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

% *Judgment pronounced on: 7th December, 2015*

\+ **CS (OS) No. 1754/2015**

MR. ARVIND SARASWAT ..... Plaintiff
Through Mr. Himanshu Pathak, Adv.

versus

MR. RAKESH SHARMA ..... Defendant
Through None.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present suit has been filed by the plaintiff against the defendant under Order XXXVII CPC for recovery of a sum of Rs.26,06,719/- along with pendent lite and future interest @ 15% per annum.

2. Brief facts of the case as stated in the plaint are that in the year 2005 the defendant, who is the son-in-law of the real younger brother of the plaintiff, represented that M/s S.K. Promoters and Developers, of which he is the proprietor, had formed a Co-operative Group Housing Society, namely " Saraswati Kunj Co-operative Group Housing Society Ltd.". The society is registered under the Haryana Co-operative Societies Act and has been allotted land at Wazirabad, Gurgaon for plots to be transferred to its members.

3. The defendant further represented that M/s S.K. Promoters and Developers was the developer of the said land in Gurgaon and that the defendant was competent and authorised to make members of the

said society and sell/allot/transfer plots to be carved out of the land allotted to the society.

4. Accordingly, the defendant induced the plaintiff and his son, Mr. Vikram Saraswat to purchase a plot each by becoming a member of the society.

5. On the basis of the representations and assurances made by the defendant that the plaintiff shall be made a member and shall be allotted/sold/transferred a plot carved out of the land allotted to the society, the plaintiff agreed to purchase the same against a total consideration of Rs. 14,85,000/-. It is stated in the plaint that the said amount was paid by the plaintiff to the defendant during the financial years 2005-2006 to 2009-2010, by way of account payee cheques drawn in favour of S.K. Promoters and Developers, proprietary concern of the defendant, except for a sum of Rs. 81,075/- which was paid by cash to the defendant.

6. In December, 2007 the defendant handed over a membership certificate bearing No. 4460 dated 22nd December, 2007 inter alia confirming allotment of plot admeasuring 137 sq. yds. bearing plot No. 1119 in Phase 1 of the society at Village Wazirabad, Gurgaon to the plaintiff and took back the pass book in the name of the plaintiff stated to have been issued by the society. The plaintiff alleges that the defendant informed him that the civil work and basic infrastructure will be completed by 1st August, 2009 and the possession will be delivered tentatively by 10th October, 2009.

7. It is averred that the plaintiff kept inquiring from the defendant at regular intervals about the status and pace of the work at the aforementioned plot and the defendant assured that the work was

being carried out and that possession will be delivered as per schedule. It is further stated that in March, 2009 the defendant handed over a letter dated 24th March, 2009 purported to be of the society whereby the plaintiff was asked to clear the arrears and pay development charges. Another letter dated 18th July, 2009 purported to be of the society was handed over to the plaintiff by the defendant, inter alia informing that HUDA had increased the stamp duty and was charging development charges of Rs. 1,680/- per sq. yd, which was required to be paid for getting the plot registered. It is also submitted that the defendant also handed over a copy of the Conveyance Deed titled "Byanama" to the plaintiff and informed him that it would be executed in the favour of the plaintiff by the society.

8. It is stated that since the defendant was the son-in-law of the real brother of the plaintiff and enjoyed very good relations with them, the plaintiff did not doubt the intention or assurances extended by the defendant.

9. It is stated that around October, 2010 when the defendant had not handed over the possession of the plot after repeated reminders, the plaintiff who was anxious to find out the status of the work and possession, contacted the society and the Registrar of Societies. The plaintiff was informed by the society that he had not been enrolled as a member of the society and that the membership certificate and other documents handed over by the defendant to the plaintiff were fabricated and the same were not issued by the society.

10. It is submitted that on confronting the defendant, the defendant admitted that the membership certificate and other documents were fabricated by him and he had cheated and played fraud upon the plaintiff.

11. Thereafter, the defendant had agreed to refund a sum of Rs. 14,85,000/- advanced by the plaintiff, along with lump sum interest of Rs. 5,90,000/-. The defendant had also agreed to issue post dated cheques in discharge of his liability. He issued four cheques in favour of the plaintiff bearing Nos. 310933, dated 28th August, 2013, 310931 dated 28th September, 2013, 310934 dated 28th October, 2013 and 310936 dated 28th December, 2013 for a sum of Rs. 5 lacs, Rs. 5 lacs, Rs. 5 lacs and Rs. 2 lacs respectively. Parties also executed Memorandum of Understanding dated 3rd August, 2013 whereby the defendant undertook to pay the aforementioned amount and to refund the balance amount of Rs. 3,75,000/- on or before 30th April,2014. Defendant further executed promissory note to unconditionally pay a sum of Rs. 20,75,000/- on demand along with interest @ 15% per annum payable at monthly rest.

12. However, the cheques issued when presented by the plaintiff, were returned unpaid with the remark "Funds Insufficient". Thereafter, the plaintiff got issued a notice dated 7th November, 2013 against the defendant pertaining to cheque No. 310934. The defendant again assured the plaintiff that the remaining cheques will be honoured and the defendant will settle the amount as against the cheques already returned. It is submited that the defendant in order to convince the plaintiff issued two cheques bearing Nos. 310939 and 310940 dated 28th December, 2013 and 28th January, 2014 respectively against a sum of Rs.3,75,000/- which was payable on or before 30th April, 2014 as per settlement. Thereafter, the plaintiff filed complaints for the offences under Sections 138 and 142 of the Negotiable Instruments Act, which are pending before the court of Metropolitan Magistrate, Saket Courts, New Delhi.

13. Thus, the defendant is liable to pay a sum of Rs. 20,75,000/- along with interest of Rs. 5,31,719/- in terms of Memorandum of Understanding and demand promissory note dated 3rd August, 2013 totalling to Rs. 26,06,719/-. Since, the defendant failed to pay the said amount, the plaintiff has filed the present suit.

14. When the matter was taken up, no one appeared on behalf of the defendant despite service. Memo of appearance is not on record. No application for leave to defend was filed.

15. The claim of the plaintiff has not been rebutted by the defendant who also failed to appear before the Court. No steps were taken by the defendant to contest the suit. The case set up by the plaintiff is proved on record. Therefore, the claim of the plaintiff is liable to be allowed.

16. Under these facts and circumstances, the plaintiff is entitled for a decree for recovery of a sum of Rs. 26,06,719/- along with pendent lite and future interest @ 15% per annum as claimed in terms of the prayer as per the plaint from the date of filing of the suit till the date of payment.

17. The decree be drawn accordingly. The suit is disposed of.

(MANMOHAN SINGH)
JUDGE

DECEMBER 07, 2015