000/- vide two separate cheques. A further payment of Rs 5,82,800 /- was made by her to the defendant, when called upon to make further payment and thus a total sum of Rs. 10,12,800/- was paid for the plots booked with the defendant.

Despite receiving the aforesaid amount from the plaintiff, defendant did not carry out any development work and the plaintiff, therefore, sought refund of entire amount of Rs.10,12,800/- along with interest. The defendant expressed its inability to refund the said amount but persuaded the plaintiff to book an apartment in ‘AJS Hill View Apartments’ complex which it claimed to be developing in Gurgaon. The defendant agreed to transfer the aforesaid amount of Rs. 10, 12,800/- towards booking of two apartments in ‘AJS Hill View Apartments’ in the manner that a sum of Rs. 5,06,400 /- was to be adjusted in respect of the flat to be booked by her husband and a sum of of Rs 5,06,400/- in the respect of the flat to be booked by the plaintiff. The said flats were agreed to be sold @

Rs 2700/- per sqft and the area of the flat was 1500 sqft each. The plaintiff made enquiries in the locality and came to know that at that time, the flats in new projects were being sold in the range of Rs 2600/- to 2800/- per sqft. Later on, the plaintiff made further payment of Rs. 4,18,500 to the defendant by way of two separate cheques. The plaintiff made yet another payment of Rs4,18,000/- on 25.04.2008, thereby raising the total sum paid by her to the defendant to Rs 13,43,400/-. It is alleged that when the plaintiff went to the site where the defendant had to carry out the development work, it was discovered that there was no sign of any construction or development and the site was lying barren, in the same condition in which it was at the time of booking. It is also alleged that the current rate prevailing in the locality which at the time of booking by the plaintiff ranged between Rs2600 – 2800/- per sq yard is now at least RS 4,000/- to Rs 5,000/- per sq. ft . The plaintiff , therefore , sent a notice of demand to the defendant seeking refund of Rs41,33,400/-, which comprised Rs13,43,400/- being the amount paid by her and Rs.27,90,000/-as damages calculated @Rs 1800/- per sq. ft. Since that amount has not been paid, the plaintiff has filed this suit for recovery of the aforesaid amount along with interest.

3. Vide order dated 18.07.2011, the right of the defendant to file the written statement was closed and the plaintiff was directed to file her affidavits by way of evidence.

4. In her affidavit by way of evidence, the plaintiff has supported her case as set out in the plaintiff and has stated that at the time of booking of the flat , the developers in the area were selling flats, in their projects which were under development at that time, within the range of Rs 2600/- to Rs 2800/- per sq. ft. She has further stated that at present,

the prevalent rate in the locality is not less than Rs 4500/- per sq. ft. It has also been stated that when plaintiff went to the spot , it came to her notice that there was no sign of any kind of construction or development activities and the land was lying barren.

5. Ex PW1/2 and PW 1/3 are receipts whereby the plaintiff deposited Rs. 2,15,000/- with the defendant by way of two cheques . Ex PW1/7 is another receipt of payment of Rs 4,18,000/- to the defendant.

6. Ex. Pw 1/1 is the registration form towards registration of the apartment in ‘ AJS Hill View Apartments’ project of the defendant. A perusal of clause 5 of the document would show that the defendant had agreed that in case it is not able to allot the residential plot within 12 months from the date of the application, it will refund the said amount along with the interest @9% per annum for the period of delay, after 12 months from the date of booking .

7. Ex. PW-1/11 , Ex. PW 1/12 and Ex. PW-1/13 are the Brochures filed by the plaintiff to show the current rate of bookings for apartments in Gurgaon at Golf Course Road. The brochure Ex.PW. 1/11 is the brochure of Ireo Skyon, Ex. PW-1/12 is the brochure of Mansion Prime and Ex.PW. 1/13 is the Brochure of Palm terraces. All the projects are situated at golf road in Gurgaon.

**Suit No. 729/2011**

8. The plaintiff in suit no. 729/2011 is the husband of the plaintiff in the suit no. 722/2011. The defendant adjusted a sum of Rs 5,06,400/- in the flat booked by the plaintiff Mr. M . V Rao on 19.03.2007 and a sum of Rs 5,06,400/-in the flat booked by the his wife. Beside the abovementioned adjustment, he paid Rs 3,65,000/-vide 2 cheques

of Indian Bank New Delhi. One amount was of Rs 2,25,000/- was paid vide cheque dated 18/03/07 and second amount of Rs 1,40,000 /- was paid vide cheque dated 15/04/07. The plaintiff made another payment of Rs 3,64,000/- vide cheque dated 25/04/08. The total amount paid by him including the amount adjusted out of the amount paid by his wife to the defendant for booking of plot, comes to Rs 12,35,400/-. Since no flat has been constructed by the defendant in the aforesaid site at Gurgaon, he is claiming the aforesaid amount with interest, alongwith Rs 24,30,000/- towards damages at the rate of Rs 18,00/- per sq.ft.

9. The plaintiff in Suit No. 729/2011 has filed affidavit by way of evidence and supported on oath the case set out in the plaint. His deposition is on the lines of the deposition of his wife. He has relied upon the following documents to prove his case:-

| <b>EXHIBITS</b> | <b>DOCUMENTS</b>                       |
|-----------------|----------------------------------------|
| Ex. PW. 1/1     | Receipt of Rs. 365400/- dated 19/04/07 |
| Ex. PW. ½       | Demand letter dated 16/02/08           |
| Ex. PW. 1/3     | Receipt of Rs. 364500/- dated 16/07/08 |
| Ex. PW. ¼       | Demand letter dated 09/04/08           |
| Ex. PW. 1/5     | Demand letter dated 25/09/08           |
| Ex. PW. 1/6     | Receipt of Rs. 365400/-                |
| Ex. PW. 1/7     | Brochure of Ireo skyon                 |
| Ex. PW. 1/8     | Brochure of Mansion Park Prime         |
| Ex. PW. 1/9     | Brochure of Palm Terrace               |
| Ex. PW. 1/10    | Legal notice                           |
| Ex. PW. 1/11    | Postal receipt                         |
| Ex. PW. 1/12    | Photographs of the site.               |

**Suit No. 726/2011**

10. The plaintiff in Suit No. 726/2011 Mr. Subash Wadhawan also had initially booked a plot with the defendant at for purchase of a plot at Sonepat where the plaintiff in suit no. 722/2011 had booked the plot. He paid Rs 5,06,400 against booking of the plot. Later on that money was adjusted by the defendant towards booking of a flat measuring 1550 sq.ft. at AJS Hill View Apartment project at the rate of Rs 2700 /- per sq.ft. He later on paid Rs.4,18,000 vide 2 cheques on 08/02/07 . He again paid 4,18,000 on 23/04/08 vide a cheque and Rs 90,055 towards IDC on 1/12/08, thereby making a total payment of Rs.14,33,455. His grievance is identical to the grievance of other plaintiffs, as no flat has been constructed by the defendant. He has also filed his affidavit by way of evidence and stated on oath the case set out in the plaint.

11. The following are the documents relied by the plaintiff in this suit:

| <b>EXHIBITS</b> | <b>DOCUMENTS</b>                                     |
|-----------------|------------------------------------------------------|
| Ex. Pw. 1/1A    | Special Power of Attorney dated 21/10/11             |
| Ex. Pw. 1/1     | Registration Form Dated 08/02/07                     |
| Ex. Pw. ½       | Receipt of Rs. 4,18,500/- dated 11/03/07             |
| Ex. Pw. 1/3     | Demand letter dated 16/02/08                         |
| Ex. Pw. 1/4     | Letter for clarification by plaintiff                |
| Ex. Pw. 1/5     | Demand letter dated 09/04/08                         |
| Ex. Pw. 1/6     | Receipt of Rs. 4,18,500/- dated 19/06/08             |
| Ex. Pw. 1/7     | Demand letter dated 25/09/08                         |
| Ex. Pw. 1/8     | Adjustment memo dated 1/12/08                        |
| Ex. Pw. 1/9     | Letter dated 19/01/09 for refund of invested amount. |

|              |                                                                                                       |
|--------------|-------------------------------------------------------------------------------------------------------|
| Ex. Pw. 1/10 | Letter dated 21/01/09 in regard to transfer of amount ie. Rs 5,06,400/- in AJS Hill view Appartments. |
| Ex. Pw. 1/11 | Letter dated 27/02/09 for submissions of required paper for transfer of amount.                       |
| Ex. Pw. 1/12 | Letter dated 27/02/09 to Indian bank for verification of signatures                                   |
| Ex. Pw. 1/13 | Receipt of Rs 5,06,400 dated 28/07/09                                                                 |
| Ex. Pw. 1/14 | Letter dated 23/03/10 in regard to status of work.                                                    |
| Ex. Pw. 1/15 | Defendant's reply dated 09/04/10                                                                      |
| Ex. Pw. 1/16 | Photographs of site                                                                                   |
| Ex. Pw. 1/17 | Brochure of Ireo Skyon                                                                                |
| Ex. Pw. 1/18 | Brochure of Mansion Park Prime                                                                        |
| Ex. Pw. 1/19 | Brochure of Palm Terraces                                                                             |
| Ex. Pw. 1/20 | Legal notice dated 28/01/11                                                                           |
| Ex. Pw. 1/21 | Postal receipt                                                                                        |

### **Suit No. 732/2011**

12. The plaintiff in Suit No. 732/2011 Mr. Harsh Verma also had initially booked a plot with the defendant at Sonapat where the plaintiff in suit no. 722/2011 had booked the plot. He paid Rs 5,06,400 against booking of the plot. Later, that money was adjusted by the defendant towards booking of a flat measuring 1550 sq.ft. at AJS Hill View Appartment project at the rate of Rs 2700 /- per sq.ft. He paid Rs 3,64,500/- to the defendant on 16/02/08 . He again paid 1,18,500/- on 7/10/08 , Rs 1,00,000/- and Rs 78,432/- towards IDC on 24/09/09, thereby making a total payment of Rs. 11,67,832/-. He is also seeking return of the amount paid by him to the defendant, along with interest and damages amount to Rs 24,30,000/-.

13. In his affidavit by way of evidence, the plaintiff in this suit has relied upon the following documents:-

| EXHIBITS                                | DOCUMENTS                                                       |
|-----------------------------------------|-----------------------------------------------------------------|
| Ex. Pw. 1/1                             | Registration Form Dated 23/03/06                                |
| Ex. Pw. 1/2                             | Receipt of Rs. 2,15,000/- dated 1/04/06                         |
| Ex. Pw. 1/3                             | Demand letter dated 26/10/06                                    |
| Ex. Pw. 1/4                             | Reminder letter dated 24/11/06                                  |
| Ex. Pw. 1/5                             | Receipt of Rs. 1,00,000/- dated 06/03/07                        |
| Ex. Pw. 1/6                             | Receipt of Rs. 2,64,500/- dated 06/04/07                        |
| Ex. Pw. 1/7                             | Demand letter dated 16/02/08                                    |
| Ex. Pw. 1/8                             | Refund letter dated 1/04/08                                     |
| Ex. Pw. 1/9                             | Refund letter dated 10/04/08                                    |
| Ex. Pw. 1/10                            | Demand letter dated 09/04/08                                    |
| Ex. Pw. 1/11                            | . Reminder letter dated 1/05/08                                 |
| Ex. Pw. 1/13                            | Adjusted Memo dated 08/09/08                                    |
| Ex. Pw. 1/14                            | Receipt of Rs 1,18,500 dated 07/10/09                           |
| Ex. Pw. 1/15                            | Receipt of Rs 1,00,000                                          |
| Ex. Pw. 1/16                            | Receipt of Rs 78,432 dated 24/09/09                             |
| Ex. Pw. 1/17                            | Letter in regard to status of construction dated 26/03/10       |
| Ex. Pw. 1/18                            | Reply by the defendant dated 09/04/10                           |
| Ex. Pw. 1/19                            | Photographs of the site                                         |
| Ex. Pw. 1/20 Ex Pw. 1/21<br>Ex. Pw.1/22 | Brochures of Ireo Skyon , Mansion Prime Park and Palm terraces. |
| Ex. Pw. 1/23                            | Status letter dated 17/04/10                                    |
| Ex. Pw. 1/24                            | Plaintiff's letter dated 17/04/10 to Police Commisioner         |
| Ex. Pw. 1/25                            | Legal notice dated 28/01/11                                     |
| Ex. Pw. 1/26                            | Postal reciepts                                                 |

**Suit No. 723/2011, 724/2011, 725/2011, 727/2011, 728/2011, 730/2011, 731/2011**

14. The plaintiff in the suit nos. 723,724,725,727,728,730,731 of 2011 did not book any plot with the defendant and directly booked one flat in AJS Hill View Apartments project at the rate of Rs2700/- per sq.ft. The details of payment made by them are as under:-

| SUIT NO.        | DATE OF PAYMENT | AMOUNT             |
|-----------------|-----------------|--------------------|
| CS(OS) 723/2011 | 01/11/07        | 434,000            |
|                 | 26/07/08        | 434,000            |
|                 |                 | Total = 8,68,000   |
| CS(OS) 724/2011 | 17/03/07        | 4,18,000           |
|                 | 23/04/08        | 4,18,000           |
|                 |                 | Total = 9,27,055   |
| CS(OS) 725/2011 | 1/03/07         | 4,18,000           |
|                 | 23/04/07        | 4,18,000           |
|                 | 01/12/08        | 90,055             |
|                 |                 | Total = 12,94,526  |
| CS(OS) 727/2011 | 10/02/07        | 4,18,500           |
|                 | 26/03/08        | 4,18,500           |
|                 | November 2008   | 90,055             |
|                 |                 | Total = 9,27,535   |
| CS(OS) 728/2011 | 16/03/07        | 4,18,500           |
|                 | 06/05/08        | 4,18,500           |
|                 | 28/07/09        | 4,18,500           |
|                 | 06/05/08        | 90,055             |
|                 |                 | Total = 13,45,555  |
| CS(OS)730/2011  | 25/03/07        | 3,64,500           |
|                 | 24/04/08        | 3,64,500           |
|                 | 08/05/09        | 3,64,500           |
|                 | 16/12/08        | 78,435             |
|                 |                 | Total = 11,71,935. |
| CS(OS) 731/2011 | 25/03/07        | 3,64,500           |
|                 | 24/04/08        | 3,64,500           |
|                 | 08/05/09        | 3,64,500           |
|                 | 16/12/08        | 78,435             |
|                 |                 | Total = 11,71,935  |

They also have claimed damages at the rate of Rs. 1800 per Sq Ft. besides seeking refund of the principal amount paid by them, with interest. In CS(OS) No. 722 to 728 of 2011 the damages claimed is Rs. 27,90,000/- each and in CS(OS) No. 729 to 731 of 2011 the amount of damages claimed is Rs. 24,30,000/- each.

15. The following are the documents relied upon by the plaintiff in the above referred suits.

| SUIT NO.           | EXHIBIT NO.     | DOCUMENT                                                             |
|--------------------|-----------------|----------------------------------------------------------------------|
| CS(OS) NO.723/2011 | Ex. Pw. 1/1     | 1. Registration form dated 1/11/07                                   |
|                    | Ex. Pw1/2       | 2. Receipt of Rs. 4,34,400/- dated 1/11/07                           |
|                    | Ex. Pw1/3       | 3. Demand letter dated 16/12/08                                      |
|                    | Ex. Pw1/4       | 4. Demand letter dated 09/04/08                                      |
|                    | Ex. Pw1/5       | 5. Letter of clarification dated 16/02/08                            |
|                    | Ex. Pw1/6       | 6. Adjustment<br>Memo dated 08/09/08                                 |
|                    | Ex. Pw1/7       | 7. Reminder letter dated 22/05/09                                    |
|                    | Ex. Pw1/8       | 8. Photographs of the site                                           |
|                    | Ex. Pw1/9,10,11 | 9. Brochures of Ireo Skyon, Mansion Park<br>Prime and Palm Terraces. |
|                    | Ex. Pw 1/12     | 10. Legal notice dated 08/02/11                                      |
|                    | Ex. Pw 1/13     | 11. Postal receipt                                                   |
| CS(OS) 724/2011    | Ex. Pw. 1/1A    | 1A. Special Power of Attorney dated 21/10/11                         |

|                |                  |                                                                   |
|----------------|------------------|-------------------------------------------------------------------|
|                | Ex. Pw. 1/1      | 1. Registration form dated 17/03/07                               |
|                | Ex. Pw. 1/2      | 2. Receipt of Rs. 4,18,500/- dated 19/04/07                       |
|                | Ex. Pw. 1/3      | 3. Reply by plaintiff to the demand letter.                       |
|                | Ex. Pw. 1/4      | 4. Receipt of Rs. 4,18,500/- dated 20/06/08                       |
|                | Ex. Pw. 1/5      | 5. Memo Receipt of IDC dated 28/11/08                             |
|                | Ex. Pw. 1/7      | 6. Photographs of the site                                        |
|                | Ex. Pw. 1/8,9,10 | 7. Brochures of Ireo Skyon, Mansion Park Prime and Palm Terraces. |
|                | Ex. Pw. 1/11     | 8. Legal notice dated 28/01/11                                    |
|                | Ex. Pw. 1/12     | 9. Postal receipt                                                 |
| CS(OS)725/2011 | Ex. Pw. 1/1      | 1. Registration form dated 1/03/07                                |
|                | Ex. Pw. 1/2      | 2. Receipt of Rs. 4,18,500/- dated 11/03/07                       |
|                | Ex. Pw. 1/3      | 3. Demand letter dated 16/12/08                                   |

|  |                    |                                                                    |
|--|--------------------|--------------------------------------------------------------------|
|  | Ex. Pw. 1/4        | 4. Clarification letter by plaintiff                               |
|  | Ex. Pw. 1/5        | 5. Demand letter dated 09/04/08                                    |
|  | Ex. Pw. 1/6        | 6. Receipt of Rs. 4,18,500/- dated 19/06/08                        |
|  | Ex. Pw. 1/7        | 7. Receipt of Rs. 90,055/- dated 1/12/08                           |
|  | Ex. Pw. 1/8        | 8. Receipt of Rs. 367,471/- dated 14/07/09                         |
|  | Ex. Pw. 1/9        | 9. letter in regard to status of work dated 23/03/10               |
|  | Ex. Pw. 1/10       | 10. Reply by defendant dated 24/04/10                              |
|  | Ex. Pw. 1/11       | 11. Photographs of the site                                        |
|  | Ex. Pw. 1/12,13,14 | 12. Brochures of Ireo Skyon, Mansion Park Prime and Palm Terraces. |
|  | Ex. Pw. 1/15       | 13. Legal notice dated 08/02/11                                    |
|  | Ex. Pw. 1/16       | 14. Postal receipt                                                 |

|                       |                    |                                                                   |
|-----------------------|--------------------|-------------------------------------------------------------------|
| CS(OS)<br>No.727/2011 | Ex. Pw. 1/1        | 1. Special power of Attorney dated 10/05/10                       |
|                       | Ex. Pw. 1/2        | 2. Receipt of Rs. 4,18,500/- dated 01/03/07                       |
|                       | Ex. Pw. 1/3        | 3. Receipt of Rs. 4,18,500/- dated 19/06/08                       |
|                       | Ex. Pw. 1/4        | 4. Demand letter dated 25/09/08                                   |
|                       | Ex. Pw. 1/5        | 5. Bank Statement                                                 |
|                       | Ex. Pw. 1/7        | 6. letter seeking clarification dated 06/07/09                    |
|                       | Ex. Pw. 1/8        | 7. letter – defendant offered rebate of 2% dated 21/12/09         |
|                       | Ex. Pw. 1/9        | 8. Photographs of the site                                        |
|                       | Ex. Pw. 1/10,11,12 | 9. Brochures of Ireo Skyon, Mansion Park Prime and Palm Terraces. |
|                       | Ex. Pw. 1/13       | 10. Legal notice dated 08/02/11                                   |

|                       |              |                                                            |
|-----------------------|--------------|------------------------------------------------------------|
|                       | Ex. Pw. 1/14 | 11. Postal receipt                                         |
| CS(OS)<br>No.728/2011 | Ex. Pw. 1/1A | 1. Special power of Attorney dated 09/08/09                |
|                       | Ex. Pw. 1/1  | 1/1 Registration form dated                                |
|                       | Ex. Pw. 1/2  | 2. Receipt of Rs. 4,18,500/- dated 19/07/07                |
|                       | Ex. Pw. 1/3  | 3. Demand letter dated 16/02/08                            |
|                       | Ex. Pw. 1/4  | 4. letter dated 22/02/08                                   |
|                       | Ex. Pw. 1/5  | 5. Demand letter dated 09/04/08                            |
|                       | Ex. Pw. 1/6  | 6. letter of outstanding payments dated 01/05/08           |
|                       | Ex. Pw. 1/7  | 7. Receipt dated 19/06/08                                  |
|                       | Ex. Pw. 1/8  | 8. Demand letter dated 25/09/08                            |
|                       | Ex. Pw. 1/9  | 9. Reminder letter dated 20/05/09                          |
|                       | Ex. Pw. 1/10 | 10. Registered Letter dated 25/09/09                       |
|                       | Ex. Pw. 1/11 | 11. Letter for payment of third installment dated 07/07/09 |

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|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                       | <p>Ex. Pw. 1/12</p> <p>Ex. Pw. 1/13</p> <p>Ex. Pw. 1/14</p> <p>Ex. Pw. 1/15</p> <p>Ex. Pw. 1/16</p> <p>Ex. Pw. 1/17,18, 19</p> <p>Ex. Pw. 1/20</p> <p>Ex Pw. 1/21</p> | <p>12. Receipt dated 10/09/09</p> <p>13. EDC charges letter dated 28/12/09</p> <p>14. Letter for status of construction dated 22/03/10</p> <p>15. Reply by the defendant dated 09/04/10</p> <p>16. Photographs of the site</p> <p>17. Brochures of Ireo Skyon, Mansion Park Prime and Palm Terraces.</p> <p>18. Legal notice dated 28/01/11</p> <p>19. Postal receipt</p> |
| CS(OS)<br>No.730/2011 | <p>Ex. Pw. 1/1</p> <p>Ex. Pw. 1/2</p> <p>Ex. Pw. 1/3</p> <p>Ex. Pw. 1/4</p> <p>Ex. Pw. 1/5</p>                                                                        | <p>1. Registration form dated 17/03/07</p> <p>2. Receipt of Rs. 1,00,000/- dated 19/04/07</p> <p>3. Receipt of Rs. 2,64,500/- dated 19/04/07</p> <p>4. Demand letter dated 16/12/08</p> <p>5. Clarification letter by plaintiff dated 22/02/08</p>                                                                                                                        |

|                       |                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                       | <p>Ex. Pw. 1/6</p> <p>Ex. Pw. 1/7</p> <p>Ex. Pw. 1/8</p> <p>Ex. Pw. 1/9</p> <p>Ex. Pw. 1/10</p> <p>Ex. Pw. 1/11</p> <p>Ex. Pw. 1/12</p> <p>Ex. Pw. 1/13</p> <p>Ex. Pw. 1/14</p> <p>Ex. Pw. 1/15,16,17</p> <p>Ex. Pw. 1/17</p> <p>Ex. Pw. 1/18</p> | <p>6. Demand letter dated 09/04/08</p> <p>7. Receipt of Rs. 3,64,500/- dated 16/06/08</p> <p>8. Demand letter for IDC dated 25/09/08</p> <p>9. Letter dated 15/12/08</p> <p>10. Receipt of Rs. 78,435/- dated 18/12/08</p> <p>11. Receipt of Rs. 3,64,500/- dated 11/05/09</p> <p>12. Letter for status of work dated 22/03/10</p> <p>13. Defendant's reply dated 30/03/10</p> <p>14. Photographs of the site</p> <p>15. Brochures of Ireo Skyon, Mansion Park Prime and Palm Terraces.</p> <p>16. Legal notice dated 28/01/11</p> <p>17. Postal receipt</p> |
| CS(OS)<br>No.731/2011 | <p>Ex. Pw. 1/1</p> <p>Ex. Pw. 1/2</p>                                                                                                                                                                                                             | <p>1. Registration form dated</p> <p>2. Receipt of Rs. 3,64,500/- dated 19/04/07</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

|                    |                                                                    |
|--------------------|--------------------------------------------------------------------|
| Ex. Pw. 1/3        | 3. Demand letter dated 16/02/08                                    |
| Ex. Pw. 1/4        | 4. Letter for clarification dated 22/02/08                         |
| Ex. Pw. 1/5        | 5. Demand letter dated 09/04/08                                    |
| Ex. Pw. 1/6        | 6. Receipt of Rs. 3,64,500/- dated 16/06/08                        |
| Ex. Pw. 1/7        | 7. Demand letter (IDC) dated 25/09/08                              |
| Ex. Pw. 1/8        | 8. Reply dated 15/12/08                                            |
| Ex. Pw. 1/9        | 9. Receipt of Rs. 78,435 /- dated 18/12/08                         |
| Ex. Pw. 1/10       | 10. Receipt of Rs. 3,64,500/-                                      |
| Ex. Pw. 1/11       | 11. Letter dated 22/03/10 in regard to work status.                |
| Ex. Pw. 1/12       | 12. Reply dated 30/03/10                                           |
| Ex. Pw. 1/13       | 13. Photographs of the site                                        |
| Ex. Pw. 1/14,15,16 | 14. Brochures of Ireo Skyon, Mansion Park Prime and Palm Terraces. |
| Ex. Pw. 1/17       | 15. Legal notice dated 28/01/11                                    |
| Ex. Pw. 1/18       | 16. Postal receipt                                                 |

16. There is no evidence of any agreement between the parties with respect to specification of the flat which the plaintiffs had booked with the defendant. The price of flat varies from project to project and sometimes even in respect of flats in the same project. It depends upon host of factors such as location of the plot on which the flats have to be constructed, the quality of the building material to be used , specification as per which the construction is to be raised . the quality of the fittings and fixtures such as electrical fittings, hardware fittings , sanitary fittings , CP Fittings and the amenities to be provided by the builder in the flats. In the absence of evidence of agreement between the parties with respect to the specifications to which the constructions was to confirm, the quality of the material to be used in construction, the specifications of the fittings and fixtures to be installed in the flats and the amenities which the defendant was to provide therein , it is not possible to compare the flats of other builders with the flats which the defendant was supposed to build for the plaintiffs. To take an example, if marble stones/wooden flooring is being provided in a flat, its price would be higher than the price of the flat in which cement/mosaic flooring is to be provided. Even the quality of the marble/wooden flooring may vary from project to project or sometime even flat to flat. To take another example, if superior quality hardware and electrical fittings are to be provided in a flat, the price would be higher compared to the flat in which fittings and fixtures with lower specification and of inferior quality are to be provided. To take ye one more example, if the flat has air-conditioning, its price would be higher than the price of a flat which is not air conditioned. There are many other variables , which affect the

price of the flat. Even on the same road, the location may not be comparable and a flat at a prime location would fetch higher price than compared to that flat at an inferior location. In these circumstances, it is difficult to ascertain as to what would be the exact price of the flats, of the quality and specification which the defendant had agreed to construct in its complex. In their affidavits by way of evidence also, the plaintiffs do not say that as to what were the specifications offered by the defendant at the time when the flats were booked with it. In these circumstances, it would be difficult to say that the flats which the plaintiffs had booked with defendant would have market price of at least Rs 4500 per sq. ft at the time the suit was filed. Therefore, the plaintiffs have not been able to make out a case for award of damages based upon the price the price at which the flat was booked by her and the price of the flats of other builders in Gurgaon.

17. However, since the defendant failed to deliver the flat to the plaintiffs within one year from the date of booking, it is liable to refund the whole of the amount which the plaintiffs had deposited with it along with interest on that amount @9% per annum , with effect from one year after the date of booking till the date of filing of the suit.

18. The following chart would show the principal amount deposited with the defendant, the date of booking, the date from which the interest is payable to the plaintiffs and the amount of interest, in the above eleven suits, which are subject matter of this decision:-

| Suit no.         | Principal amount paid to the defendant in rupees | Date of booking | Date from which interest is payable | Amount of interest in rupees |
|------------------|--------------------------------------------------|-----------------|-------------------------------------|------------------------------|
| Cs(os) 722 /2011 | 13,43,400                                        | 19/03/07        | 19/03/08                            | 362068                       |
| Cs(os) 723/2011  | 8,68,000                                         | 1/11/07         | 01/11/08                            | 185850                       |
| Cs(os)724/2011   | 9,27,055                                         | 17/03/07        | 17/03/08                            | 250304                       |
| Cs(os)725/2011   | 12,94,526                                        | 1/03/07         | 01/03/08                            | 354846                       |
| Cs(os) 726/2011  | 14,33,455                                        | 08/02/07        | 08/02/08                            | 401249                       |
| Cs(os) 727/2011  | 9,27,055                                         | 10/02/07        | 10/02/08                            | 259190                       |
| Cs(os) 728/2011  | 13,45,555                                        | 17/03/07        | 17/03/08                            | 363299                       |
| Cs(os) 729/2011  | 12,35,400                                        | 19/03/07        | 19/03/08                            | 332961                       |
| Cs(os) 730/2011  | 11,71,935                                        | 17/03/07        | 17/03/08                            | 316422                       |
| Cs(os) 731/2011  | 11,71,935                                        | 17/03/07        | 17/03/08                            | 316422                       |
| Cs(os) 732/2011  | 11,67,832                                        | 08/02/07        | 23/03/08                            | 326897                       |

19. For the reasons stated hereinabove, the decrees for recovery of the following amounts with proportionate costs and pendent lite and future interest @ 9% per annum are passed against the defendant and in favour of the concerned plaintiff.

| SUIT NO.       | TOTAL AMOUNT IN RUPEES |
|----------------|------------------------|
| CS(OS)722/2011 | 17,05,468              |
| CS(OS)723/2011 | 10,53,850              |

|                |           |
|----------------|-----------|
| CS(OS)724/2011 | 11,77,359 |
| CS(OS)725/2011 | 1639372   |
| CS(OS)726/2011 | 1834704   |
| CS(OS)727/2011 | 1186745   |
| CS(OS)728/2011 | 1707854   |
| CS(OS)729/2011 | 1568361   |
| CS(OS)730/2011 | 1488357   |
| CS(OS)731/2011 | 1488357   |
| CS(OS)732/2011 | 1494729   |

Decree sheets be dawn accordingly. All suits and IAs stand disposed of.

**V.K.JAIN, J**

**August 13, 2012**  
**rd/bg**