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

% *Judgment Reserved on : March 10, 2014*  
*Judgment Pronounced on: April 15, 2014*

+ **RFA(OS)15/2013**

R.K.B.K.FISCAL SERVICES PVT. LTD. .... Appellant

Represented by: Mr.Parag P.Tripathi, Senior  
Advocate, instructed by Ms.Pratibha  
Sinha, Mr.Kunal Bahl and Mr.Dhawal  
Mehrotra, Advocates

versus

ISHWAR DAYAL KANSAL AND ANR. .... Respondents

Represented by: Respondent No.1 in person

**CORAM:**  
**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**  
**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J.**

1. The present appeal is filed challenging the judgment and decree dated 21.12.2012 whereby the suit of the respondents seeking specific performance of the Agreement to Sell dated February 09, 2005 was decreed in favour of the respondents with a direction to the respondent to pay to the appellant the balance sale consideration of ₹6.25 crores (Rupees six crore and twenty five lacs only) with interest @ 6% per annum from the date of filing of the suit till date of payment. Cross objections being CM No.4402/2013 is filed by the respondents challenging the direction in the impugned order directing the respondents to pay interest @ 6% per annum on the balance sale consideration.

2. Respondents filed the present suit stating in the Plaint that the appellant and respondent No.1 entered into an agreement to sell on 9.2.2005 for land owned by the appellant company measuring 1.8252 hectares (18252.50 Sq.Mtrs.) bearing Khasra Nos.85/4/3 Min., 7 East, 7 West, 7,8,13,14 West, 17 Min. and 85/18, Min.situated at Village Bijwasan, New Delhi for a total consideration of ₹7,35,00,000/- (Rupees seven crore and thirty five lakh only). Respondent No.1 paid an advance of ₹1,10,000,00/- (Rupees one crore and ten lacs only) and the balance ₹6,25,000,00/- (Rupees six crore and twenty five lacs only) was payable at the time of completion of the sale formalities by April 30, 2005. The appellant was to provide the No Objection Certificate/permission from the competent authority (NOC) for transfer of the suit property. In case there was any problem in obtaining the NOC before April 30, 2005 the parties were to find a mutually acceptable way to complete the transaction. The appellant/defendant company applied for NOC on March 24, 2005. It is urged that despite several reminders, the appellant did not find any acceptable way to transfer the suit property despite the stipulated date April 30, 2005 approaching. Thereafter, respondent No.1 was surprised to receive a letter dated April 30, 2005 on May 05, 2005 by which the appellant company sought to cancel the agreement on the pretext that its Board did not approve the Agreement. A draft of ₹1,10,000,00/- (Rupees one crore and ten lacs only) was also sent with the said communication. A copy of a Caveat petition was also received by respondent No.1 dated May 03, 2005 filed in the Delhi High Court by the appellant. Respondent No.1 did not accept the cancellation of the agreement by the appellant company and vide his letter dated May 19, 2005 reiterated the same to the appellant. It was also stressed in the said communication that respondent No.1 was not accepting the said bank draft for

₹1,10,00,000/- (Rupees one crore and ten lacs only). It was also pointed out that the appellant had received the NOC issued by the Tehsildar and a copy of the same be provided. The appellant had received the NOC on May 02, 2005.

3. It is further stated that in the second week of June 2005 Mr. Ramjee Dwivedee Attorney holder of the appellant informed respondent No.1 that the Board of Directors of the appellant had approved the Agreement to Sell dated February 09, 2005 and the General Body of the shareholders of the appellant company had also accorded its approval on June 08, 2005. The appellant is also stated to have applied for a fresh NOC on June 13, 2005 as the earlier NOC had expired on June 01, 2005. On July 08, 2005 a communication was received from the appellant stating that sale formalities would be completed within 15 days of receipt of NOC. It is further urged that on July 09, 2005 respondent No.1 returned the bank draft of ₹1.1 crore to the appellant and also delivered to the appellant company the proposed sale-deed duly initialed by respondent No.1. In the meantime it is stated that a circular was issued on June 01, 2005 by the Government of NCT of Delhi that NOCs would not be issued in respect of Agricultural lands less than 8 acres. It is further stated that in last week of November 2005 as the appellant was not getting the NOC, Mr. Dwivedee of the appellant company informed respondent No.1 that the appellant company was planning to file a Writ Petition in the Delhi High Court and that respondent No.1 would have to be a co-petitioner. Respondent No.1 agreed to the same and signed the Writ Petition on December 02, 2005. The Delhi High Court on December 20, 2005 allowed the writ petition inasmuch as Government of NCT Delhi agreed to issue the NOC. It is further stated that on December 23, 2005 Mr. Dwivedee again met respondent No.1 and informed him about the order

of Delhi High Court and asked him to sign a fresh application for grant of NOC, which was duly signed by respondent No.1. It is further stated that thereafter there was no information from the appellant and they kept evading the respondents. On December 25, 2005 respondent No.1 tried to contact Mr.Dwivedee but learnt that he was hospitalized and was admitted in ICU at Apollo Hospital due to a serious illness. On January 02, 2006 respondent No.1 met Mr.Barun Kumar Sinha, Advocate of the appellant company and came to know that the appellant company was sending another power of attorney to execute the sale-deed in place of Mr.Dwivedee who was seriously ill. No other information is stated to have been given to him by Mr.B.K.Sinha, Advocate. Respondent No.1 further stated that the appellant company has no office in Delhi and that Mr.Dwivedee was the only representative in Delhi. Respondent No.1 claims to have written a letter on January 3, 2006 to the Kolkata Office of the appellant pointing out that respondent No.2 has been incorporated and that in terms of the Agreement to Sell dated February 9, 2005 would be the nominee in favour of whom the sale-deed would have to be registered by the appellant. Various other details were requested from the appellant including original NOC, copy of the Delhi High Court Order, a fresh power of attorney and Board resolution, copy of Memorandum and Articles of the Appellant, proof of payment of house tax, electricity bills, original latest Khasra and Khatoni, etc. The letter is stated to have been sent by Registered A.D. to the appellant company. As there was no response, it was stated that respondent No.1 sent another letter on January 7, 2006 to the appellant company at the Kolkata office with a copy to Mr.Dwivedee. On January 12, 2006 respondent No.1 again claims to have sent a third letter to the appellant company. On January 13, 2006 respondent No.1 claims to have been shocked to receive a photocopy of a

notice of cancellation sent by the appellant dated January 7, 2006 couriered on January 9, 2006 which was signed by one Mr.Puneet Saran claiming himself to be the Attorney of the company. It is stated that no copy of the Power of Attorney or authority of Mr.Puneet Saran was enclosed with the said letter. The said communication threatened that in case respondent No.1 did not furnish the bank draft for the balance sum of ₹6,25,00,000/- (Rupees six crore and twenty five lacs only) by January 9, 2006 the Agreement dated February 9, 2005 shall be treated as cancelled and null and void.

4. The stand of the appellant as stated in the letter dated January 07, 2006 received by the appellant on January 13, 2006 is strongly refuted. It is urged that the action of the appellant was mala fide and fraudulent. Respondent No.1 had no knowledge about appointment of Mr.Puneet Saran as an Attorney in place of Mr.Dwivedee. The appellant company did not inform respondent No.1 about appointment of any other attorney in place of Mr.Dwivedee, the earlier authorized attorney. The appellant company is also stated to have never informed respondent No.1 about issue of NOC dated December 23, 2005 nor contacted respondent No.1 for completing the sale formalities. Despite letter dated January 03, 2006 sent by respondent No.1 the appellant company did not supply necessary information or documents required to finalize the proposed sale-deed and to send the said proposed sale deed for stamping for purpose of payment of stamp duty. The only action taken by the appellant was on January 9, 2006 when a photocopy of the communication dated January 07, 2006 was purportedly sent by Mr.Puneet Saran claiming himself to be the attorney of the appellant with a request to respondent No.1 to get the sale-deed stamped and to pay vide bank draft ₹6,25,00,000/- (Rupees six crore and twenty five lacs only) by January 9, 2006 itself. Further on January 14, 2006 respondent No.1

received photocopy of a letter dated January 12, 2006 signed by the said Mr.Puneet Saran in reply to the letter dated January 07, 2006 sent by respondent No.1, stating that the Agreement to Sell already stands cancelled and that a bank draft of ₹55,00,000/- (Rupees fifty five lacs only) dated January 12, 2006 was being sent alongwith the said letter whereas in fact no such draft was sent.

5. Hence, the respondent No.1 filed the present Suit seeking the relief of specific performance, declaration and permanent injunction on February 14, 2006.

6. The appellant filed the written statement. It is urged in the written statement that the Agreement to Sell was originally cancelled as the shareholders of the appellant company did not accept the same. However, after reconsideration and acceptance of the same by the shareholders a fresh application for NOC was made by the appellant on June 13, 2005. It is further stated that a supplementary agreement was signed on July 8, 2005 and the parties had specifically agreed to complete the sale formalities within 15 days' time from receiving the fresh NOC and that in case of non compliance of the said provision it was to entail cancellation of the said contract.

7. On July 9, 2005 respondent No.1 handed over the bank draft of ₹1,10,00,000/- (Rupees one crore and ten lacs only). It is urged that after the order of the Delhi High Court on December 20, 2005 directing Government of NCT Delhi to grant necessary NOC, respondent No.1 was informed by Shri Ramjee Dwivedee when he came to sign the application form on December 23, 2005 that the NOC would be made available on the same date and that respondent No.1 must complete the sale formalities within 15 days. It is further stated that on December 24, 2005 the appellant

company sent the NOC alongwith a letter dated December 23, 2005 requiring respondent No.1 to complete the sale formalities within a period of 15 days from the date of issuance of NOC failing which the Agreement to Sell would stand terminated and 50% of the advance money would stand forfeited. The said communication/NOC was sent through messenger at the residence of respondent No.1 where his wife refused to accept it on telephonic instructions. The same thing happened in the office of respondent No.1 at Ansari Road, Daryaganj, Delhi where the office staff refused to accept the letter. The appellant then claims that on December 26, 2005, the NOC and letter was sent by first flight courier and speed post to respondent No.1. It is further stated that as Shri Ramjee Dwivedee was retiring the appellant company appointed Mr.Puneet Saran as Power of Attorney holder to execute the sale-deed in respect of the suit property and power of attorney was executed on December 26, 2005 and an intimation of the same was sent to respondent No.1 through counsel Mr.B.K.Sinha on December 26, 2005. Further, on January 2, 2006 when respondent No.1 met Mr.B.K.Sinha, Advocate, he spoke to Mr.Puneet Saran the new power of attorney holder on telephone. It was offered to him to inspect the power of attorney the next day. Regarding letter dated January 3, 2006 sent by respondent No.1, it is urged that the same was received by fax on January 7, 2006 by the appellant and it was only an excuse to delay the matter inasmuch as copy of most of the documents demanded by respondent No.1 were already available with respondent No.1 at the time of entering into the agreement to sell and the supplementary agreement. The letter dated January 7, 2006 said to have been sent by respondent No.1 was also received by the appellant company on January 9, 2006. Reply was sent on January 12, 2006 by the appellant that as respondent No.1 had failed to execute the

sale-deed within 15 days of issuance of NOC, the appellant company had forfeited 50% of the advance amount of ₹1,10,00,000/- (Rupees one crore ten lacs only) as per clause 10 of the Agreement to Sell and the balance amount was being returned. Hence, it is urged that the present suit was liable to be dismissed. It is urged that respondent No.1 failed in performing his part of the obligation inasmuch as he did not come forward and get the sale deed executed on or before January 9, 2006 as per the Agreement nor did he make the necessary payment compelling the appellant to cancel the Agreement to Sell w.e.f. January 10, 2006. It is further urged that respondent No.1 was under a legal obligation to show his readiness and willingness to perform his part of the obligation under the Agreement to Sell and that respondent No.1 has not discharged its obligation under the Agreement.

8. Issues were framed on January 30, 2007 which read as follows:-

*“1. Whether any cause of action arises in favour of the plaintiff to file the present suit for specific performance?”*

*2. Whether there is any termination of the agreement to sell by the alleged Notice of Cancellation dated 7.1.2006?*

*3. Whether cancellation of agreement dated 9.2.2005 by the defendant for violation of the terms of the contract is valid?*

*4. Whether cancellation of power of attorney dated 17.6.2005 of Mr.Ramajee Dwivedi was communicated to the plaintiff? If not, its effect?*

*5. Whether particulars of new power of attorney dated 26.12.2005 along with a copy of new power of attorney was delivered/sent to the plaintiff?*

*6. Whether the defendant has delivered the No Objection Certificate to the plaintiff on 24.12.2005?*

*7. Whether the Board of the Defendant Company approved the draft of sale deed submitted by the plaintiff on 9.7.2005 and communicated the same to the plaintiff? If so, its effect?*

*8. Whether the defendant has performed its reciprocal obligation under the agreement to sell dated 9.2.2005?*

*9. Whether the plaintiff was always ready and willing to perform his part of the obligation under the agreement to sale dated 9.2.2005?*

*10. Whether time was the essence of the agreement to sell?*

*11. Whether in the absence of registration of the agreement to sell the same is hit by Sections 53(a) and 54 of the Transfer of Property Act read with Section 17 of the Registration Act and the suit is liable to be dismissed as not maintainable?*

*12. Whether the suit is properly valued?*

*13. Whether the plaintiff is entitled to decree of specific performance?*

*14. Relief.”*

9. The appellant has examined Sh.Puneet Saran as DW-1, Sh.S.M.Barmecha as DW-2, both representatives of the appellant company, DW-3 is Mr.Naveen Chaturvedi and DW-5, Mr.Sushil Kumar who are both employees of the appellant company. Mr. Barun Kumar Sinha, Advocate has given his evidence as DW-4. The appellant has proved documents which are marked as Ex.D-1 to D-15.

10. The respondents has examined himself i.e. Respondent No.1 as PW-1, Sh.Uday Singh from Karol Bagh Post Office as PW-2, Sh.Madan Mohan Singh, Joint Managing Director, Consortium Securities Pvt. Ltd. as PW-3, Accountant of M/s.Multi Media & Entertainment Ltd. Sh.Rajiv Maheshwari as PW-4 and Sh.B.L.Agarwal, Chartered Accountant as PW-5. The

respondent No.1 has proved on record documents which are marked as Ex.P-1 to P-18 and Ex.PW-1/1 to PW-1/21.

11. Parties have clubbed issue Nos. 2 to 6 and 8 to 10 to make their submissions. Separate submissions have been made on the financial capacity of respondent No.1. Both sides have also filed written submissions.

12. Learned senior counsel for the appellant has submitted extensively on events that took place between December 23, 2005 i.e. date of receipt of NOC till cancellation of the Agreement to Sell by the appellant vide notice dated January 07, 2006 to submit that respondent No.1 was not possessed of sufficient means and was only delaying matters. Learned senior counsel has further submitted that the plaintiff/respondent was neither ready nor willing to perform his part of the contract. It is urged that as per the terms of the Supplementary Agreement dated July 08, 2005 (Ex.P-13), respondent No.1 was obliged to make payment of the balance amount of ₹6,25,00,000/- (Rupees six crores twenty five lacs only) within 15 days from the date of receipt of the fresh NOC from the competent authority and to complete all formalities for registration of the sale-deed. It is submitted that the said Supplementary Agreement clearly stipulated that in case respondent No.1 failed to do the needful within the stipulated time, the Agreement to Sell dated February 09, 2005 shall stand automatically cancelled and the appellant will be entitled to forfeit 50% of the advance amount already paid by respondent No.1. It is urged that despite full knowledge that the NOC has been granted to the appellant on December 23, 2005, respondent No.1 took no steps. It is submitted that admittedly respondent No.1 met Mr.Ramjee Dwivedee on December 23, 2005 to sign the duplicate application for grant of NOC. Obviously, respondent No.1 was informed by the said Mr.Ramjee Dwivedee that the writ petition filed by the appellant and the respondent

No.1 jointly before the Delhi High Court had been disposed of on December 20, 2005 and Government of NCT of Delhi had agreed to issue the NOC. It is urged that it is highly improbable that the respondent No.1 would not have sought a copy of the order of the High Court or that the contents of the order were not shared with him. It is further urged that the respondent No.1 thereafter admittedly met the counsel who had filed the writ petition in the Delhi High Court, namely, Sh.B.K.Sinha on January 02, 2006. It is urged that it is inconceivable that the said Mr.B.K.Sinha would not have informed respondent No.1 about the fact that the appellant Company has received the NOC and that in place of Mr.Ramjee Dwivedee who was hospitalized, Mr.Puneet Saran has been appointed as a power of attorney of the appellant Company. In fact, it is urged that the appellant Company had on December 26, 2005 got executed a fresh power of attorney in favour of Mr.Puneet Saran and got it registered in Kolkata on December 29, 2005. These steps were taken to ensure smooth completion of the transaction. It is inconceivable that having taken all these steps, they would not have informed respondent No. 1 about the appointment of the new attorney holder. It is further stated that Mr.B.K.Sinha, Advocate in his meeting with respondent No.1, on January 02, 2006 had made respondent No.1 speak to Mr.Puneet Saran on telephone and he had fixed a meeting at Mr.Saran's office at Okhla, New Delhi to inspect the new power of attorney. It is urged that despite all these developments, on January 03, 2006 respondent No.1 claims to have written a communication seeking details of the new power of attorney and also seeking certain other documents including khasra and khatoni for the suit property, etc. It is urged that this was only an attempt to evade the issue, namely, the fact that the respondent No.1 had to perform his part of the contract within 15 days of the receipt of the NOC. It is further

urged that on January 07, 2006 the appellant sent a notice of cancellation whereby it was made clear to respondent No.1 that if the necessary balance payment was not made on or before January 09, 2006, the Agreement to Sell shall stand cancelled. This was reiterated by the appellant on January 12, 2006 where a reference was made to the notice dated January 07, 2006 and to the effect that the appellant have forfeited 50% of the advance amount i.e. ₹55,00,000/-(Rupees fifty five lacs only) and was returning balance amount of ₹55,00,000/-(Rupees fifty five lacs only).

13. On the basis of these facts it is urged that respondent No.1 was only evading and trying to back track from completing his part of the transaction knowing fully well that the appellant had received the NOC on December 23, 2005 and that a power of attorney has been executed and got registered in favour of a new attorney Mr.Puneet Saran and that the appellant Company was ready and willing to perform its part of the contract. It is urged that the appellant Company had taken the effort of filing the writ petition, engaging a lawyer, appointing a new attorney, getting the attorney registered and thereafter following up and getting the NOC from the concerned department. It is urged that all these steps were done by the appellant is a clear pointer to the intention of the appellant Company to get the transaction completed. In contrast it is urged that respondent No.1 was dilly dallying and side stepping the root issue and was delaying the matter needlessly. Hence, it is argued that time being the essence of the Contract, the appellant was entitled to cancel the Agreement to Sell. Reliance is also placed upon judgment of the Hon'ble Supreme Court in the case of (2011)12 SCC 18 Saradamani Kandappan vs. S.Rajalakshmi & Ors. where the Court held that there is an urgent need to revisit the principle that time is not the essence in contract relating to immovable properties in view of the changed circumstances

arising from inflation and steep increase in prices.

14. Learned senior counsel has further urged that respondent No.1 has not been able to show availability of funds to make good the balance transaction. It is urged that respondent No.1 has given a false and distorted picture of his assets and advances and his shareholdings. It is urged that the Valuation Certificate dated February 16, 2006 (Ex.PW-1/20) and Demat Account Statement (Ex.PW-3/2) are not credible evidence. It is urged that the Valuation Certificate which shows the valuation of the shares to be over ₹9,00,00,000/- (Rupees nine crores only) as on February 16, 2006 is a manipulated document. The further evidence of the respondent No.1 of having owned 1,00,21,500 equity shares of ₹10 each in Multimedia Entertainment Ltd. worth above ₹10,00,00,000/-(Rupees ten crores only) (Ex.PW-1/21) is also said to be a false statement. Thus as per respondent's evidence, the value of all the listed shares (Andhra Cements Limited, Duncan Industries Limited, Snowcem Limited and Multimedia & Entertainment Limited) taken together should have been ₹19,83,02,500/- (₹9,80,87,500/- + ₹10,02,15,000/-) as on 31.03.2006. Yet his audited balance sheet as on 31.03.2006 (Ex.PW-1/18) shows total investment in quoted/listed shares as ₹7,25,28,207.73/- only. Hence, it is urged that the valuation of assets by respondent No.1 is manipulated. It is further urged that in fact the value of shares of Andhara Cements limited, Duncan Industries Limited and Snowcem Limited which are the basis of the Certificate PW-1/20 should be negative as they are sick companies under The Sick Industrial Companies (Special Provision) Act, 1985 and proceedings are pending before BIFR. These shares would also have no ready market. Further, the shares of Multimedia & Entertainment Limited were held by respondent No.1 in physical form and were listed at Guwahati,

Delhi and Jaipur stock exchange where there has been no trading of shares for the last 5-6 years. In view thereof, it is submitted that the shares of Multimedia could not have been sold at all by the plaintiff and certainly not within 15 days from the receipt of NOC for payment of balance sale consideration.

15. As regards the loans and advances, it is urged that there is clear window dressing done by respondent No.1 to show a picture of large assets in the form of loan portfolios. This loan portfolio pertains to defunct companies which are all sister or associate concerns owned by respondent No.1 and his family members. It is urged that the transactions are circuitous and fictitious and no reliance can be placed on the same.

16. Hence, it is urged that issue Nos. 2 to 6, 8 to 10, 13 and 14 have been wrongly decided by the impugned order.

17. Respondent No.1 appearing in person has on the other hand submitted that the contentions of the appellant are entirely false on the events that unfolded after December 23, 2005. He submitted that at no stage did the appellant forward to him the NOC received from the concerned department or a copy of the power of attorney of the new Attorney holder Mr.Puneet Saran. Regarding notice of cancellation dated January 07, 2006, sent by the appellant it is urged that as per the appellant company this was sent by registered post, courier and by hand on January 07, 2006. However, despite an application filed by respondent No.1 under Order XI Rules 12 & 14 CPC for discovery of receipt of registered post, speed post for the said communication and despite order of the court dated November 02, 2006, to discover the document on oath, no such receipt has been filed. The court on February 18, 2008 passed an order that it shall be deemed that no such receipt exists. In fact, it is urged that DW-1 in his cross-examination on

February 02, 2011 DW-1 admitted that the said letter was sent by the appellant company by courier on January 09, 2006 only. Hence, this communication of January 07, 2006 was admittedly received by respondent No.1 on January 13, 2006 after the date mentioned as the last date of payment, namely, 09.01.2006 in the said notice. Hence, it is urged that the alleged cancellation dated January 07, 2006 is no cancellation in the eyes of law.

18. On the issue of availability of funds with respondent No.1, to complete the sale transaction reliance is placed on para 46 to 51 of the affidavit of evidence of PW-1 where he has stated about his assets. He has filed his audited balance sheet as on 31-03-2006 (Ex.PW1/18), copy of his Income tax return for the said year (Ex. PW1/19) a valuation of the holding of shares in D'mat form (Ex.PW3/2) and the market price of the said shares in the stock exchanges as on 16-02-2006 (Ex.PW1/20) and a certificate of holding of 10021500 shares of Rs.10/- each by respondent no.1 in Multimedia and Entertainment Limited book value of each share as per the balance sheet of the said Company as on 31<sup>st</sup> March 2006 (Ex.PW1/21). These documents have been stated to have been proved by the respective witnesses that is the auditor of balance sheet of respondent no.1 (PW-5), Joint Managing Director of Consortium Securities P. Limited (PW-3) and accountant of Multimedia & Entertainment Limited (PW4). Respondent No.1 has stated that he could sell the listed shares held by him in D'mat form and would have got the payment on the 3<sup>rd</sup> working day. The market price of the said shares as on February 16, 2006 is more than Rs.9,80,00,000/- whereas he had to pay only Rs.6.25 crores. He has also stated that he could raise the funds based on his shares of Multimedia and Entertainment Ltd. Being a promoter of Multimedia and Entertainment Ltd.,

funds could be arranged by pledging the shares in physical form to a NBFC or a private financier.

19. On the loans advanced by him, respondent No.1 has submitted that it is not his case that he was to raise funds from recovery of loans advanced by him. Hence, on the basis of this it is urged that the respondent No.1 was ready and willing to perform his part of the contract. He had the necessary funds but it was the appellant who acted in an arbitrary and grossly illegal fashion and without any rhyme or reason cancelled the Agreement to Sell on a back date. Hence, he urges that the present appeal is liable to be dismissed and the cross-objections filed be allowed inasmuch as on account of the conduct of the appellant, they would not be entitled to any interest on the balance sale consideration.

20. In our view there are no reasons to differ with the view taken in the impugned order on the said issues. The first basic controversy pertains to the three documents i.e. NOC (Ex.D-5), the new Power of Attorney issued in favour of Mr.Puneet Saran (Ex. D/A) and the notice dated January 07, 2006 sent by the appellant.

21. We will first deal with the controversy of receipt of NOC by respondent No.1 i.e. issue No.6. The impugned order holds that NOC was not received by respondent No.1.

22. It has been strongly urged by the appellant that respondent No.1 had come to the office of the appellant on December 23, 2005 after the order of the Delhi High Court directing issue of the NOC and signed the application for grant of NOC. He was informed by Mr.Ramjee Dwivedee attorney of the appellant that the NOC would be issued by the evening. It is then urged that on December 24, 2005 a letter dated December 23, 2005 along with the NOC was sent to respondent No.1 requesting him to complete sale

formalities within 15 days. (Initially the letter was said to be dated December 24, 2005 but later the date was changed via an amendment to December 23, 2005). The said NOC was allegedly sent by hand through a messenger Mr.Sushil Kumar at the residence of respondent No.1 but respondent No.1's wife refused to accept the said communication after receiving instructions from respondent No.1 on telephone. The same was stated to be the fate when Mr.Sushil Kumar visited the office of respondent No.1. Hence it is claimed that on December 26, 2005 the letter along with the NOC was sent by courier and the receipt has been filed as Ex.D-6. Respondent No.1 denied his signatures on the said receipt.

23. The impugned order records a finding that a bare glance at the receipt Ex.D-6 shows that the sender's name is not that of the appellant and further that the address of the respondent No.1 is not there on the courier receipt. Further, the alleged signatures of respondent No.1 on the said receipt do not tally with any signatures of respondent No.1 on any documents on record. The impugned order further holds that in the light of the denial of signatures, no witness from the courier company was examined by the appellant nor any handwriting expert summoned. Further the appellant has failed to produce on record copy of the letter dated December 23, 2005 despite an order for production of the same passed in IA No.10248/2006 on November 02, 2006. Further, on February 18, 2008 the Court passed an order staying that it shall be presumed that the documents not produced pursuant to order dated November 02, 2006 do not exist. It is also noteworthy that respondent No.1 in his communication dated January 03, 2006 to the appellant had asked for a copy of the NOC. In its reply dated January 07, 2006 the appellant took the stand that the original documents are ready and would be given to respondent No. 1 at the time of execution of sale deed provided respondent

No.1 furnishes bank draft of ₹6,25,00,000/- (Rupees six crores twenty five lacs only) by January 09, 2006.

24. In the light of the evidence led by the appellant, there is nothing on record to prove the receipt of the NOC by respondent No.1. We agree with the said finding recorded in the impugned order.

25. We now come to the controversy of the fresh power of attorney executed in favour of Mr.Puneet Saran on December 26, 2005 which got registered on December 29, 2005 and as to whether respondent No.1 was informed about the same. This aspect is covered by issues No.4 and 5. The impugned order recorded a finding that the appellant neither informed respondent No.1 about the cancellation of the power of attorney in favour of Mr.Ramjee Dwivedee nor sent/delivered to him the new power of attorney in favour of Mr.Puneet Saran. It is the contention of the appellant that respondent No.1 was duly informed of the fresh power of attorney executed in favour of Mr.Puneet Saran by Mr.B.K.Sinha, Advocate on January 02, 2006 when respondent No.1 admittedly met Mr.Sinha. Apart from this averment there is nothing on record to show that a copy of the new power of attorney was sent to respondent No.1. The evidence of DW-4 Sh.Barun Kumar Sinha is also completely silent on this aspect of giving a copy of the Power of Attorney in favour of Mr.Puneet Saran. In fact DW-1 Mr.Puneet Saran in his cross-examination has said that he has not met respondent No.1 between the date when the power of attorney executed i.e. December 26, 2005 till February 14, 2006, the date of filing of the suit.

26. It is also further noteworthy that respondent No.1 in his letter dated January 03, 2006 clearly stated that he learnt from Mr.B.K. Sinha, Advocate about the appellant sending some fresh power of attorney. He requested for the original power of attorney which should be duly registered with other

details. In its reply dated January 07, 2006, the appellant simply brushed aside the demand for the original Attorney including the other documents saying that the documents are irrelevant and unnecessary for execution of the sale deed. It was however said that the appellant would produce the said documents at the time of execution of the sale-deed provided the sale-deed gets done on or before January 09, 2006. It is clear that there is nothing on record to show that respondent No.1 received a copy of the new power of attorney. We see no reason to differ from the said finding recorded in the impugned order.

27. The next argument addressed by learned senior counsel for the appellant pertains to service of notice dated January 07, 2006 of termination of Agreement to Sell by the appellant on respondent No.1. This aspect is covered by issues No.2 and 3. On these issues the impugned order holds that the said notice of cancellation was sent by the appellant only on January 09, 2006 and was received by respondent No.1 on January 13, 2006 i.e. after the time limit specified in the notice for the execution of the sale-deed expired. Even otherwise it was held that the power of attorney of Mr.Puneet Saran dated December 26, 2005 gives him no power to cancel the agreement. The impugned order points out at lot of controversies regarding the date when the said communication dated January 07, 2006 was dispatched by the appellant and was received by respondent No.1. The impugned order concludes after going in detail into the evidence that the said letter was sent by courier only on January 09, 2006 and was received by respondent No.1 on January 13, 2006. The impugned order relies on the cross-examination of DW-1 on February 02, 2011 where the date of dispatch is admitted. For date of proof of delivery reliance is placed on Ex.D-8. This position as accepted in the impugned order has not been seriously contested

before us.

28. The said communication dated January 07, 2006 was in response to a communication dated January 03, 2006 sent by respondent No.1. The said communication stated that the demand of respondent No.1 for original documents is misplaced inasmuch as these ten documents sought by respondent No.1 are irrelevant and unnecessary for execution of the sale-deed and that the same would be produced whenever the sale-deed is executed and registered. The letter further states that the respondent No.1 must make balance payment of ₹6,25,00,000/- (Rupees six crore twenty five lacs only) and get the sale-deed executed on or before January 09, 2006 failing which the Agreement to Sell dated February 09, 2005 shall be treated as cancelled and null and void automatically without any further notice and 50% of the advance money paid shall be forfeited as per Clause 10 of the Agreement to Sell dated February 09, 2005. Hence, the notice/communication which gives an opportunity to respondent No.1 to complete the transaction by January 09, 2006 is posted on the said date itself and is received by the respondent No.1 on January 13, 2006 after expiry of the notice period. Clearly, the notice dated January 07, 2006 is mischievous and cannot be treated as of any effect whatsoever.

29. In view of above finding the effect is that no notice of cancellation of the agreement was served on respondent No.1 by the appellant. What would be the effect of the same? In this context reference may be had to the judgment of the Supreme Court in the case of AIR 1967 SC 868 Gomathinayagam Pillai & Ors. vs. Pallaniswami Nadar relevant portion of which reads as follows:-

*“8. ... In the present case there is no express stipulation, and the circumstances are not such as to indicate that it was the intention of the parties that time was intended to be of the*

*essence of the contract. It is true that even if time was not originally of the essence, the appellants could by notice served upon the respondent call upon him to take the conveyance within the time fixed and intimate that in default of compliance with the requisition the contract will be treated as cancelled. As observed in Stickney vs Keeble I.L.R. [1915] A.C. 386 where in a contract for the sale of land the time fixed for completion is not made of the essence of the contract, but the vendor has been guilty of unnecessary delay, the purchaser may serve upon the vendor a notice limiting a time at the expiration of which he will treat the contract as at an end. In the present case appellants 1 & 2 have served no such notice; by their letter dated July 30, 1959 they treated the contract as at an end. If the respondent was otherwise qualified to obtain a decree for specific performance, his right could not be determined by the letter of appellants 1 & 2."*

Accordingly the so called notice dated January 07, 2006 does not affect the rights of respondent No.1 flowing from the Agreement to Sell dated February 09, 2005.

30. We see no reason to differ with the findings in the impugned order on issues No.2 and 3 i.e. whether there is termination of Agreement to Sell vide notice dated January 07, 2006 and whether cancellation of the Agreement to Sell by the Appellant is valid.

31. Though no serious arguments were raised on this aspect, but it would be necessary to deal with issue No.10 i.e. as to whether time was the essence of the Agreement to Sell. In our view the impugned order has rightly held relying on Section 55 of The Contract Act that there are no facts on record to show that it was the intention of the parties that time should be the essence of the Contract. The original contract dated February 09, 2005 provided that the sale formalities would be completed by April 30, 2005. The appellant received the NOC on May 02, 2005 but did not take steps to communicate the same to respondent No.1 or have the transaction completed.

Accordingly, the said NOC lapsed. In the meantime, respondent No.1 purported to cancel the agreement on April 30, 2005 (Ex.P-12) claiming that the shareholders of the company did not approve the Agreement to Sell. Thereafter on June 08, 2005 it claimed that the shareholders of respondent No.1 company approved the sale transaction and accordingly a fresh application for NOC was made and a supplementary agreement was entered into on July 08, 2005 (Ex.P-13). It was the supplementary agreement which provided that balance payment would be made within 15 days of receipt of the NOC from the competent authority.

32. The whole emphasis of the appellant centers around Clause 1 of the Supplementary Agreement dated July 08, 2005 (Ex.P-13) relevant portion of which reads as follows:-

*“1. That the Board of Directors of the Seller company M/s.Khas Joyrampur Colliery Company Pvt.Ltd. (KJCL) has reconsidered the Agreement to Sell dated 09.02.2005 to sell “Surabhi Farmhouse” situated at Vill.Bijwasan, New Delhi to you and was placed before the General Meeting of the Share Holders for according their approval for sale in terms of the said Agreement to Sell dated 09.02.2005. The General Meeting of Share Holders was held on 08.06.2005 and accorded its approval to the Agreement to Sell dated 09.02.2005 to sell “Surabhi Farmhouse”, New Delhi to you with a modification to allow you maximum 15 days time from the date of receiving the fresh NOC (since the earlier NOC obtained for the purpose got expired on 1<sup>st</sup> June 2005) from the competent authority to complete the sale formalities say getting stamping of the documents from the officer of Collector of Stamps and making payment of balance amount of ₹6,25,00,000.00 (Rupees six crores twenty five lacs only) at the time of registration of the Sale Deed with the Office of the Sub-Registrar).”*

33. On the basis of this, it has been urged by the appellant that respondent

No.1 had to tender the balance sale consideration within 15 days of receipt of the NOC failing which the agreement to sell would automatically stand cancelled.

34. A finding has already been recorded that NOC was received on December 23, 2005, but a copy was never provided to respondent No.1. The original attorney holder of the appellant Shri Ramjee Dwivedee was seriously unwell and hospitalized on December 25, 2005. He could not recover from his illness. A fresh attorney was executed in favour of Mr.Puneet Saran on December 26, 2005 and was registered on December 29, 2005. No copy of the Power of Attorney was supplied to respondent No.1 nor was respondent No.1 intimated about the same. In the light of the above facts and the conduct of the appellant it is not possible to conclude that time was the essence of the contract. The appellant could not cancel the Contract in the manner sought to be done.

35. The legal position in the case of sale of immovable property is that there is no presumption of time being the essence of the contract even if the parties have expressly provided that time is the essence of the contract. In AIR 2008 SC 1205, Balasaheb Dayandeo Naik (Dead) Through LRs. & Ors. vs.Appasaheb Dattatraya Pawar in paragraph 9 the Hon'ble Supreme Court held as under:-

“9. In Chand Rani (Smt.) (dead) by LRs. Vs. Kamal Rani (Smt.) (dead) by LRs, (1993) 1 SCC 519, a Constitution Bench of this Court has held that in the sale of immoveable property, time is not the essence of the contract. It is worthwhile to refer the following conclusion:

“19. It is a well-accepted principle that in the case of sale of immovable property, time is never regarded as the essence of the contract. In fact, there is a presumption

against time being the essence of the contract. This principle is not in any way different from that obtainable in England. Under the law of equity which governs the rights of the parties in the case of specific performance of contract to sell real estate, law looks not at the letter but at the substance of the agreement. It has to be ascertained whether under the terms of the contract the parties named a specific time within which completion was to take place, really and in substance it was intended that it should be completed within a reasonable time. An intention to make time the essence of the contract must be expressed in unequivocal language.”

“21. In *Govind Prasad Chaturvedi v. Hari Dutt Shastri* (1977) 2 SCC 539 following the above ruling it was held at pages 543-544: (SCC para 5)

“... It is settled law that the fixation of the period within which the contract has to be performed does not make the stipulation as to time the essence of the contract. When a contract relates to sale of immovable property it will normally be presumed that the time is not the essence of the contract. [Vide *Gomathinayagam Pillai v. Pallaniswami Nadar* 1 (at p. 233).] It may also be mentioned that the language used in the agreement is not such as to indicate in unmistakable terms that the time is of the essence of the contract. The intention to treat time as the essence of the contract may be evidenced by circumstances which are sufficiently strong to displace the normal presumption that in a contract of sale of land stipulation as to time is not the essence of the contract.”

“23. In *Indira Kaur (Smt) v. Sheo Lal Kapoor* (1988) 2 SCC 488 in paragraph 6 it was held as under:

“... The law is well-settled that in transactions of sale of immovable properties, time is not the essence of the contract.”

36. Similarly the Hon’ble Supreme Court in Gomathinayagam Pillai’s case (supra) in para 6 held as follows:-

*“6. It is not merely because of specification of time at or before which the thing to be done under the contract is promised to be done and default in compliance therewith, that the other party may avoid the contract. Such an option arises only if it is intended by the parties that time is of the essence of the contract. Intention to make time of the essence, if expressed in writing, must be in language which is unmistakable: it may also be inferred from the nature of the property agreed to be sold, conduct of the parties and the surrounding circumstances at or before the contract. Specific performance of a contract will ordinarily be granted, notwithstanding default in carrying out the contract within the specified period, if having regard to the express stipulations of the parties, nature of the property and the surrounding circumstances, it is not inequitable to grant the relief. If the contract relates to sale of immovable property, it would normally be presumed that time was not of the essence of the contract. Mere incorporation in the written agreement of a clause imposing penalty in case of default does not by itself evidence an intention to make time of the essence.....”*

In the facts and circumstances of this case, it is obvious that in the original Agreement to Sell dated February 09, 2005 the date of completion of the transaction was April 30, 2005. The appellant themselves resiled on April 30, 2005 claiming that the Board and the General Body of shareholders had not approved the Agreement to Sell. The Supplementary Agreement was later executed on July 08, 2005 which provided that the balance payment would be made within 15 days of receipt of NOC. The NOC took almost more than five months. The conduct of the parties especially of the appellant does not in any way show that the parties treated the time as the essence of

the contract. We see no reason to differ with the view taken in the impugned order.

37. We will now deal with the second aspect argued by the parties i.e. the ability of respondent No.1 to make payment of the balance amount of sale consideration. This is covered by Issue No.9 i.e. whether respondent No.1 was ready and willing to perform his part of the Agreement to Sell. On this issue the impugned order holds that the respondent No.1 was possessed of the capacity to arrange the funds for payment of sale consideration at all points of time. It held that the availability of funds in hand or in the bank accounts was not a sine qua non but the respondent No.1 led sufficient evidence to show that it was capable of paying the sale consideration at the time of the execution of the sale deed.

38. Respondent No.1 namely DW1 in his evidence by way of affidavit, has stated that as per his Balance Sheet as on March 31, 2006, his net worth is Rs.27.3 Crores and that the current valuation of assets is Rs. 40 crores and there is no liability of any institution or bank. It has further been stated that he has substantial investments in shares of listed companies which payment is realizable within three working days from the Stock Exchange. The valuation certificate issued by the depository participants has been placed on record valuing the stock holding of listed shares of respondent No.1 as on February 16, 2006 at Rs.9,80,87,500/- based on the closing price of the Scrip. The shares pertain to companies Andhra Cement Ltd., Dunken Industries Ltd. and Snowcem India Ltd. It is further stated in the affidavit that respondent No.1 owns fully paid up equity shares of Rs.10/- face value each in physical form in Multi Media Entertainment Ltd, a company listed in Delhi, Guwahati and Jaipur Stock Exchanges and the book value of shares is more than Rs. 10 Crores as per the company's balance sheet on March 31,

2006. He has also pleaded that he has investments in unlisted companies of more than Rs.10 Crores. PW3 Mr. Madan Mohan Singh, Joint Managing Director, Consortium Securities Pvt Ltd., has proved certificate issued by them, namely, which gives total valuation of the share holding in the three listed companies of respondent No.1 and also confirms issue of the valuation as on 16.02.2006 (Ex.PW1/20). PW4 Mr. Rajiv Maheshwari, Accountant of M/s. Multi Media & Entertainment Ltd has pointed out that the said Multi Media Entertainment Ltd. has a paid up capital of Rs.20 Crore. He has confirmed certificate dated August 20, 2007 stating the share holding of respondent No.1 in Multi Media Entertainment Ltd (Ex.PW1/21).

39. Learned senior counsel appearing for the appellant has strongly urged that the valuations put forth are imaginary figures and that respondent No.1 does not have the financial capacity to pay the balance sale consideration and was hence needlessly prolonging the matter. He urges that shares which are owned by respondent No.1 and are said to be listed on the Stock Exchange and which are the subject matter of certificate of valuation (Ex. PW-1/20) are sick companies under The Sick Industrial Companies (Special Provisions) Act, 1985. It is urged that Andhra Cements, Dunkin Industries and Snowcem India are, as on 2006, sick companies and subject matter of proceedings before the BIFR and could not command any worthwhile price and were incapable of being sold in the manner as projected by respondent No.1. It has further been argued that cross examination of PW4 would show that the company Multi Media Entertainment Ltd has a paid up capital of Rs.20 Crores of which 10 Crores worth share are owned by respondent No.1 implying that the said company is a family company and the attempt to value share above Rs.10 Crores is a manipulated valuation. He has also urged that Ex. PW1/20 shows the valuation of Scrip, at Rs. 9.8 Crores.

Ex.PW1/21 shows the valuation of shares in Multi Media Entertainment Limited above Rs.10 Crores whereas as per the balance sheet of respondent No.1 as on March 31, 2006, the total investments in quoted/listed shares is only Rs.7,25,28,207/- as is apparent from a perusal of PW1/18. Hence it is urged that there is a huge variation in the valuation as projected by different documents which clearly shows that the same are manipulated. It is also urged that reliance on loans receivable from other parties by respondent No.1 is misplaced as these are sham transactions which are circuitous loans within the family and cannot be said to be available to respondent No.1 for the purpose of payment of balance sale consideration.

40. Respondent No.1, in his written submissions, has explained that the balance sheet always shows the cost price at the time of purchase and not the market price prevalent on the particular date. Hence it is pleaded that there is variation in the valuation certificate dated February 16, 2006 (PW-1/20) and the balance sheet (PW-1/18). He has further stated that respondent No.1 could have raised an amount of Rs.9.8 crores by sale of shares which are listed on the Stock Exchange and the money would be made available to him within three working days. He could not sell the shares in Multi Media Entertainment Ltd to arrange funds on a short notice but these shares could have been pledged for raising funds. Regarding the loans made by respondent No.1 to other unlisted companies and associates, it is submitted that it is not the case of respondent that he would raise funds by recovery of such loans and hence, the contention of learned senior counsel of appellant on this aspect is misplaced. He submits that he had other sufficient assets to raise the necessary funds and reference to these loans to associates and family members was only for the purpose of completing the full picture.

41. In our view, the contentions of the appellant are misplaced. They have

not been able to shake the evidence placed on record by respondent No.1 regarding his net worth and assets available in hand.

42. On the valuation of listed shares on the basis of which the document Ex.PW-1/20 has been prepared, PW-1 in his cross-examination on this aspect on September 24, 2008 stated as follows:-

*Ques. I put it to you that the companies namely Dunken industries, Andhra Cement and Snoweem India, have already referred to BIFR as sick industrial company and delisted on all the stock exchanges.*

*Ans. It is incorrect that these companies were delisted on stock exchanges. But I am not aware if the reference of these companies was pending with BIFR and reference to BIFR does not affect the listing of shares with stock exchanges for trading. It is incorrect to suggest that there were not buyers for shares of these companies as they were already referred to BIFR as sick industries as their share price were zero.*

*I was holding about one lac shares in Electrolux India Ltd. they went in demat form. It is correct that I have not filed any record of these Demat sales of M/s.Electrolux Kalvinators. Volunteered: but I can file it. This Demat account was in respect of Electrolux Calvinator Shares was with Stock Holding Corporation of India. It is incorrect to suggest that multimedia Entertainment shares are not listed with any stock exchanges. It is listed with Delhi, Jaipur and Guwahati Stock Exchanges. The Kalvinator shares were purchased by me long back. The amount utilized for purchase of Kalvinator shares is reflected in the bank account when shares were purchased through stock exchange.”*

43. There is no question posed to him about difference in the listed shares as stated in Ex.PW-1/20 issued by Consortium Securities Private Limited and the balance sheets of the respondent No.1 as on March 31, 2006 (Ex.PW-1/18).

44. Similarly, PW-3 Shri Madan Mohan Singh, Joint Managing Director, Consortium Securities Pvt. Limited confirmed the certificate Ex.PW-1/20

and in his cross-examination stated as follows:-

*“It is correct that I have no legal status with NSDL but my company has that status as it has been granted a certificate of registration as participant by Securities & Exchange board of India (SEBI). I have not brought the certificate issued by SEBI but I can produce the same. We have kept in deposit any of the shares of Mr.Kansal in physical form. (Vol.) these shares are not tradable in physical form.*

*I do not know whether reference of Andhra Cement Co. is pending in the board of industrial and Financial Reconstruction (BIFR) but its shares are being traded in the stock exchange. Same is my answer to M/s.Duncan Industries. I have no idea of present price of shares of these 3 companies as on today.”*

45. On this document PW-1/20 no other worthwhile evidence has been placed on record by the appellant.

46. Shri Rajiv Maheshwari, Accountant of M/s.Multimedia & Entertainment Ltd. had deposed regarding the shareholding of respondent No.1 in the said company Multimedia and Entertainment Limited. In his cross-examination on August 27, 2008 he said as follows:-

*“Multi Media and Entertainment Ltd. was incorporated on 01.11.1994. The paid up capital of my company is ₹20 crores. I have brought the copy of balance sheet and annual return with ROC receipts of my company for the year 2007 but it is only a photocopy. I can bring its original. The copy of balance sheet and annual return and ROC receipt are collectively put as Ex.PW4/1 (Coll.). As the Delhi Stock Exchange is not working now a days. To my knowledge, DSE is not doing the trading of shares for the last 5-6 years. Besides DSE, the Multimedia Entertainment company's share were listed at Gohati and Jaipur Stock Exchanges. The position of Gohati and Jaipur stock exchanges are also the same about their non trading of shares.”*

47. Hence, the evidence placed on record by respondent No.1 has not been shaken. There is nothing to disbelieve the contention of respondent

No.1 that he held shares in three companies, namely, Dunken Industries Ltd., Andhra Cement Ltd. and Snowcem India Ltd. which as on February 16, 2006 were valued at ₹9.8 crores and could have been liquidated within three days. The submission of the appellant that these companies were BIFR companies may be true but it is obvious that the shares were being traded on the stock market.

48. Similarly, there is nothing to show that the shareholding of respondent No.1 in Multimedia Entertainment Limited could not have realized assets as stated by respondent No.1 in his evidence. In fact in paragraph 51 of his evidence PW-1 i.e. respondent No.1 said as follows:-

*“51. I say I can also raise the loan within a short span of five days by pledging the shares and immovable property held by me. I also have personal friends and associates who are financially sound and can provide me the funds if required.”*

49. Respondent No.1 has not been cross-examined on this aspect. Hence, there is merit in the submission of respondent No.1 that though the shares in Multimedia and Entertainment Limited were not in D'mat form and that the stock exchange in Delhi, Guwahati and Jaipur had shut down, yet he could have raised funds by pledge of these shares within a short period and could have easily paid the dues payable to the appellant in terms of the Agreement to Sell. In view of the above, we affirm the findings of the learned Single Judge regarding issue No.9.

50. The last issues are issues No.13 and 14, namely, as to whether the plaintiffs (respondents) are entitled to decree of specific performance. The impugned order concludes that the conduct of the appellant is not worthy of claiming any special equities while the conduct of respondents has been commensurate with accepted standard demanded by equity. Further, respondents filed the present suit and pursued their remedy at the earliest

point of time and the suit was instituted within one month of the appellant resiling from the agreement. Further, the impugned order holds that respondents have diligently pursued the suit and hence it is difficult to hold that they acted in a malafide manner and are disentitled to grant relief for specific performance.

51. We cannot help noticing the conduct of the appellant. The Agreement to Sell was executed on February 09, 2005. The sale formalities were to be completed by April 30, 2005. The appellants applied for NOC on March 24, 2005 and the NOC was received on May 2, 2005. Suddenly, on the date of completion of transaction being April 30, 2005 as fixed by the Agreement, the appellant cancelled the Agreement to Sell claiming that the agreement had not been approved by the Board and shareholders of the appellant company (Ex.P-12). The payment received from respondent No.1 of ₹1,10,00,000/- (Rupees one crore ten lac only) was returned by way of a demand draft. In addition, a caveat was also filed in the Delhi High Court. This unilateral action of the appellant was not accepted by respondent No.1 who protested on May 19, 2005 (Ex.PW-1/3). Thereafter the appellant informed respondent No.1 that the Agreement to Sell had been approved by the shareholders on June 08, 2005. The appellant applied for a fresh NOC on June 13, 2005 as the first NOC expired on June 01, 2005. A supplementary agreement was also executed on July 08, 2005 (Ex.P-13). The matter did not make any progress as the NOC was not received. Finally, in December 2005, the appellant filed a joint Writ Petition alongwith respondent No.1 against the Government of NCT of Delhi. The said Writ Petition was allowed on December 20, 2005 with directions for issue of the NOC. The NOC was received on December 23, 2005. Thereafter the appellant dilly dallied on completion of the sale transaction

and on January 09, 2006 sent a communication dated January 07, 2006 asking respondent No.1 to complete the sale transaction and pay the balance amount on January 09, 2006 failing which the Agreement to Sell would stand automatically cancelled. This communication was received by the respondent No.1 on January 13, 2006. It was also the contention of the appellant that in terms of the Agreement to Sell it was entitled to forfeit 50% of the advance received, namely, the sum of ₹55 lacs. The facts taken as a whole would clearly show that appellant has been dilly dallying and trying to side step the agreement on one pretext or the other. Hence, there is no equity in favour of the appellant.

52. In view of the above facts, the submission of learned senior counsel for the appellant that in the meantime during pendency of present proceedings the prices have risen astronomically cannot be accepted given the conduct of the appellant. The appellants are to be blamed for the present situation.

53. We also cannot help noticing another aspect which was also noted in the impugned order regarding the conduct of the appellant. On February 17, 2006 an ex parte injunction was passed directing the appellant to maintain status quo with regard to title. Despite the said proceedings the appellant intentionally withheld the information about its amalgamation with R.K.B.K.Fiscal Services Pvt.Ltd. which took place vide order of the Calcutta High Court on June 05, 2006. The said R.K.B.K.Fiscal Services Pvt.Ltd. was designated as a transferee company in the amalgamation scheme. Hence, this Court on August 04, 2010 in IA No. 5963/2009 held R.K.B.K.Fiscal Services Pvt.Ltd. bound by the interim status quo order vis-à-vis the suit property till final disposal and a direction was passed that the cause title be amended to substitute the transferee company in the array of

defendants. A cost quantified at ₹50,000/- (Rupees fifty thousand only) was imposed on the said R.K.B.K.Fiscal Services Pvt.Ltd. which is now appellant before us for failing to place on record these facts despite interim order dated February 17, 2006. This conduct of the appellant is being noted to reiterate that there can be no equity in favour of the appellant.

54. In view of the above, we affirm the findings of the impugned order. The impugned judgment is upheld and the present appeal is dismissed.

55. There are no serious submissions made by respondent No.1 appearing in person in the cross-objections. In our view the directions in the impugned order to respondents to pay interest @ 6% per annum on the balance unpaid sale consideration from date of filing of the suit till payment are justified. The cross-objections are also accordingly dismissed.

56. No order as to costs.

**JAYANT NATH**  
**(JUDGE)**

**PRADEEP NANDRAJOG**  
**(JUDGE)**

**APRIL 15, 2014**  
**n/rb/raj**