

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

+ **CS(OS) No.78/2007**

% **3rd February, 2016**

M/S SHRI NEELPADMAYA CONSUMER PRODUCTS PVT. LTD.

.... Plaintiff

Through: Ms. Smita Maan, Advocate with Mr.
B.S. Maan, Advocate.

versus

SH. SATYABIR @ SATBIR AND ORS.

..... Defendants

Through: Mr. N.S. Vasisht, Advocate with Mr.
Vishal Singh, Advocate and Ms. Jyoti
Kataria, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. This is a suit for specific performance filed by the plaintiff/Company. The Agreements to Sell are dated 25.9.2006 and the same pertains to a total land of 20 bighas and 8 biswas (approx 20,500 sq yds) situated in the revenue estate of village Goela Khurd, New Delhi. One agreement is signed by defendant nos.1, 3 & 4 whereas defendant no.2 has signed another near identical agreement. The Khata number of the land is 138/98 and the relevant khasra numbers are 20//18/2 (1-4), 23/1 (4-5),

30//3/1 (4-1), 8/2 (0-11), 9 (4-16), 12 (4-16), 13/1 (0-11) and 27(0-4).

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2. The case of the plaintiff is that the four defendants had equal 1/4th co-ownership rights in the suit land and which suit land was agreed to be sold for a total price of Rs.5,32,91,250/-. The total price is arrived at on the basis of the price per acre (4 bighas 16 biswas or 4,840 sq yds) being 1,25,25,000/-. Plaintiff under the two Agreements to Sell dated 25.9.2006 paid a sum of Rs.40 lacs. A further amount of Rs.13 lacs was paid by the plaintiff to the defendants on 5.10.2006 which was acknowledged by means of a Receipt dated 10.10.2006. In terms of the agreements to sell, balance sale consideration was to be paid at the time of execution and registration of the sale deed, and which was to be and could be executed after the defendants obtained the NOC under the Delhi Land (Restrictions on Transfer) Act, 1972. The case of the plaintiff further is that the defendants became dishonest and did not apply for the NOC and in spite of the fact that plaintiff kept on making enquiries, the defendants either avoided the issue or did not give proper reply. Plaintiff has pleaded in the plaint that two envelopes were received in December on 4.12.2006 and 12.12.2006, and which contained either new year greetings or a blank letter showing the further dishonest intention of the defendants. Envelope of 4.12.2005 is said to contain the new year greetings and did not have the sender's name whereas the envelope dated 12.12.2006 is said to have contained a blank

page. Plaintiff is said to have received the two envelopes between 5.12.2006 and 27.12.2006. The envelope dated 12.12.2006 containing the blank page had defendant no.2 as the sender's name and plaintiff thereafter served a Legal Notice to the defendants dated 28.12.2006. Plaintiff had earlier sent a Legal Notice dated 15.12.2006. Defendants gave their reply dated 27.12.2006 and which as per the plaintiff falsely held the plaintiff responsible for breach of the contract on the ground that plaintiff had to pay but did not pay Rs.2 crores in October, 2006 and Rs.1 crore in November, 2006. The subject suit has thereafter been filed on 15.1.2007 i.e the subject suit for specific performance has been filed within around four months of the entering into of the Agreements to Sell dated 25.9.2006.

3. Defendants have contested the suit and claimed that the Agreements to Sell dated 25.9.2006 are in fact not agreements to sell but only advance payment receipts, and since there are no agreements to sell, the subject suit for specific performance is not maintainable. The defendants have further pleaded that the plaintiff had to pay a sum of Rs.2 crores in October, 2006 and Rs.1 crore in November, 2006 and which amount the plaintiff/Company failed to pay and hence was guilty of breach of contract. The original written statement was amended to include the plea of bar to the

suit on account of the agreements to sell being hit by Sections 33 and 42 of the Delhi Land Reforms Act, 1954 (hereinafter referred to as 'the Act').

4. The following issues were framed in the suit on 15.7.2011:-

“(i) Whether the plaint has not been signed, verified and the suit filed by the competent person on behalf of the plaintiff company? OPD

(ii) Whether the document/receipt dated 25th September, 2006 constitute a valid and binding agreement to sell between the parties? OPP

(iii) Whether the suit land is governed by the provisions of Delhi Land Reform Act, 1954 and the agreement between the parties is in violation of provisions of said Act? If so to what effect? OPD

(iv) Whether the plaintiff was ready, willing and able to pay the balance sale consideration to the defendants on all material dates? OPP

(v) Whether the defendants have committed the breach of the agreement dated 25th September, 2006 and the same stands validly cancelled by letters dated 4th December, 2006 & 12th December, 2006 from the defendants? OPD

(vi) Whether the plaintiff is entitled to the relief of specific performance against the defendants? OPP

(vii) Relief.”

5. The following documents have been proved and exhibited by the plaintiff:-

(i) Receipt-cum-Agreement to Sell dated 25.9.2006 executed by the defendant nos.1, 3 and 4 as Ex.P-1 (admitted document)

(ii) Receipt-cum-Agreement to Sell dated 25.9.2006 executed by the defendant no.2 as Ex.P-2 (admitted document)

(iii) Zonal Development Plan issued by the DDA with respect to the land situated in village Goela Khurd as Ex.PW5/1.

(iv) Letter dated 4.6.2010 issued by the appropriate authority notifying the Zonal Development Plan as Ex.PW5/2.

(v) Certified copies of sale deeds showing purchase of various lands by the plaintiff in around the vicinity of the suit land/village Goela Khurd as Ex.PW-1/16 to Ex.PW1/21 for showing payments made by the plaintiff for purchase of these lands of an amount of about Rs.5.20 crores.

(vi) Bank account of the plaintiff/Company in the Citibank showing an amount therein of Rs.5.50 crores as on 26.4.2007, Ex.PW2/1.

(vii) The empty (as alleged by plaintiff) envelope sent by the defendant no.2 to the plaintiff as Ex.PW-1/8/Ex.P-11.

(viii) Envelope in which as per the plaintiff new year greetings were received as Ex.PW1/9/Ex.P-10 with the new year greetings paper found therein as Ex.PW-1/10.

(ix) Legal Notice dated 15.12.2006 issued by the plaintiff to the defendants as Ex.P-8/PW-1/2 (admitted document)

(x) Another Legal Notice issued by the plaintiff dated 28.12.2006 as Ex.P-9/PW1/11 (admitted document).

(xi) Reply to the legal notice sent by the defendants dated 27.12.2006 as Ex.P-12 (admitted document).

6. Defendants have sought to prove and exhibit the letters contained in the envelopes dated 4.12.2006 and 12.12.2006 as Ex.DW1/2 and Ex.DW1/3 respectively. It may be noted that plaintiff has filed these vernacular letters but the case of the plaintiff is that actually only blank paper or greetings were received in the envelopes dated 4.12.2006 and 27.12.2006 and these vernacular letters were received as annexed to the reply dated 27.12.2006 sent by the defendants to the legal notice of the plaintiff.

Issue No.1

7. This issue is not pressed on behalf of the defendants.

Issue No.2

8. The first issue which is to be decided is issue no.2 as to whether the two documents dated 25.9.2006 executed by the defendant nos.1, 3 and 4 and defendant no.2 amount to agreements to sell in the eyes of law. In this regard, the case of the plaintiff is that these receipts amount to contract in law as they satisfy all the requirements of a contract under the Indian Contract Act, 1872 whereas the case of the defendants is that these receipts are only advance payment receipts and cannot be held to be agreements to sell. It is also the case of the defendants that a proper agreement to sell was to be subsequently entered into but it was not.

9. In order to question as to whether the two documents dated 25.9.2006 are or are not contracts of agreements to sell, let me reproduce the translated copies of these two documents Ex.P-1 and Ex.P-2 and these documents read as under:-

“Ex.P-1

We, Satyabir, S/o Ratan, Ombir S/o Pratap, Karamvir S/o Pratap, Rambir S/o Pratap, Village Gola Khurd, agricultural land given under :-

Khasra No. 138/98

20//18/2 (1-4)

23/1 (4-5)

30//3/1 (4-1)

8/2 (0-11)

9 (4-16)

12 (4-16)

13/1 (0-11)

27 (0-4) Total 20-8

We have entered into an agreement to sell in respect of our land with M/s Shri Neelpadmaya Consumer Products Pvt. Ltd Plot No. 05, LSC, Vardhman Royal Plaza, Gujrawalan Town, Delhi. The consideration has been fixed at Rs. 1,25,25,000/- per acre, against which an amount of Rs.20 lacs in case has been received and cheques of Rs.20 lacs have been received. Cheque no.

135124 Satyabir

135122 Ombir

135121 Karambir

135119 Rambir

The aforesaid agreement is for a period of three months Stamp signed Stamp signed Dated 25/9/06

Satyabir

Karambir

Rambir

Ex.P-2

Ombir S/o Pratap Village Gola Khurd, agricultural land given under:-

Khasra No. 138/98

20//18/2 (1-4)

23/1 (4-5)

30//3/1 (4-1)

8/2	(0-11)	
9	(4-16)	
12	(4-16)	
13/1	(0-11)	
27	(0-4)	Total 20-8

I have entered into an agreement to sell in respect of my land with M/s Shri Neelpadmaya Consumer Products Pvt. Ltd Plot No.05, LSC, Vardhman Royal Plaza, Gujrawalan Town, Delhi. The consideration has been fixed at Rs. 1,25,25,000/- per acre, against which an amount of Rs.5 lacs in cash has been received and cheque of Rs.5 lacs has been received. Cheque no 135122.

The aforesaid agreement is for a period of three months

Stamp signed

Ombir”

10. It is not in dispute that these two documents which the defendants call as receipts are in fact signed by all the four defendants, with one receipt being signed by the defendant nos.1, 3 and 4 and other receipt being signed by the defendant no.2. Though the defendants have tried to set up a case in the cross-examination that there are interpolations in these documents, however, no such case is laid out in the pleadings that these documents are forged documents on the ground that they contain interpolation. Therefore, no amount of evidence can be looked into which is not set up in the pleadings. Also, no such issue is framed that the documents dated 25.9.2006 are forged and fabricated documents on account of interpolations. Also these ‘interpolations’ are the cheque numbers and the
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date, however, there is no dispute as to the receipt of part consideration by the defendants or the dates of the agreements to sell and therefore nothing can turn on the 'interpolations', assuming they are.

11. As per the Indian Contract Act, for a contract being an agreement to sell to be complete, who is the buyer and seller must be known, the land in question which is to be transferred has to be known, the price has to be known and if any balance is payable what is that balance due. On such aspects existing then such a document will be a contract under the Indian Contract Act in view of Section 10 of the Indian Contract Act which states that all agreements are contracts if they are entered into with free consent of the parties who are competent to the contract, for a lawful consideration and which are not declared by law to be void. An agreement to sell to be certain and for there being *consensus ad idem* between the parties it was required clearly to be known as to who are the buyers and sellers, what is the price at which land has to be sold, the land in question and the time of payment of the price, and since all of these aspects are found in the two documents dated 25.9.2006 Ex.P-1 and Ex.P-2, hence I hold that these documents are complete contracts under the Indian Contract Act.

12(i) The argument urged on behalf of the learned counsel for the defendants that these documents cannot be said to be contracts because an agreement to sell was to be entered into in future is not an argument which carries any weight whatsoever because the two documents Ex.P-1 and Ex.P-2 do not in any manner show that for getting them enforced or for their finality, a proper agreement to sell has had to be entered into and whereafter only the contents of Ex.P-1 and Ex.P-2 would be final- vide ***Jambu Rao Satappa Kocheri Vs. Neminath Appayya Hanamannayar AIR 1968 SC 1358***. Once all the requisite ingredients of an agreement to sell are found in the documents dated 25.9.2006, these documents result in final and binding contracts. Therefore I reject the argument urged on behalf of the defendants that documents Ex.P-1 and Ex.P-2 dated 25.9.2006 cannot be said to be complete contracts in the eyes of law and the contract is not complete allegedly because a proper agreement to sell had to be entered into between the parties.

(ii) Another reason for this Court to reject the argument urged on behalf of the defendants and hold that Receipts-cum-Agreements to Sell dated 25.9.2006 were complete agreements in themselves and it was not envisaged that further detailed agreements to sell will be entered into,

because, admittedly subsequent to the entering into of Ex.P-1 and Ex.P-2 on 25.9.2006, the defendants on 5.10.2006 received a further amount of Rs.13 lacs from the plaintiff, and this document signed by the defendants is an admitted document and exhibited as Ex.P-3 and which document also like Ex.P-1 and Ex.P-2 does not talk of entering into an agreement to sell. Therefore, if the defendants have been receiving monies even after the original Receipts-cum-Agreements to Sell were entered into on 25.9.2006 without stating that an agreement to sell was to be entered into, it does not lie in the mouth of the defendants to urge that parties were not bound by the terms of the Receipts-cum-Agreements to Sell dated 25.9.2006 and that allegedly Ex.P-1 and Ex.P-2 were not complete contracts. The defendants thus would not have received an amount of Rs.13 lacs on 5.10.2006 and executed the receipt of the same date, Ex.P-3, if there was no concluded contract of the Agreements to Sell dated 25.9.2006 between the parties.

13(i) Learned counsel for the defendants has relied upon the judgment of the Supreme Court in the case of *Aloka bose Vs. Parmatma Devi & Ors. AIR 2009 SC 1527* to argue that since the Receipts-cum-Agreements to Sell dated 25.9.2006 have only been signed by the defendants, the ratio of this judgment in the case of *Aloka Bose (supra)*

applies and which as per the defendants shows that unilateral signatures do not mean that parties have entered into the contract.

(ii) The argument urged on behalf of the defendants relying upon *Aloka Bose (supra)* is fallacious because in fact the observations contained in paras 7 and 8 of the judgment go against the defendants themselves as these paras state that it is enough if one of the parties only signs the agreement or the contract between the parties. These paras 7 and 8 read as under:-

“7. We find that neither of the two decisions have addressed the real issue and cannot be said to be laying down the correct law. The observation in *Md. Mohar Ali (supra)* stating that an agreement of sale is an unilateral contract is not correct. An unilateral contract refers to a gratuitous promise where only party makes a promise without a return promise. Unilateral contract is explained thus by John D. Calamari & Joseph M. Perillo in The Law of Contracts (4th Edition Para 2-10(a) at pages 64-65):

“If A says to B, 'If you walk across the Brooklyn Bridge I will pay you \$ 100,' A has made a promise but has not asked B for a return promise. A has asked B to perform, not a commitment to perform. A has thus made an offer looking to a unilateral contract. B cannot accept this offer by promising to walk the bridge. B must accept, if at all, by performing the act. Because no return promise is requested, at no point is B bound to perform. If B does perform, a contract involving two parties is created, but the contract is classified as unilateral because only one party is ever under an obligation.”

All agreements of sale are bilateral contracts as promises are made by both - the vendor agreeing to sell and the purchaser agreeing to purchase. On the other hand, the observation in S.M. Gopal Chetty (supra) that unless agreement is signed both by the vendor and purchaser, it is not a valid contract is also not sound. An agreement of sale comes into existence when the vendor agrees to sell and the purchaser agrees to purchase, for an agreed

consideration on agreed terms. It can be oral. It can be by exchange of communications which may or may not be signed. It may be by a single document signed by both parties. It can also be by a document in two parts, each party signing one copy and then exchanging the signed copy as a consequence of which the purchaser has the copy signed by the vendor and a vendor has a copy signed by the purchaser. Or it can be by the vendor executing the document and delivering it to the purchaser who accepts it. Section 10 of the Act provides all agreements are contracts if they are made by the free consent by the parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void under the provisions of the Contract Act. The proviso to Section 10 of the Act makes it clear that the section will not apply to contracts which are required to be made in writing or in the presence of witnesses or any law relating to registration of documents. Our attention has not been drawn to any law applicable in Bihar at the relevant time, which requires an agreement of sale to be made in writing or in the presence of witnesses or to be registered. Therefore, even an oral agreement to sell is valid. If so, a written agreement signed by one of the parties, if it evidences such an oral agreement will also be valid....

8. The defendant next contended that the agreement of sale in this case (Ex.2) was clearly in a form which required signatures of both vendor and purchaser. It is pointed out that the agreement begins as: "Agreement for sale between Kanika Bose and Parmatma Devi" and not an "Agreement of sale executed by Kanika Bose in favour of Parmatma Devi". Our attention is also drawn to the testimonium clause (the provision at the end of the instrument stating when and by whom it was signed) of the agreement, which reads thus: "In witnesses whereof, the parties hereto have hereunto set and subscribed their respective hands and seals on these presents." It is therefore contended that the agreement specifically contemplated execution by both parties; and as it was not so executed, it was incomplete and unenforceable. We have carefully examined the agreement (Ex.2), a photocopy of which is produced. The testimonium portion in the agreement is in an archaic form which has lost its meaning. Parties no longer 'subscribe their respective hands and seals'. It is true that the format obviously contemplates signature by both parties. But it is clear that the intention of the parties was that it should be complete on signature by only the vendor. This is evident from the fact that the document is signed by the vendor and duly witnessed by four witnesses and was delivered to the purchaser. Apart from a separate endorsement made on the date of the agreement itself (7.9.1979) by the vendor acknowledging the receipt of Rs. 2001 as advance, it also contains a second endorsement (which is also duly witnessed) made on 10.10.1979 by the vendor, acknowledging the receipt of a further sum of Rs. 2000 and confirming that the total earnest money received was Rs. 4001. This shows that the purchaser

accepted and acted in terms of the agreement which was signed, witnessed and delivered to her as a complete instrument and that she then obtained an endorsement thereon by the vendor, in regard to second payment. If the agreement was not complete, the vendor would not have received a further amount and endorsed an acknowledgement thereon on 10.10.1979. Apart from the above, the evidence of the witnesses also shows that there was a concluded contract. Therefore, even though the draftsman who prepared the agreement might have used a format intended for execution by both vendor and purchaser, the manner in which the parties had proceeded, clearly demonstrated that it was intended to be executed only by the vendor alone. Thus we hold that the agreement of sale (Ext. 2) signed only by the vendor was valid and enforceable by the purchaser.” (underlining added)

14. Issue no. 2 is hence decided in favour of the plaintiff and against the defendants holding that the documents/Receipts-cum-Agreements to Sell dated 25.9.2006 have all the requisite ingredients for the same to be the contracts in the eyes of law.

Issue No.3

15. The next issue which is to be addressed is issue no.3 as to whether the suit is barred by Sections 33 and 42 of the Act. These Sections 33 and 42 of the Act provide that in case a bhumidar of the land under the Act sells the land whereafter he has with him less than eight standard acres then such a transfer is invalid and can be set aside either on the suit of a gaon sabha or by the land owner himself under Section 42 of the Act.

16. The argument urged on behalf of the defendants relying upon Section 33 of the Act is wholly misconceived for the reason that Section 33 talks of a complete sale transaction. The bar with respect to Section 33 of the Act will apply if there is actually a final transfer and a sale of the land and not if there is only an agreement to sell of the land. This becomes clear from the language of Section 33 of the Act and which Section 33 is reproduced as under:-

“Section 33. Restrictions on the transfers by a Bhumidhar.- (1) No Bhumidhar shall have the right to transfer by sale or gift or otherwise any land to any person, other than a religious or charitable institution or any person in charge of any such Bhoodan movement, as the Chief Commissioner may, by notification in the Official Gazette, specify, where as a result of the transfer, the transferor shall be left with less than eight standard acres in the Union Territory of Delhi:

Provided that the Chief Commissioner may exempt from the operation of this section, the transfer of any land made before the 1st day of December, 1958, if the land covered by such transfer does not exceed one acre in area and is used or intended to be used for purposes other than those mentioned in clause (13) of section 3.

(2) Nothing contained in sub section (1) shall preclude the transfer of land by a Bhumidhar who holds less than eight standard acres of land, if such transfer is of the entire land held by him;

Provided that such Bhumidhar may transfer a part of such land to any religious or charitable institution or other person referred to in sub section (1).

Therefore, in my opinion Sections 33 and 42 of the Act cannot be called in aid by the defendants to argue that the agreements to sell are

void documents as they are hit by Section 33, inasmuch as Section 33 talks of a sale deed or complete document of transfer and not an agreement to sell.

17. The issue can also be looked into from another angle and which is in view of the judgment of the Supreme Court in the case of ***Jambu Rao Satappa Kocheri (supra)***. This judgment of the Supreme Court was under the Bombay Tenancy and Agricultural Lands Act, 1948 which required as per its provision that a person cannot hold land in excess of the ceiling limit. In such a situation the issue came up for discussion as to whether an agreement to sell entered into which would result in a prospective purchaser exceeding the ceiling limit would be void as being barred by the provisions of the Bombay Tenancy and Agricultural Lands Act. The Supreme Court negated the contention by making the following observations in the judgment:-

“8. An agreement to sell land does not under the Transfer of Property Act create any interest in the land in the purchaser. By agreeing to purchase land, a person cannot be said in law to hold that land. It is only when land is conveyed to the purchaser that he holds that land. Undoubtedly the respondent was holding some area of land at the date of the agreement and at the date of the suit, but on that account it cannot be inferred that by agreeing to purchase land under the agreement in question his object was to hold in excess of the ceiling. It was open to the respondent to transfer or dispose of the land held by him to an other agriculturist. The Act contains no general restrictions upon such transfers, and unless at the date of the acquisition the transferee holds land in excess of the ceiling, the acquisition to the extent of the excess over the ceiling will not be invalid. There is nothing in the agreement,

not can it be implied from the circumstances, that it was the object of the parties that the provisions of the Act relating to the ceiling should be transgressed. The mere possibility that the respondent may not have disposed of his original holding at the date of the acquisition of title pursuant to the agreement entered into between him and the appellant will not, in our judgment, render the object of the agreement such, that, if permitted, it would defeat the provisions of any law. The Court, it is true, will not enforce a contract which is expressly or impliedly prohibited by statute, whatever may be the intention of the parties, but there is nothing to indicate that the Legislature has prohibited a contract to transfer land between one agriculturist and another. The inability of the transferee to hold land in excess of the ceiling prescribed by the statute has not effect upon the contract, or the operation of the transfer. The statutory forfeiture incurred in the event of the transferee coming to hold land in excess of the ceiling does not invalidate the transfer between the parties.

9. We hold that a contract for purchase of land entered into with the knowledge that the purchaser may hold land in excess of the ceiling is not void, and the seller cannot resist enforcement thereof on the ground that, if permitted, it will result in transgression of the law.”
(underlining added)

18. The aforesaid ratio of the judgment of the Supreme Court in the case of ***Jambu Rao Satappa Kocheri (supra)*** squarely applies to the facts of the present case inasmuch as taking that Section 33 of the Act applies even to an agreement to sell, though it does not because it applies only to a sale deed, yet it was perfectly possible for the defendants to have entered into a further transaction either with the plaintiff or with any other person to transfer their balance land before the sale deed of the subject land was executed and once the entire balance land owned by the defendants no longer would be in the ownership of the defendants, then, admittedly the bar under Section 33 would not have applied. The period between the date of
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Agreements to Sell dated 25.9.2006 and the subsequent sale deed which was to be executed by December, 2006 was a period in which if there was any deficiency because of the application of Section 33 of the Act, such a deficiency could have been got removed. Of course, at the cost of repetition, it cannot be said that there is a bar to enter into an agreement to sell under Section 33 of the Act and what is a bar is only for a sale deed or a conveyance deed i.e a final act of transfer of title by a deed.

19. There is yet another angle by which the issue can be looked upon and decided. This is in terms of Section 3(13) of the Act which defines the land which is the subject matter of the Act. Besides the definition of 'land' contained in Section 3(13) of the Act, I would also have to refer to the definition of 'Delhi town' and 'New Delhi town' which are contained in sub-Sections (5) and (15) of same Section 3. Reference will also have to be drawn to Section 1 of the Act which provides for the scope of operation of the Act. These Sections 1, 3(5), 3(13) and 3(15) of the Act read as under:-

“Section 1. Short title, extent and commencement. - (1) This Act may be called the Delhi Land Reforms Act, 1954.

(2) It extends to the whole of the Union territory of Delhi, but shall not apply to-

(a). [the areas which are or may before the first day of November, 1956 be] included in a Municipality or a Notified Area under the provisions of the

Punjab Municipal Act, 1911, or a Cantonment under the provisions of the Cantonments Act, 1924.

(b) [areas] included in any estate owned by the Central Government or any local authority, and

(c) areas held and occupied for public purpose or a work of public utility and declared as such by the Chief Commissioner or acquired under the Land Acquisition Act. 1894, or any other enactment other than this Act, relating to acquisition of land for a public purpose.

(3) It shall come into force at once.

(4) The declaration of the Chief Commissioner under clause (c) of sub-section (2) shall be conclusive evidence that the land is held and occupied for a public purpose or a work of public utility.

Section 3(5) [‘Delhi town’ means the areas which immediately before the establishment of the Municipal Corporation of Delhi were included in the limits of Delhi Municipality, Civil Station Notified Areas, West Delhi Municipality and the Fort Notified Area);]

Section 3(13) “land” except in Sections 23 and 24, means land held or occupied for purposes connected with agriculture, horticulture or animal husbandary including pisciculture and poultry farming and includes-

(a) buildings appurtenant thereto,

(b) village abadis,

(c) grove-lands,

(d) lands for village pasture or land covered by water and used for growing singharas and other produce or land in the bed of a river and used for casual or occasional cultivation, but does not include-

land occupied by buildings in belts of areas adjacent to Delhi town and New Delhi town, which the Chief Commissioner may by a notification in the Official Gazette declare as an acquisition thereto;

Section 3(15) “New Delhi town” means the area included in the limits of the New Delhi Municipality and Delhi Cantonment.”

A reading of the later part of sub-Section (13) of Section 3 of the Act shows that the land which is the subject matter of the Act would no

longer be the subject matter of the Act if there is issued a notification in the Official Gazette that the land which was the subject matter of the Act is an acquisition to the Delhi town and New Delhi town. Delhi town and New Delhi town as the definitions thereof show that the areas which are included in a municipality or a cantonment area or New Delhi Municipal Council area etc are excluded from the scope of the Act. Putting it in another words, areas which would fall under the municipalities i.e urbanized areas or areas to be developed as an urban area were excluded from the purview of the Act. This also becomes clear from the reading of Section 1 of the Act which excluded the operation of the Act when it came into force to areas which fell within any municipality or notified area under the Punjab Municipal Act, 1911 or the Cantonments Act, 1924 i.e those areas which were not rural and fell in urbanized area. A conjoint reading of provisions of Sections 1, 3(5), 3(13) and 3(15) of the Act shows that the object of law was that on a notification being issued in the Official Gazette of an area which was falling under the Act thereafter as falling within the Delhi town and New Delhi town on such an action of such lands falling in Delhi town and New Delhi town these lands cease to be the subject matter of 'land' which was the subject matter of the Act on account of the said land being land within the meaning of the definition of the land in Section 3(13) of the Act. It is also

required to be noted that the expression municipality with its cognate and agnate expressions has to be understood as being taken as urban areas because a municipality is for an urban area and it has to be taken as a genetic term for urban area in terms of the object of the aforesaid provisions of the Act. Thus if by a notification in an Official Gazette an area ceases to be a rural land as it is urbanized for urban development, then such lands are no longer rural lands falling under Section 3(13) of the Act.

20(i) The issue is that whether there exists a notification issued in the Official Gazette declaring the subject land as falling within Delhi town and New Delhi town? On behalf of the defendants, it is argued that the land which is the subject matter of the Act can be urbanized only if notification is issued under Section 507 of the Delhi Municipal Corporation Act, 1957 and which admittedly has not been issued so far as the said village and suit lands are concerned and hence it is argued that once the land is not urbanized because a notification is not issued under Section 507 of the Delhi Municipal Corporation Act, the land in question continues to be the subject matter of the land falling under Section 3(13) of the Act and hence the land governed by the Act and hence the Agreements to Sell dated 25.9.2006 are hit by the provision of Section 33 of the Act.

(ii) In response to the argument urged on behalf of the defendants, counsel for the plaintiff has argued that it is not necessary that notification which is talked of in the later part of Section 3(13) of the Act has necessarily to be a notification only under Section 507 of the Delhi Municipal Corporation Act, 1951 inasmuch as even a notification issued by the Central Government under Section 11 of the Delhi Development Act, 1957 declaring an area to be the subject matter of a master plan or a zonal plan of the Delhi Development Authority, has the effect that such a land with respect to which a master plan or a zonal plan or an area plan is prepared (and which will entitle thereafter the DDA to treat such area as development area for being developed as per the master or zonal plan etc) shows that by such notification lands no longer will remain the subject matter of the Act inasmuch as such lands are part of urbanization. Reliance is also placed in this regard upon paras 19 and 24 of the judgment of a learned Single Judge of this Court in the case of *Gur Pratap Singh Vs. Union of India 2004 (III) DLT 25*, and by which paras, the learned Single Judge has held that once a particular area is a subject matter of the notification under the Delhi Development Act by notifying the master plan or zonal plan then such land becomes urbanized and hence is out of the scope of application of the Act and Section 3(13) of the Act. These paras 19 and 24 read as under:-

“19. This matter can be looked into from another aspect. The notification amending the Master Plan clearly provides that the land in question can be used for the purpose of a motel. Once this option is available and is exercised by owner of the land, the land is no more being used for agricultural purposes. Thus, once the land is elected to be used by the owner for a motel, permission for which has been granted under the amendment to the Master Plan, it no more remains agricultural land under the meaning of Section 3(13) of the Land Reforms Act. For this reason also, there would be no occasion for obtaining any permission. The Land Reforms Act is an enactment for protecting the agricultural use of the land. Once this land itself ceased to be agricultural, there is, really speaking, no question of application of the Land Reforms Act. Needless to say, this is on account of the fact that there is permissible non-agricultural use of a motel in pursuance to the notification of 1995.

XXXXX

XXXXX

24. Section 53(3) of the DDA Act makes it clear that once a permission for development under this Act has been obtained, the same shall not be deemed to be unlawful by reason of the fact that such permission, approval or sanction is required under any other law for which permission has not been obtained. Thus, in view of the mandate by the DDA and accepted by the MCD, there would be overriding effect of this mandate, even if the Land Reforms Act was to apply.” (underlining added)

21. I agree with the argument which is urged on behalf of the plaintiff that a notification for urbanization need not only be through a notification under Section 507 of the Delhi Municipal Corporation Act as the later part of Section 3(13) of the Act does not in any way require that there is only one manner of notification viz only under Section 507 of the Delhi Municipal Corporation Act. This later part of Section 3(13) of the Act does not talk of a notification only under Section 507 of the Delhi Municipal Corporation Act. The requirement of this later part of Section 3(13) of the

Act is only that a notification is issued in the Official Gazette to make the land as part of the Delhi town and New Delhi town. Once a notification is issued applying a zonal plan issued pursuant to the master plan showing that subject lands are covered under the zonal plan issued by the DDA, in such a situation, it has to be held that the lands cease to be the lands covered under the Act because of issuance of a notification in the Official Gazette results in the lands becoming part of the Delhi town. Additional reasoning on this aspect can be understood from the object and the language found in Section 1 and Sections 3(5) and 3(15) of the Act and which Sections show that once an area falls within a town area and an area ceases to be an agricultural land because it has to be developed as part of the development of the Delhi town or New Delhi town, then such an area no longer remains an agricultural area for being covered under the expression land as defined in Section 3(13) of the Act. With humility, I am in complete agreement with the observations made by the learned Single Judge of this Court in the case of ***Guru Pratap Singh (supra)*** and which arrives at the same conclusion that once the land ceases to be agricultural, the land ceases to be the subject matter of the Act.

22. I may note that the plaintiff has proved the zonal plan Ex.PW5/1 and the notification Letter dated 4.6.2010 as Ex.PW5/2 and these

documents clearly show that the entire village Goela Khurd and wherein the suit land is located is the subject matter of the zonal plan issued under the Delhi Development Authority. As per the aforesaid discussion, as also the ratio of the learned Single Judge in *Gur Pratap Singh (supra)*, once the land is the subject matter of a zonal plan issued under Section 11 of the Delhi Development Act, the land is beyond the purview of the Act. It is also therefore immaterial as to what is the deposition made in this regard by the witness PW-5, inasmuch as, the arguments urged on behalf of the defendant that PW-5 has stated in cross-examination dated 1.2.2013 that it is not known as to whether khasra numbers of village Goela Khurd fall or do not fall in the “dotted or the recreational area” inasmuch as Ex.PW5/1 and Ex.PW5/2 show that the entire area of village Goela Khurd is a part of the zonal plan. As long as the village Goela Khurd is the subject matter of the zonal plan Ex.P5/1 that it is sufficient for the entire area of village Goela Khurd to be urbanized land, hence the subject land is situated and become an area which is notified for urbanization resulting in taking the same out of rural areas which are the subject matter of the Act. Also, in my opinion, once a particular area falls within the zonal development plan issued by the DDA under Section 11 of the Delhi Development Act, thereafter calling the same by any description, whether rural or otherwise cannot take away the

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effect that the said land is very much part of notification issued for development of the area which is the subject matter of the zonal plan and hence the subject matter of issuance of a notification falling in the later part of Section 3(13) of the Act taking such land as outside the operation of the Act.

23. I therefore reject the argument urged on behalf of the defendants that Agreements to Sell dated 25.9.2006 are barred by Sections 33 and 42 of the Act. Issue no.3 is accordingly decided in favour of the plaintiff and against the defendants.

Issue no.4

24. The next issue to be decided is issue no.4 as to whether plaintiff has been ready and willing to perform its obligation under the Agreements to Sell dated 25.9.2006. No doubt it is rightly contended on behalf of the defendants that plaintiff is bound to prove readiness and willingness as held by the Supreme Court in the judgement in the case of ***J.P. Builders and Another Vs. A. Ramadas Rao and Another (2011) 1 SCC 429***, however, whether readiness and willingness is proved is not a matter of law but a matter of fact in each case. Also, it is undisputed that readiness refers to the financial capacity and willingness refers to the intention to go ahead with the

transaction. Therefore, the facts of the present case have to be examined as regards the readiness and willingness of the plaintiff and which is the subject matter of issue no.4 which has been framed on behalf of the plaintiff to prove the readiness and the capacity to pay the balance amounts due under the subject Agreements to Sell dated 25.9.2006. Plaintiff has filed and proved exhibits Ex.PW-1/16 to Ex.PW1/21, which are the sale deeds executed in favour of the plaintiff with respect to the lands in the near vicinity of the subject land, and these sale deeds show payments of total consideration of Rs.5.20 crores by the plaintiff to different sellers of the immovable property/lands which are the subject matter of Ex.PW-1/16 to Ex.PW1/21. Notably most of the consideration of Rs. 5.20 crores to the extent of approximately Rs. 4.6 crores is paid for the sale deeds of January, 2007, with the balance amount for the difference of total to Rs.5.20 crores being of the sale deeds of September to December, 2006. Therefore, the plaintiff has proved that it had in fact monies with it of Rs. 5.20 crores for the period from September, 2006 to January, 2007 and which is the relevant period to determine whether plaintiff had or did not have funds at the relevant time with it to pay the balance sale consideration of Rs.4,79,91,250/-. It is also further required to be noted that plaintiff has filed and proved on record its statement of account in Citibank as Ex.PW2/1

and which shows that as in April, 2007 plaintiff had an amount of Rs.5.50 crores in its bank account. Another aspect which is relevant to note that as per the ratio of the judgment of the Supreme Court in the case of *Nathulal Vs. Phoolchand (1970) 2 SCR 854*, it is not necessary that plaintiff must show availability of exact liquid funds to complete the sale transactions and it is enough to show that plaintiff/buyer had the necessary wherewithal to pay the balance sale consideration. In this judgment of *Nathulal's* case (*supra*), the Supreme Court has observed that plaintiff does not have to show a final scheme as to the availability of the entire liquid funds for completing the sale transactions ie when a readiness is talked because of Section 16(c) of the Specific Relief Act, 1963, capacity to pay has to be shown and not a concluded scheme of entire amounts in liquid position for payment of the balance sale consideration. On the basis of the sale deeds Ex.PW-1/16 to Ex.PW1/21 and the statement of account Ex.PW2/1, I hold that it is clear that the plaintiff did have the necessary financial capacity to make payment of the balance sale consideration of Rs.4,79,91,250/-.

25(i) An additional aspect which is required to be noted is that the issue of readiness actually is an issue to be looked at on the date on which the plaintiff/buyer is called upon in law to perform its part of the obligation

of the payment of the balance sale consideration, ie readiness has to be shown on the date on which the sale transaction has to go through and not before that vide *Nathulal's* case (*supra*). In the present case, it has come on record as per the admission of the defendants in the written statement itself, besides in the cross-examination of the witness of the defendants on 24.11.2015, that, the defendants had to obtain the necessary NOC for execution of the sale deed. In terms of Section 55(2) of the Transfer of Property Act, 1882, it is the seller who has to make himself capable of completing the sale transaction by executing the sale deed because this Section 55(2) of the Transfer of Property Act requires that seller must have the power to execute the sale deed and which power comes to the defendants/sellers having in this case obtained the necessary NOC from the concerned authority under the Delhi Land (Restrictions on Transfer) Act, 1972. Though it is not as if that in a suit for specific performance plaintiff does not have to show his financial capacity only till the stage comes of execution of the sale deed, yet, what is being emphasized is that it is actually the wherewithal and the capacity to pay which has to be shown and not the final concluded scheme for existence and payment of balance sale consideration in liquid moneys. In my opinion, on account of the sale deeds

Ex.PW-1/16 to Ex.PW1/21 and the statement of account Ex.PW2/1, plaintiff
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can be said to have the necessary financial capacity to conclude the transactions not only between September, 2006 to January, 2007, but even thereafter, because existence of the immovable properties in the name of the plaintiff in terms of the sale deeds show that plaintiff does have the necessary financial capacity to complete the sale transactions at a point of time at which the plaintiff will be called upon to pay the balance sale consideration on the defendants making themselves able and capable of executing the sale deeds after obtaining the NOC from the requisite authority.

(ii) Learned counsel for the defendants did seek to argue that plaintiff has filed its income tax returns exhibited as Ex.PW1/D2 and Ex.PW1/D3 for the years 2006-2007 and 2007-2008 respectively which do not show any liquid monies available (and properties in the name of the plaintiff) to pay the balance sale consideration, however, this argument of the defendant is misconceived because the sale deeds Ex.PW-1/16 to Ex.PW1/21 proved on record show in fact payments of monies by the plaintiff to the sellers of the properties which are the subject matter of the sale deeds Ex.PW-1/16 to Ex.PW1/21. An argument is urged on behalf of the defendants that the sale deeds do not show payments of actual

consideration, but this argument is misconceived because the sale deeds refer to consideration having been paid in the past and as per the definition of consideration in Section 2(d) of the Indian Contract Act, past consideration is a good consideration for entering into a contract. It is also to be noted that it is not as if that the sellers under the sale deeds are questioning the receipt of consideration by them, and once the sellers under the sale deeds Ex.PW-1/16 to Ex.PW1/21 do not question the receipt of consideration mentioned in these sale deeds, surely the defendants who are total third parties cannot have *locus standi* to question the consideration which flowed from the plaintiff to the sellers of the properties under the sale deeds Ex.PW-1/16 to Ex.PW1/21.

(iii) Also, it is noted that in the balance sheet attached to the income tax returns Ex.PW1/D2 as on 31.3.2007, the fixed assets of the company are shown at Rs.5,62,36,274/- and which obviously is an indication of the lands which were purchased by the plaintiff company under the sale deeds Ex.PW-1/16 to Ex.PW1/21 and thus it is not correct for the defendants to argue that plaintiff did not have any properties.

(iv) At this stage, it is observed that whether the plaintiff is guilty of breach of contract or not is not being discussed under this issue but this issue will be discussed while discussing the next issue no.5.

26. I therefore hold issue no.4 in favour of the plaintiff and against the defendants that plaintiff was always ready and willing to perform its obligation under the Agreements to Sell dated 25.9.2006.

Issue No.5

27. Next issue which is called for decision is issue no.5 as to whether it is the plaintiff or the defendants who are guilty of breaches of contracts being the Agreements to Sell dated 25.9.2006. While on this issue it will also have to be examined as to whether the defendants have validly cancelled the Agreements to Sell dated 25.9.2006 by the letters dated 4.12.2006 Ex.DW1/2 and 12.12.2006 Ex.DW1/3. Before discussing the issue as to whether in fact plaintiff did receive these Letters dated 4.12.2006 Ex.DW1/2 and 12.12.2006 Ex.DW1/3 and wherein the defendants alleged breaches of plaintiff and therefore cancellation of the agreements, first it has to be seen as to what are the obligations of the plaintiff under the Agreements to Sell dated 25.9.2006. This is because only if the obligation is an obligation of the plaintiff under the agreements to sell, and as contended

by the defendants in the letters Ex.DW1/2 and Ex.DW1/3, would there arise issue of the plaintiff being guilty of breaches on account of non-performance thereof. The letters Ex.DW1/2 and Ex.DW1/3 of the defendants state that plaintiff had to pay a sum of Rs.2 crores in October, 2006 and Rs.1 crore in November, 2006, and if this is an obligation of the plaintiff, the issue is whether the plaintiff has breached the same by not paying the amount of Rs.2 crores in October, 2006 and Rs.1 crore in November, 2006 as stated in the letters Ex.DW 1/2 and Ex.DW/3.

28. A reference to the Receipts-cum-Agreements to Sell dated 25.9.2006 Ex.P-1 and Ex.P-2 shows that nowhere in the same it is stated that an amount of Rs.2 crores was to be paid by the plaintiff to the defendants in October, 2006 and Rs.1 crore had to be paid in November, 2006. All that is stated in these agreements to sell is that the balance payment has to be made within three months of the execution of the Receipts-cum-Agreements to Sell dated 25.9.2006 and which date therefore will be 25.12.2006. Clearly, therefore, plaintiff could have paid the entire amount till 25.12.2006 and it is not open to the defendants to argue that out of the balance amount payable the plaintiff necessarily had to pay Rs.2 crores in October, 2006 and Rs.1 crore in November, 2006. Accordingly, the contention of the defendants of

plaintiff breaching the contracts by not making payment under the Agreements to Sell dated 25.9.2006 of Rs. 2 crores in October, 2006 and Rs.1 crore in November, 2006 is factually incorrect.

29(i). In fact this plea of the defendants to be paid a sum of Rs.2 crores in October, 2006 and Rs.1 crore in November, 2006 is barred by the provisions of Sections 91 and 92 of the Indian Evidence Act, 1872. Once a contract is entered into between the parties and the same contains a specific term of making of payment by 25.12.2006 and not by various specific installments till 25.12.2006, defendants because of Sections 91 and 92 of the Indian Evidence Act cannot contend anything to the contrary or anything which contradicts the terms of the written Agreements to Sell dated 25.9.2006 which only gives a last date of balance payment as 25.12.2006. All that the Agreements to Sell dated 25.9.2006 contained was that the last date for payment as 25.12.2006 and not that plaintiff had to pay two installments of Rs.2 crores in October, 2006 and Rs.1 crore in November, 2006 out of the balance sale consideration of Rs Rs.4,79,91,250/-. For this reason also the contention of the defendants that plaintiff has committed breaches of contracts by not making payment of Rs.2 crores in October,

2006 and Rs.1 crore in November, 2006 is a misconceived argument/stand and is accordingly rejected.

(ii) I may note that with a lot of passion both the parties raised respective arguments as to whether or not the defendants did or did not send the letters Ex.DW1/2 and Ex.DW1/3 dated 4.12.2006 and 12.12.2006 respectively to the plaintiff, inasmuch plaintiff has contended that in the envelopes received from the defendants which have been filed and proved as Ex.P-10/Ex.PW1/9 and Ex.P-11/Ex.PW-1/8 only the greetings Ex.PW-1/10 or a blank page was received, whereas the stand of the defendants was that under the envelopes Ex. P-10/Ex.PW1/9 and Ex.P-11/Ex.PW-1/8 letters Ex.DW1/2 and Ex.DW1/3 were sent, but I need not unnecessarily go into all these aspects because assuming for the sake of argument that the envelopes Ex.P-10/Ex.PW1/9 and Ex.P-11/Ex.PW-1/8 did contain the letters Ex.DW1/2 and Ex.DW1/3, however, the defendants cannot contend any breach of contract by the plaintiff simply by these letters Ex.DW1/2 and Ex.DW1/3 on the basis of obligation of installment payments upon the plaintiff but which obligation the plaintiff never had in terms of the Agreements to Sell dated 25.9.2006 ie nowhere in the Agreements to Sell dated 25.9.2006 there existed an obligation upon the plaintiff to pay one

installment of Rs.2 crores out of the balance payment in October, 2006 and further installment of Rs.1 crore out of the balance payment in November, 2006, and as already discussed above, the Agreements to Sell only had a last date of 25.12.2006 to make payment of the entire balance consideration of this Rs.4,79,91,250/-.

30. On the aspect of whether it is the plaintiff or the defendants who are guilty of breaches, admittedly since the defendants had to obtain NOC under the Delhi Land (Restriction on Transfer) Act, 1972, but the defendants failed to do so and defendants were not in a position to execute the sale deeds in the absence of such NOC, it is thus held that the defendants were guilty of breaches of contracts being the Agreements to Sell dated 25.9.2006 and not the plaintiff. Issue no.5 is therefore, decided in favour of the plaintiff and against the defendants.

Issue No.6

31. The final aspect and the issue to be considered is issue no.6 as to whether the plaintiff is entitled to the relief of specific performance including on the aspect that the plaintiff is entitled to the discretionary relief of specific performance and that instead of getting the relief of specific performance even assuming defendants are guilty of breaches of contracts,

plaintiff should get damages and that the defendants should not be asked to specifically perform by executing the sale deeds.

32. No doubt, it is the law that grant of specific performance is a discretionary relief, and which is made clear by Section 20 of the Specific Relief Act and especially sub-Section 3 thereof which requires substantial acts to be done by the plaintiff. Substantial acts have been interpreted in judgments that payment of only nominal consideration of 10 to 15% is a good ground to deny specific performance and for the proposed buyer/plaintiff only to get damages, however, whether or not specific performance should be granted or damages should be granted, necessarily has to depend upon the facts of each case. No doubt, in a case where only about 10-15% of the consideration is paid in advance and around 85% of the consideration payable is still a balance consideration, depending on the facts of a particular case, court may deny specific performance, however, there cannot be a thumb rule because there may be cases of gross breaches or lack of honesty on behalf of the proposed sellers/defendants and in such a case where plaintiff is not in any manner guilty of breaches of contracts and has approached the court within four months or so of entering into the agreements to sell, in such cases to deny specific performance will be to

legally give a stamp of approval to the lack of honest actions of the proposed sellers/defendants. It is seen that in the facts of the present case, Agreements to Sell are of 25.9.2006, thereafter within about 10 days i.e 5.10.2006 vide receipt Ex.P-3 a further amount of Rs.13 lacs was paid by the plaintiff to the defendants, the defendants did not take NOC from the concerned authorities for execution of the sale deeds and which they were to, defendants have taken up a false defence of plaintiff being liable to pay Rs.2 crores in October, 2006, and the Rs.1 crore in November, 2006, and the plaintiff has filed the present suit on 15.1.2007 ie in around three months and 20 days of entering into of the Agreements to Sell dated 25.9.2006, in such facts therefore the plaintiff in my opinion, is entitled to the discretionary relief of specific performance especially in view of the observations of the Supreme Court in the judgment in the case of *Nirmala Anand Vs. Advent Corporation (P) Ltd. and Others (2002) 8 SCC 146*. In this judgment in the case of *Nirmala Anand (supra)*, the Supreme Court by a Division Bench of three judges has held that in order to balance equities courts can increase the price while granting specific performance of an agreement to sell. It may be noted that this Division Bench judgment of three judges laying down the ratio that courts have the power to alter the price was on a reference made to the larger Division Bench of three judges on account of different views of

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two learned Single Judges and one of whom was of the opinion that courts can vary price whereas another Hon'ble Judge was of the opinion that courts cannot vary the price fixed under the agreement to sell. The relevant paras of the judgment in the case of *Nirmala Anand (supra)* are paras 5, 6 and 8 and these paras read as under:-

“5. The appellant is prepared and willing to take possession of the incomplete flat without claiming any reduction in the purchase price and would not hold respondent Nos. 1 and 2 responsible for anything incomplete in the building. It has been concurrently held that she did not commit breach of the agreement to sell. She has always been ready and willing to perform her part of the agreement. The appellant is ready and willing to pay to respondents 1 and 2 interest on sum of Rs. 25,000/-. The breach was committed by respondents 1 and 2 as noticed hereinbefore. It is evident that the appellant is ready to take incomplete flat and pay further sum as noticed, most likely on account of phenomenal increase in the market price of the flat during the pendency of this litigation for over three decades. We see no reason why the appellant cannot be allowed to have, for her alone, the entire benefit of manifold mega increase of the value of real estate property in the locality. In our view, it would not be unreasonable and inequitable to make the appellant the sold beneficiary of the escalation of real estate price and the enhanced value of the flat in question. There is no reason why the appellant, who is not a defaulting party, should not be allowed to reap to herself the fruits of increase in value.

6. It is true that grant of decree of specific performance lies in the discretion of the court and it is also well settled that it is not always necessary to grant specific performance simply for the reason that it is legal to do so. It is further well settled that the court in its discretion can impose any reasonable condition including payment of an additional amount by one party to the other while granting or refusing decree or specific performance. Whether the purchaser shall be directed to pay an additional amount to the seller or converse would depend upon the facts and circumstances of a case. Ordinarily, the plaintiff is not to be denied the relief of specific performance only on account of the phenomenal increase of price during the pendency of litigation. That may be, in a given case, one of the considerations besides many others to be taken into consideration for refusing the decree of

specific performance. As a general rule, it cannot be held that ordinarily the plaintiff cannot be allowed to have, for her along, the entire benefit of phenomenal increase of the value of the property during the pendency of the litigation. While balancing the equities, one of the consideration to be kept in view is as to who is the defaulting party. It is also to be borne in mind whether a party is trying to take undue advantage over the other as also the hardship that may be caused to the defendant by directing the specific performance. There may be other circumstances on which parties may not have any control. The totality of the circumstances is required to be seen.

XXXXX

8. Having regard to the totality of circumstances, we would direct the appellant to pay to respondents 1 and 2 a sum of Rs. 6,25,000/- instead of Rs. 25,000/-. the amount of Rs. 40,00,000/-, wherever it appears in the opinion of Justice Doraiswamy Raju, would be read as Rs. 6,25,000/-. All other conditions will remain.” (underlining added)

33. It is further required to be noted that in the aforesaid paras of the Supreme Court in the judgment in the case of *Nirmala Anand (supra)*, the Supreme Court has stated that ordinarily plaintiff is not to be denied the relief of specific performance only on account of phenomenal increase of price during the pendency of litigation, and which increase of price is only one of the aspects to be taken into for determining whether the discretionary relief of specific performance should or should not be granted. The Supreme Court therefore held that equities can be balanced by increasing the price payable by the buyer to the seller on account of lapse of time. Applying the ratio of the judgment in the case of *Nirmala Anand (supra)*, this Court in order to balance equity is of the opinion that defendants instead of getting a

price of Rs.1,25,25,000/- per acre should instead get a price of Rs.3,25,00,000/- per acre. This in my opinion will more than balance the equities, although I have already discussed in detailed above that it is the defendants who are less than honest in their actions and that the defendants only were guilty of breach of contract because finding rise in the value of the property they wanted to recant from their obligations under the Agreements to Sell dated 25.9.2006.

Relief:-

34. In view of the decision of all the issues in favour of the plaintiff and against the defendants, it is ordered that the plaintiffs are granted specific performance of the Agreements to Sell dated 25.9.2006 with respect to a total land of 20 bighas and 8 biswas situated in the revenue estate of village Goela Khurd, New Delhi. The Khata number of the land is 138/98 and the relevant khasra numbers are 20//18/2 (1-4), 23/1 (4-5), 30//3/1 (4-1), 8/2 (0-11), 9 (4-16), 12 (4-16), 13/1 (0-11) and 27(0-4). The defendants are directed to execute the sale deed(s) in favour of the plaintiff with respect to these suit lands. Before the defendants execute the sale deed(s) in favour of the plaintiff, defendants are directed to obtain the necessary NOC for transfer of the suit land under the Delhi Land (Restriction on Transfer) Act,

1972 and inform the plaintiff that this NOC has been obtained. NOC be obtained by the defendants within three months from today. On the defendants giving to the plaintiffs and its counsel the copy of NOC by a communication in writing, the plaintiff will within two months thereafter deposit in Court the balance sale consideration i.e total valuation of land calculated at Rs.3,25,00,000/- per acre, and reducing therefrom a figure of Rs.53 lacs already paid by the plaintiff to the defendants under the Agreements to Sell dated 25.9.2006. On the plaintiff depositing this balance amount, defendants will thereafter execute the necessary sale deed(s) of the suit land in favour of the plaintiff and if the defendants failed to do so plaintiff can get the sale deed(s) executed in execution proceedings under Order XXI Rule 32 of the Code of Civil Procedure, 1908. Suit is decreed and disposed of in terms of the above, leaving the parties to bear their own costs.

FEBRUARY 03, 2016
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VALMIKI J. MEHTA, J.