

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

Reserved on: 18.09.2015
Pronounced on: 20.10.2015

+ CS(OS) 2955/2014

JATIN DHILLON & ANR. Plaintiffs
Through: Mr. Atul Singh, Adv.

versus

VIGNESHWARA DEVELOPPERS Defendant
Through: None.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This suit seeks a decree for the recovery of money and damages arising out of breach of contract. The defendant-company had invited applications for allotment of a commercial unit at an Information Technology Park, which was being developed by the defendant at IMT, Manesar, Haryana, in accordance with the project guidelines sanctioned by the Haryana State Industrial Development Corporation (HSIDC). The defendant had made representations to the effect that it had all requisite authority, rights and interests to construct the said Information Technology Park and thereafter sell, lease out and part with possession of the same in the form of commercial units.
2. Based on these representations, the plaintiffs had applied for the allotment of one such commercial unit admeasuring 1000 sq. feet

by entering into a 'Developer – Anchor Unit Agreement' dated 07.11.2007 with the defendant, under the terms of which the plaintiff would pay an amount of Rs. 41,50,000/- as the full and final sale consideration for the said allotment.

3. The plaintiffs had also entered into a 'Developer Anchor Option Agreement – Assured Return Plan' dated 07.11.2007 with the defendant, under the terms of which the defendant undertook to provide the plaintiffs an assured return of Rs. 65/- per sq. feet on a per month basis of a Super Area admeasuring 1000 sq. feet for a period of 60 months from the date of the aforesaid agreement.
4. The defendant, however, failed to provide possession of the commercial unit to the plaintiffs upon the expiry of 60 months from the date of the aforesaid agreements. An extension period of 18 months was granted by the plaintiffs to the defendant for completion of the project upon the latter's request. The defendant undertook to continue to uphold his end of the 'Developer – Anchor Unit Agreement' in the meantime, and continued to pay the stipulated assured return to the plaintiffs.
5. It is the plaintiffs' case that the cheques dated 01.07.2014 issued to them by the defendant as payment of assured returns, were dishonoured with the banker's memo : 'Refer to the Drawer'. As a result, the plaintiffs initiated proceedings under Section 138 of the Negotiable Instruments Act, 1881 against the defendant in respect of the 'Developer Anchor Option Agreement – Assured Return Plan'. Upon the expiry of the 18 month-extension period, the

defendant failed to deliver possession of the commercial unit to the plaintiffs.

6. Through an order dated 26.09.2014, this Court had attached 5 bank accounts of the defendant in order to prevent it from fleeing the jurisdiction of this Court or selling its assets or siphoning off the monies therein to defeat the claim of the plaintiffs. The Court further noted that the construction raised by the defendant upon the land situated at IMT, Manesar was negligible; that various FIRs had been registered against the defendant; that the defendant had been blacklisted by the Haryana Urban Development Authority (HUDA). Furthermore, out of 67 bank accounts belonging to the defendant, 56 had been frozen.
7. This Court on 24.11.2014 had directed the defendant to file its Written Statement (WS) within 30 days thereof. On 06.01.2015, in the interest of justice, one last opportunity was granted to the defendant to file the WS. However, the defendant defaulted again. Consequently, its right to file the WS was closed and on 03.03.2015, the matter was proceeded *ex parte* against the defendant.
8. The plaintiffs have reiterated their entire case through their evidence on affidavit. In a separate suit against the same defendant (CS(OS) 1991/2014), this Court, vide order dated 09.07.2014, had directed that the bank accounts of the defendant be sealed in order to prevent the defendant from fleeing the jurisdiction of the Court or selling its assets or siphoning off the money it had received from

the plaintiff in that case. The facts of that suit and the present suit are very similar.

9. The plaintiffs case is un rebutted. There is no reason to deny the plaintiffs the relief sought in the plaint. This Court is of the view that insofar as the plaintiffs had made the full and final payment to the defendant in respect of the allotment of the said commercial unit, and the defendant failed to deliver possession of the unit even after lapse of a period of six and a half years since the agreement, the defendant is liable to refund the amount of Rs. 41,50,000/- with interest @ 24% thereon calculated from the date of institution of this suit. The amount shall be paid within two weeks, failing which the defendant shall be liable to pay interest @ 18% on the entire due amount till the date of payment.
10. The defendant is further directed to pay Rs. 1,00,000/- as costs for the suit to the plaintiffs.
11. Let decree sheet be drawn up accordingly.
12. The suit is disposed off in the above terms.

NAJMI WAZIRI, J

October 20, 2015/nrk