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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 505/2016 and IA 5819/2016, 6549/2016, 9134/2016
SH KANWAL KRISHAN GHEI & ORS Plaintiffs
Through: Mr. Muneesh Malhotra and Mr. Rituraj
Shahi, Advocates

versus

M/S DELHI INFRAMART PVT LTD & ORS Defendants
Through: Mr. Krishan Kumar and Ms. Sunita
Arora, Advocates

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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25.10.2016

1. This civil suit for permanent injunction and for recovery of Rs.1,32,80,000/- was filed by the four plaintiffs namely Mr. Kanwal Krishan Ghei (plaintiff no.1), Mrs. Usha Ghai (plaintiff no.2), Mr. Rajesh Ghei (plaintiff no.3) and Mrs. Shashi Chaudhary (plaintiff no.4) against three defendants namely M/s. Delhi Inframart Pvt. Ltd. (defendant no.1), Mr. Kamal Kapoor (defendant no.2) and Mrs. Asha Kapoor (defendant no.3), the prayer in the plaint being to the following effect :-

“(a). pass a decree of permanent injunction whereby permanently restrain the defendants from interfering with the peaceful possession of the plaintiffs herein qua the property bearing no.A-78, Madhuban, Delhi-110 092, admeasuring 258.33 sq. yds. Approx.;

(b). pass a decree in favour of the plaintiffs directing the defendants to pay a sum of ₹7 Lacs alongwith interest @

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18% per annum till realisation;

(c). pass a decree in favour of the plaintiffs directing the defendants to pay a sum of ₹24.80 lacs as damages, including

₹22 lacs as damages and ₹2.80 lacs as rental charges @ ₹35,000/- per month from September, 2015 uptill filing of the suit alongwith interest @ 18% per annum till realisation; and (d). pass such other and further order or orders as may be deemed just and proper on the facts and in the circumstances of the case.”

2. During the pendency of the case, the parties with their consent were referred to Delhi High Court Mediation and Conciliation Centre (Samadhan) for exploring the possibility of an amicable resolution of the dispute. The parties are reported to have entered into a settlement agreement dated 24.10.2016, the original whereof signed by each of the parties has been submitted to the court by Mr. Anil Airi, Sr. Adv. and mediator. The settlement agreement running into eight leaves is accompanied by a document described as stilt plan (Annexure-II) to which references have been made in the terms of settlement, this in addition to the certified copy of the extract of the minutes of the meeting of the Board of Directors of first defendant (Annexure 1).

3. The parties have now come up with a joint application (IA 13335/2016) under Order 23 Rule 3 CPC praying for a decree to be passed in terms of the aforementioned deed of settlement dated 24.10.2016 annexing copy of the said settlement agreement therewith supporting with affidavits of each of the four plaintiffs and of defendants no.2 and 3, second defendant speaking for himself as

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Director and on behalf of the first defendant company.

4. The settlement agreement dated 24.10.2016 in para 7 sets out the terms as under :-

“(a). The defendant represents and confirms that the entire

building stands constructed and Ground Floor is complete in all respects and ready for possession by plaintiff except for normal cleaning, upkeeping and fittings of toilets (sinks/ wash basin / taps / shower etc.), air conditioners.

(b). The defendant represents and confirms that the interior works in the first and third floors are still to be completed and the works which have majority not been carried out are electrical fittings, toilet fittings, UPVC, windows and doors, Air conditioners.

(c). The defendant represents and confirms that Modular kitchen has been provided on all floors of plaintiff alongwith Chimney, sink, Geyser except hob; taps of sink etc.

(d). The defendant shall install the lift in the premises for which advance has been paid to Shindler Lift Company for installation within a period of 3 months from the date of execution of the sale deed.

(e). The parties have earmarked two car parks in the stilt area marked in RED in the site plan attached herewith with a separate entry at point 'A' in front of the building. The defendant shall install its separate gate at point 'A' marked in the plan. The said parkings shall be part and parcel of the second floor and cannot be dealt separately by the defendants. Copy of plan is attached as Annexure –II.

(f). The cars should be parked by parties in such a way that it does not cause inconvenience to other occupants or blocks any amenity / entrance etc. The parties shall keep stilt area and other common areas in the building clear of all hindrances so that no inconvenience caused to any person.

(g). The defendant confirms that building is ready for occupation and 'B1 & B2' forms have been obtained from

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the Municipal authorities for occupation of the property. If in case any other sanction or permission is required for occupation, the same shall be obtained by the defendant and the plaintiffs shall sign all such applications, forms or documents as required.

(h). The parties have agreed that the plaintiffs shall execute the sale deed for the second floor of the property alongwith earmarked two car parks in favour of the defendant within two days of passing of the orders by the Hon'ble court in the above suit. The stamp duty and all

other charges required for registration shall be borne by the defendant / purchaser.

(i). The parties shall on their own apply and obtain an independent electricity connection for all their floors.

(j). The parties shall apply for a separate electricity connection for common areas including lift and shall pay the electricity charges and maintenance charges proportionately.

(k). The parties shall apply for a water connection individually or collectively for their respective floor or for the building as required.

(i). The defendant shall handover the keys of Ground floor, First Floor, Third Floor and all other portions in the building except the Second floor and two car parks to the plaintiff on the stipulated day of execution of sale deed, simultaneously at the time of execution of sale deed at site and thereafter parties will proceed for registration of sale deed at office of Sub-Registrar. The plaintiffs are taking over the possession / keys of the areas / floors on the representations of defendant as contained herein.

(m). All original documents in possession of defendants such as Form B1, B2, sanctioned plans, temporary electric connection, last paid bill, all the warranties / bills of all fitting and fixtures subject to availability shall be handed over to the plaintiff, at the time of execution of sale deed. The defendant shall hand over blank papers signed by Mr. K.K. Ghei at the time of signing of the present settlement

agreement.

(n). The defendants shall complete the work of lift, lift door on stilt floor (any other stone or finishing shall be carried on by the parties on their respective floors), light in staircase, boundary wall, entrance gate and ramp within a period of 3 months, from the date of execution of sale deed.

(o). The defendant shall be responsible for settling all accounts, payments, dues, etc. of the agencies / contractors / labour arranged and employed by them during the construction of the building till execution of the sale deed and for completion of works undertaken herein and shall remove all their labour and equipment etc. from the building. The defendant shall move any temporary shed or

Jhuggi in the stilt area or any other area so that all common areas are clear for user by the parties.

(p). The parties agree that all disputes and differences stands settled in terms of this agreement. There are no other disputes or differences or claims of the parties against each other.

(q). The parties have withdrawn all allegations made against each other in any proceedings, complaint, FIRs, including FIR no.0239/16.

(r). The plaintiffs have filed CRL M.C. no.3024/16 in the High Court of Delhi u/s. 482 Cr. PC for quashing of the FIR no.0239/16 and same is listed on 22.11.2016. Parties shall file appropriate application / proceedings for early disposal / quashing the same and defendant shall cooperate in all respects.

(s). The parties agree that all previous agreements, documents, understandings, executed between the parties hereto before whether in writing or oral stand superseded by this agreement. Any document or paper, if required, to be signed between the parties, the same shall be signed by all the plaintiffs and any document or paper signed only by Mr. K.K. Ghei shall not be valid.”

5. Having perused the record, it is found that the parties have entered into this settlement voluntarily, out of their own free will and volition. All parties now agree that the word “should” appearing in first sentence of clause (f) would be read as “shall”.

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6. Thus, the application is allowed accordingly. The suit is decreed in terms of the settlement set out above.

7. The parties shall remain bound by their respective undertakings and are left to bear their own costs. The pending applications also stand disposed of. Decree sheet be drawn up accordingly. The original settlement agreement with its annexures I and II shall form part of the judgment and decree. The file be consigned to record room.

8. In view of the negotiated settlement, the court fee shall be

refunded.

Dasti.

R.K.GAUBA, J

OCTOBER 25, 2016

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