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

% Date of Decision: 01.09.2015

\+ CS(OS) 186/2012

KULBHUSHAN RAI BAJAJ ..... Plaintiff
Through: Mr. Aseem Mehrotra, Adv.

versus

M/S A.J.S BUILDERS LTD & ANR ..... Defendants
Through: None.

**CORAM:**
**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**NAJMI WAZIRI, J. (Open Court)**

1. This is a suit for recovery of Rs.1,52,42,500/- along with pendente lite and future interest @ 18% as well as costs. The plaintiff's case is that he had entered into an agreement with defendant Nos.1 and 2 for purchase of flat bearing Nos.11201 and 11202, each admeasuring 1120 sq.ft. and Unit Nos.11109 and 11210 each admeasuring 1420 sq.ft. and unit No.102 measuring 1645 sq. ft.

2. An amount of Rs.70 lacs had been paid to and duly acknowledged by the defendants. The receipt is marked as Ex.PW1/2. The agreement is exhibited as Ex.PW1/1. The defendants defaulted in delivering possession of the flats although the plaintiff repeatedly asked them to deliver the possession of the flat. A letter in this regard, dated 12.1.2009, was also sent to the defendants

(Ex.PW1/3). Through a letter dated 22.1.2009 (Ex.PW1/4), the defendants informed the plaintiff that: i) the project is being delayed because of unavoidable circumstances but ii) they would complete it by March, 2009; iii) and there would be some change apropos the flats and the exact location of the flats would be informed to the plaintiff within fifteen days thereof. Nevertheless, they assured the plaintiff that the flats would be delivered at least by the first week of April, 2009. The said deadline also was not adhered to by the defendants hence, the plaintiff demanded the flat by his letter dated 20th May, 2009, (Ex.PW1/5).

3. It is contended that the defendants sought to pressurize the plaintiff into signing a document/undertaking whereby the plaintiff would not initiate either civil or criminal proceedings against the defendants, which of course was declined by the plaintiff. This is evident from the defendants' letter to the plaintiff dated 11.08.2009 (Ex. PW1/6). A legal notice (Ex.PW1/7) was issued on 10.10.2010 seeking possession of the flats within fifteen days thereof or in the alternative, an amount of Rs.2 crores towards refund of the earnest money along with interest thereon.

4. In these proceedings, the defendants were proceeded ex parte on 13.2.2015.

5. Clause 8 of the agreement between the parties reads as under:-

> *"8. That is hereby specifically clarified and so agreed by Smt. Madhu Sigh that she is the promoter, Director of the company and is in charge and liable for day to day affairs of the company, therefore the Smt. Madhu Sing and the company are jointly and severally responsible for*

*the payment and performance of this agreement and in case they fails to make the payment with in six months to Second party, in that case she as the Directors of the said company as well the company will be responsible for all the implications and consequences as well as payment. It is further assures the second party that he had entered in to the agreement after passing a proper board resolution to that effect. It is further agreed that the First party shall be liable and bound to make the payment of Rs.91,00,000/- (Rupees Ninety One lacs only) on or before 27.3.2008 to the Second party within six months i.e. on or before, in both the events, if the project is completed and/or in case it is not completed due to any reason whatsoever. It is also agreed between the parties, that the said agreement can be extended for a further period of one month if mutually agreed to between the parties on the same terms."*

6. It is contended that in view of the aforesaid, since an amount of Rs.91 lakhs was agreed to be paid to the plaintiff within six months of the date of the agreement, irrespective of completion of the project, the said amount has now become payable to the plaintiff. The plaintiff has led his evidence which is in terms of the plaint. There is no rebuttal. There is no opposition or rebuttal to the contentions made in the plaint.

7. Mr. Aseem Mehrotra, the learned counsel for the plaintiff would submit that in three similar proceedings, i.e. CS(OS) No.2112/2012, CS(OS) No.95/2011 & CS(OS) No.722/2011 against the same defendants, this Court has ordered likewise. It is submitted that in CS(OS) No.2112/2012 against the very same builder, this Court has awarded pendente lite and future interest @ 18%.

8. In view of the aforesaid clause 8 of the agreement, the claim for Rs.91 lakhs is made out and the claim is allowed. The Court would take note of the fact that an investment in real estate is made not only it is a secure investment but also with the understanding that its value would increase as time passes by. The monies were invested in 2007; real estate values have increased manifold in and around the NCT of Delhi, therefore, an investment of Rs.70 lacs which has been liquidated to Rs.91 lacs ought to fetch a fair amount of appreciation in value during the pendency of this litigation. Accordingly, the interest @ 18% as claimed by the plaintiff would not be unfair. The suit is decreed in terms of prayers A and B of the plaint. Costs of Rs.50,000/- is also awarded in favour of the plaintiff.

9. Let the decree sheet be drawn up accordingly.

10. The suit is disposed off in the above terms.

**NAJMI WAZIRI, J**

**SEPTEMBER 01, 2015/ak**