IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1977 OF 2003

1. Shri Manubhai Vadilal Shah
Adult, Occ: Business,
Residing at 24, Shreeniketan
1st Floor, V.P. Road,
Andheri (W), Mumbai – 400 058

2. Shri Sudhir J. Shah
Adult, Occ: Business,
Residing at 101, Amardeep Mahal – A
Nandkar Road, Vileparle (E),
Mumbai – 400 057.

3. Smt. Subhadraben M. Shah
Adult, Occ: Business,
Residing at 24, Shreeniketan
1st Floor, V.P. Road,
Andheri (W), Mumbai – 400 058

4. Smt. Preeti J. Shah

5. Smt.Reeta S.Shah

6. Smt.Kalavati R.Shah
No. 4, 5 and 6 , Residing at
3, Ashok Villa, Sweekar Mandir
Co-op.Hsg. Society, V.P. Road,
Vile Parle (E), Mumbai 400057.

7. Smt. Bharati B. Shah
3, Prabhadevi, 1st floor,
P.M. Road, Vile Parel (East),
Mumbai 400 057.

8. Jayesh R.Shah
Residing at 3, Ashok Villa,
Sweekar Mandir Co-op.Hsg.
Society, V.P. Road, Vile Parle (E),
Mumbai 400057.

9. Shri Pankaj J. Shah

10. Jasvantbhai V.Shah
No. 9 and 10, Residing at 5,
Jal Palace, Shradhanand Road,
Vile Parle (E), Mumbai.

11. Mr.Pragnesh M. Shah
Residing at 24, Shreenniketan
1st floor, V.P. Road, Andheri (W),
Mumbai 400058.

12. Mr.Ketan Shah

13. Hetal D.Shah

14. Sheetal R.Shah

15. Rakesh K.Shah

All Residing at 34, Raj Mahal
Mumbai – 400 058. .. Appellants
(Org. Plaintiffs)

Versus

M/s.Sonam Builders,
A Partnership Firm, Registered
under Indian Partnership Act,
having office at A/304,
Akash Ganga Building, 3rd floor,
Devchand Nagar,
Tal. & Dist. Thane .. Respondent

Mr.Sandesh Patil a/w Mr.Chintan Shah and Mr.Amogh Singh, for the Appellants.
Mr.Y.S.Jahagirdar, Senior Advocate a/w Mr.P.S.Dani, Senior Advocate I/b Mr.R.D.Suyanwanshi and Mr.D.G.Naik, for Respondent.

CORAM : B.R.GAVAI &
M.S.KARNIK, JJ.
DATE : 14th AUGUST 2017

JUDGMENT (PER M.S.KARNIK, J). :

. After the matter was reserved for judgment, the same was listed for further hearing on 03/09/2018. We have accordingly heard the learned Counsel for the appellants as well as learned Senior Counsel for the respondent.

2. The appellants/original plaintiffs by this appeal challenge the judgment and decree dated 30th November, 2002 passed by the Civil Judge, Senior Division, Thane, in Special Civil Suit No.103/1999. The plaintiffs' suit for recovery of claim amount of Rs.5,73,55,612/- and for handing over possession of the suit flats, execution of conveyance of those suit flats,

declaration and injunction in respect of those suit flats is dismissed by the learned Trial Judge. The respondent/defendant was however directed to pay the earnest amount Rs.1,03,000/- to the appellants with interest at the rate of 18% per annum from 25th July, 1995 till realisation.

3. The brief facts of the appellants' case before the learned Trial Court are thus :-

The appellants are carrying on business as builders and developers at Bhayandar. The respondent is also a builder and developer by profession. The respondent intended to develop various properties at Kashimira Road, Bhayandar, Taluka – Thane under the name and style as “Golden Nest” and “Geeta Nagar” etc. The respondent was short of funds. One of the partner of the respondent - Mr. Bharat M. Jain requested the appellant No.1 to be a part of the development by investing about 30% of the capital amount that will be required for development of the properties. Appellant No.1 agreed to invest the amount in the project known as “Golden Nest” and “Geeta

Nagar". The work of the project commenced in 1993. The appellant No.1 paid Rs.5,50,000/- by a cheque dated 20th July, 1993. The total amount of the investment according to the appellant No.1 is to the tune of Rs.8,80,515/-. It was also agreed that the appellant No.1 was entitled to 30% of profits in the above scheme. The said projects were to be completed jointly by the appellant No.1 and respondent by mutual understanding and in joint venture.

4. The appellant No.1 and respondent started the development work jointly. It took a very long time for the project to complete which gave rise to misunderstandings and confusion between the appellant No.1 and the respondent. As a result disputes arose between the parties. It was therefore not possible to continue with the joint venture. They decided to separate from each other and accordingly the accounts were settled on 30/6/1997. As per the said settlement the respondent was to pay Rs.4,25,14,430/- to the appellant No.1. The respondent had collected from the appellants/allottees of the

said flats viz. family members of the appellant No.1 as and by way of earnest money a sum of Rs.1,03,000/-. The flats in Building No.21, "Golden Nest, Phase III" thus are allotted to the appellants on 25/7/1995 and earnest money received by the respondent is to the tune of Rs.5000/- each flat. An amount of Rs.79,16,160/- was therefore agreed to be paid to the appellants as and by way of adjustment towards these 17 flats. On failure to pay this amount, the respondent was to hand over physical possession of these flats.

5. Thus The amount adjusted towards the flats by way of settlement of accounts comes to the tune of Rs.79,16,160/- and the earnest money collected by the respondent comes to the tune of Rs.1,03,000/-. The amount shown in the promissory note Exhibit 77 due and payable by respondent to appellant No.1 is Rs.4,25,14,430/-. The total amount that came to the share of the appellant is Rs.5,05,33,590/- as and by way of adjustment of the flats and 30% of the profit as per the settlement of the accounts.

6. An amount of Rs.4,25,14,430/- is secured by the respondent by way of executing a promissory note on 30/6/1997 in favour of the appellant No.1. The respondent has agreed to pay the amount at the rate of 12% per annum in case the defendant fails to pay said amount within six months.

7. The respondent, however, failed to pay the amount as per settlement of account as mentioned in the promissory note dated 30/6/1997 and also failed to hand over possession of the flats to the allottees in spite of various demands and requests made by the appellant No.1. A legal notice for the said demand came to be issued on 22/12/1998. By a reply dated 8/1/1999 the respondent denied the claim amount and refused to hand over the possession of the flats. As the respondent tried to dispose of all the flats and shops in the building "Golden Nest" and "Geeta Nagar" the suit was filed for declaration and injunction.

8. The respondent filed written statement at Exh.20 and denied the contents of the plaint. The respondent inter alia denied that the appellant No.1 invested Rs.5,50,000/- in the business of the respondent as joint venture. The settlement of the accounts on 30th June, 1997 vide Exh.45 and execution of the promissory note at Exh.77 is denied. The respondent also denied that the consideration of 17 flats was adjusted in the said settlement and that the said amount is due against the respondent.

9. According to the respondent, Shri Mithalal Jain is the father of the one of the partners of the respondent. Shri Jain was a member of the Parliament and his financial position was sound. Shri Mithalal Jain was running M.M. Plastic business. He was also the partner of M/s. Sonam Builders as on 1/11/1997. In the month January/February, 1993, appellant No.1 was urgently in need of money and he had requested Shri Mithalal Jain to advance loan of Rs.5,00,000/-. Shri Mithalal Jain advanced loan of Rs.5 lacs i.e. 2,50,000/- by cheque dated

21/1/1993 and Rs.2,50,000/- also by way of a cheque dated 2/2/1993 drawn on Dena Bank. The entry in respect of the said amount is shown in the account of Mithalal Jain but the said amount was not shown in the account of M/s. Sonam Builders till 1998.

10. The respondent thus denied about joint venture agreement. The respondent further denied executing document at Exhibit 45 and contended that the same is forged and fraudulent document and never signed by Bharat Jain. It is the case of the respondent that rubber stamp of Sonam Builders appearing on the Statement of Accounts was not of Sonam Builders. It is their further case that the address of Maitry Associates is mentioned on the letterhead. Blank letterheads were given by Maitry Associates to Sunil Shah, the nephew of appellant No.1. The letterheads are misused by him. The respondent denied the execution of the Statement of Accounts as alleged. Even insofar as promissory note - Exhibit 77 is concerned, it is contended that the same is fraudulent and

forged document not signed by the respondent. According to the respondent, the same cannot be a promissory note as it is signed by two attesting witnesses. As regards the contention about the allotment of flats, the respondent states that Kirtibhai Shah – brother of appellant No.1 being investor booked 17 flats in the name of his family members @ Rs.750/- per sq.feet. Rs.1,03,000/- was paid by Kirtibhai Shah to respondent being earnest money of 17 flats towards which receipts were duly issued by the respondent. It is stated that at the time of signing receipts, Bharat Jain prepared unsigned allotment letters which were handed over to Kirtibhai Shah in 1995 to bring signatures of all the appellants in whose names the flats were booked. The signatures on these letters are forged and by notice dated 15/01/1999, the respondent cancelled the booking of the flats. The respondent prayed for dismissal of the Suit.

11. The learned Trial Court framed the following issues at Exhibit 36.

1) Do the plaintiffs prove that plaintiff No.1 invested an amount of Rs.8,80,515/- in joint venture of Defendant described in para 3 ?

2) Do plaintiffs prove that as per the agreement they are entitled for 30% profits in the suit scheme ?

3) Do plaintiffs prove that on 30/06/1997, there was settlement of account with Defendant ?

4) Do plaintiffs prove that as per the settlement of amount Defendant is liable to pay an amount of Rs.4,25,14,430?

5) Do plaintiffs prove that Defendant agreed to adjust the amount of Rs.79,16,160/- by allotting 17 flats to plaintiffs ?

6) Do plaintiffs prove that Defendant on 30/06/1997 executed a promissory note in favour of plaintiff No.1 ?

7) Do plaintiffs prove that defendant has agreed to handover possession of suit flats within reasonable time ?

8) Are plaintiffs entitled for declaration as sought for ?

9) Are plaintiffs entitled for execution of conveyance under specific performance of Contract ?

10) Are plaintiffs entitled for permanent injunction ?

11) Are plaintiffs entitled for possession as sought for ?
12) To what amount plaintiff is entitled ?

13) Does Defendant prove that suit is bad for non joinder and misjoinder of necessary parties and cause of action?

14) Does Defendant prove that suit is bared by limitation?

15) Does Defendant prove that an amount of Rs. 5,50,000/- paid by plaintiff No.1 by cheque was in fact repayment of loan received by him ?

16) Does Defendant prove that as per letter of confirmation executed by plaintiff No.1 this Defendant is absolved from repaying the amount of Rs.5,00,000?

17) Does Defendant prove that he is entitled for compensatory cost ?

18) What order and relief ?

12. Additional issues came to be framed by the learned Trial Court as under :

19. Does defendant prove on 30th June, 1997 there was no partnership of M/s.Sonam Builders in existence and Shri Bharat Jain was carrying on the business in the capacity of Proprietor of the said M/s.Sonam Builders ?

20. Does the Defendant prove that the promissory note executed on 30/06/1997 is forged one ?

21. Does the Defendant prove that the writing pertaining to settlement of account is forged one ?

13. Appellant No.1 examined himself as P.W.1. Shri Pramod Shah is examined as P.W.2 being witness to Exhibit 45 as well as Exhibit 77. The respondent examined himself in support of his case. Upon hearing appellants and respondent, learned Trial Judge dismissed the Suit.

14. Learned Counsel for the appellant assailing the order of the learned Trial Court submits that the learned Trial Court ought to have decreed the Suit. Learned Counsel for the appellant invited our attention to the pleadings. With the assistance of the learned Counsel we have gone through the pleadings and the evidence on record. It is not in dispute that appellant No.1 – original plaintiff and the respondent – original defendants are Builders and Developers by profession. Mithalal Jain – respondent's father was a member of the Parliament.

15. Learned Counsel for the appellant submits that the materials on record justified the entitlement of the appellant to recover an amount of Rs. 5,73,55,612/-. Inviting our attention to the averments in the plaint he submits that admittedly appellant No.1 is a Builder and Developer who entered into joint venture for the development of the properties with the respondent in 2 projects viz. Golden Nest & Geeta Nagar by investing an amount of Rs.5,50,000/- and as per agreement was entitled to 30% of the profits. According to him, the defendant

had insufficient funds to complete the projects and therefore was in need of finance. In his submission, the appellant No.1 had advanced the said loan to the respondent M/s.Sonam Builders through Shri Bharat M. Jain and thereby joint venture for development of the properties was entered into. In the submission of learned Counsel work of project commenced in the year 1993 and admittedly a cheque was drawn by appellant No.1 on the Bombay Mercantile Bank, Andheri, Mumbai dated 20/07/1993 in favour of Shri Bharat Jain and thus entered into a joint venture for the development of the properties. He submits that in all a sum of Rs. 8,80,515/- was invested by appellant No.1 for which he was entitled to 30% of the profits in the said scheme. The projects were to be completed jointly by appellant No.1 and respondent in mutual understanding. Learned Counsel further submitted that on account of misunderstanding and the delay in completing the projects, it was mutually agreed between appellant No.1 and Shri Bharat Jain that the joint venture be put to an end and amicable settlement was reached. The accounts were settled on

30/06/1997. As per settlement the respondent through said Shri Bharat Jain agreed to pay a sum of Rs.4,25,14,430/-. He further submits that by way of adjustment the respondent/original defendant through Bharat Jain agreed to adjust the amount of Rs.79,16,160/- towards 17 suit flats for which the respondent issued allotment letters to the appellants. Aggregate amount to which the appellants are entitled to is the sum of Rs. 5,05,33,590/-. Learned Counsel relying on the evidence, settlement of accounts - Exhibit 45, the promissory note- Exhibit 77 submits that the respondent is liable and has agreed to pay amount of Rs.5,05,33,590 /- and/or for sum of Rs. 4,25,14,430/- and said flats as agreed by and between appellant No.1 and respondent through their partner Bharat Jain. Learned Counsel relying on the promissory note Exhibit 77 dated 30/06/1997 in favour of appellant No.1 points out that the respondent further agreed to pay interest @ 12% p.a. in case the respondent fails to pay the said amount within 6 months.

16. Insofar as the flats are concerned learned Counsel

relied upon the allotment letters at Exhibits No. 63 to 76. He pointed out that the earnest money of Rs.1,03,000/- was paid by appellants to respondent towards the 17 flats which were alloted in building No.21 of Golden Nest III. He submits that the amount of Rs. 79,16,160/- was adjustment towards these 17 flats. Learned Counsel submits that not only defendant failed to pay the amount as mentioned in the promissory note dated 30/06/2017, but also failed to hand over possession of the suit flats to the respective allottees - appellants No. 2 to 15. According to the learned Counsel entire case put up by respondent in the written statement is dishonest, false and fabricated. Learned Counsel submits that the settlement arrived at between appellant No.1 and respondent was binding on the respondent. In fact the same has been recorded on the letterhead of the respondent on 30/06/1997. It is submitted that the respondent has not examined any other witness except Shri Bharat Jain. Learned Counsel submits that it was incumbent upon the respondent to have examined Maitri Associates and/or Girish Goyal and Mithalal Jain ought to have stepped into witness box and given oral evidence about the incidents and the documents which have been referred to in the written statement. Learned Counsel submits that Shri Bharat Jain was not competent to depose the incidents, facts and documents which did not concern or relate to him and his evidence is not evidence in the eyes of law. The learned Trial Judge ought to have disbelieved him. Learned Counsel was therefore at pains to point out that when admittedly appellant No. 1 had paid sum of Rs. 5,50,000/- to the respondent, documentary evidence on record in the form of statement of accounts -Exhibit 45 and the promissory note under Exhibit 77 coupled with the allotment letters in respect of 17 flats at Exhibits 63 to 76 lead to one irresistible conclusion that an amount of Rs.8,00,550/- was invested by appellant No.1 for entering into joint venture in respect of the said projects for which appellant No.1 is entitled to 30% of the profits. It is thus the case of appellant No.1 that though there is no oral agreement of joint venture document on record, however, statement of accounts - Exhibit 45, promissory note - Exhibit 77 coupled with evidence of appellant No.1 would in fact go to show that joint venture was entered into. Therefore the case of appellant No.1 that the accounts of joint venture were settled by way of statement of accounts entered into on 30/06/1997 at Exhibit 45 and promissory note dated 30/06/1997 at Exhibit 77. In the submission of learned Counsel for the appellant, all these aspects have been overlooked by the learned Trial Judge. The learned Trial Court Judge was therefore not justified in dismissing the appellant's claim in the face of such cogent oral and documentary evidence on record.

17. Per contra, learned Senior Counsel for the respondent invited our attention to the material averments in the written statement denying the claim of the appellants. According to him insofar as joint venture is concerned, there is no written agreement on record which the appellants themselves admit. He submits that the appellant No.1 himself in his evidence has deposed that this was by way of oral agreement. Inviting our attention to the evidence of appellant No.1 wherein

appellant No.1 has categorically deposed that "there is no documentary evidence to show that we have done the business by joint venture after appellant No.1 invested Rs. 5,50,000/-". Learned Senior Counsel submits that even insofar as the statement of accounts Exhibit 45 is concerned, the same is forged and fraudulent document and never signed by Shri Bharat Jain. According to him, the rubber stamp used on statement of accounts was not of the M/s.Sonam Builders. The address of Matri Associates is mentioned on the letterhead. On 30/06/1997 there was no partnership firm of the defendant in existence. Learned Senior Counsel then invited our attention to the findings recorded by the learned Trial Court and submits that no error can be found with the findings so recorded by the learned Trial Court and has relied upon reasoning given by the learned Trial Court in support of his submissions.

18. Insofar as the promissory note Exhibit 77 is concerned, learned Senior Counsel submits that the same is fraudulent and forged document. It was not signed by the

respondent. According to him, the document in question cannot be said to be a promissory note as the same is signed by two attesting witnesses and therefore it is more than the nature of money bond. He submits that as the respondent has denied signatures on the promissory note, hence onus is on the plaintiff to prove the signature on Exhibits 45 & 77 and burden is not shifted on the respondents by examining handwriting experts. Inviting our attention to the findings of the learned Trial Court where signatures of the respondent on the written statement were compared with the signature on the document Exhibits 45 and 77 learned Senior Counsel submits the finding as regards difference in signatures was recorded.

19. We have heard learned Counsel at length. As narrated hereinbefore the case of the appellants is that appellant No.1 being a Builder and Developer entered into joint venture for the development of the properties with respondent in two projects being Golden Nest and Gita Nagar by investing Rs.5,50,000/- and thus entitled to 30% of profit amounting to

Rs. 5,05,33,590/- on the basis of the accounts shown to the appellant and interest accrued on this amount. The total investment according to the appellant is Rs.8,80,515/-.

20. The factum of the joint venture is denied by the respondent. It has come in the evidence by way of examination in chief that no agreement was reduced in writing and it was only an oral agreement. Appellant No.1 deposed that the amount of Rs. 5,50,000/- was paid to Bharat Jain by way of cheque. Insofar as the appellant No.1's case of joint venture, we find it difficult to believe the existence of joint venture. The appellant has admitted that there was an oral agreement and the same was not reduced into writing. In the cross examination, the appellant was not in a position to indicate what were the properties developed nor could he state the number of buildings in Golden Nest Phase - I. Appellant No. 1 could not even indicate who are the partners of the respondent firm. In fact it has come in evidence that appellant No.1 could not say whether amount of Rs.5,50,000/- invested is equivalent

to his 30% share. It has further come in evidence that appellant No.1 could not tell the exact income of the joint venture for the years 1993, 1994 and 1995 & 1996 nor could he state expenses for the joint venture from 1993 to 1996 and 1997.

It has further come in evidence of appellant No.1 that no income tax returns were submitted year-wise for the joint venture. In response to the question whether specific mention has been made in the personal books of accounts about the investment in the joint venture with Sonam Builders, appellant No.1 states that amount of Rs. 5,50,000/- was mentioned under the head of loan and advances. He further admits that there is no documentary evidence to show that business was done as joint venture after the appellant No.1 invested the amount of Rs. 5,50,000/- in the joint venture.

21. In the absence of there being any other evidence on record, it is difficult to accept the case of appellant No.1 about existence of joint venture on the basis of the oral agreement,

particularly in the light of the admissions of appellant No.1 in the course of his deposition. Learned Counsel for appellant tried to justify the existence of joint venture on the basis of the letter of settlement of accounts at Exhibit 45. According to him, in the meeting that was held between the appellant No.1 and respondent, accounts of joint venture were settled on 03/06/1997 by executing a writing on the letterhead of the respondent (Exhibit 45).

It is the case of the appellant No. 1 that the respondent agreed to pay to appellant No.1 amount of Rs. 4,25,14,430/- and by way of adjustment respondent agreed to adjust amount with 17 flats which were allotted to appellants by allotment letters dated 03/05/1995 and 25/07/1995. The amount adjusted towards these 17 flats was Rs.79,16,160/- and earnest money of Rs.1,03,000/- was paid by the appellants to the respondent.

As is the submission of the respondent, document Exhibit 45 is a forged and fraudulent document and never signed by Bharat Jain. In the evidence in chief, appellant No.1 has stated that the document was prepared in the office of the respondent. The same was prepared by Bharat Jain and bears signature of the appellant No.1 and Bharat Jain who signed on behalf of the respondent. It is pertinent to note that during the course of cross examination, appellant No.1 deposed that while preparing Exhibit 45, he was not aware of the status of Sonam Builders, whether it was a proprietary firm or partnership firm. It has come in his evidence that on 30/06/1997 he was all alone with Bharat Jain in his cabin. The entire accounts were settled within a period of one hour and promissory note of Bharat Jain was obtained. Appellant No.1 has further stated in his cross examination that he had not asked Bharat Jain to ask his partner for settlement of accounts nor asked Bharat Jain about the name of other sharers to whom the 70% of profit from the joint venture would be paid. Appellant No.1 stated that he did not see the capital account of Bharat Jain nor capital account of Sonam Builders. He also did not enquire about the number of flats sold from Gita Nagar and Golden Nest projects Phase I to VII .

22. It is pertinent to note that as per Exhibit 45 net profit from the project was shown as Rs.25,88,00,000/-and on that basis the profit of appellant No. 1 is shown as 30% i.e. Rs.4,95,00,000/-. However, as per findings recorded by learned Trial Judge, the assessment order issued by Income Tax Department shows the net profit of partnership of Sonam Builders as Rs.2,88,22,413.98. It can thus be seen that there is huge variance in the net profit as indicated in Exhibit 45 and that mentioned in the assessment order issued by the Income Tax Department.

23. Apart from the variance in the amount mentioned in Exhibit 45 and that mentioned in the assessment order issued by the Income Tax Department, the respondent has submitted that document Exhibit 45 is forged and fraudulent and never signed by Bharat Jain. Our attention is invited to the finding of the learned Trial Court where the signatures on Exhibit 45 and admitted signatures of respondent on written statement was compared. The learned Trial Court held that there is difference

in signatures. We also went through the record and compared the signatures on Exhibit 45 and admitted signature of respondent on written statement. In our view, the difference in the signatures is noticeable. We are in agreement with the findings recorded by the learned Trial court that there is difference in the signatures. In this view of the matter, we are unable to accept the submission of the learned Counsel for the appellants about the existence of the joint venture and settlement of the accounts of joint venture on 30/06/1997 on the basis of the Statement of Accounts - Exhibit 45. In our opinion the document Exhibit 45 cannot be relied upon in support of the appellants claim.

24. Insofar as the execution of the promissory note - Exhibit 77 is concerned, it is the case of the appellants that on 30/06/1997 the respondent executed promissory note Exhibit 77 to secure the amount of Rs. 4,25,14,430/- and agreed to pay 12% interest in case the respondent fails to pay amount within 6 months. Appellant No.1 in his evidence stated that Bharat Jain

signed the promissory note on behalf of the respondent in the presence of Pramod M. Shah and Suyakant M. Shah both of them also signed on the promissory note as attesting witnesses.

25. The respondent denied the execution of the promissory note Exhibit 77 and contended that the signature of Bharat Jain is forged. It has come in the cross examination that appellant No.1 was not aware whether on 30/06/1997 the respondent was proprietary concern of Bharat Jain. The learned Trial Court has discussed the evidence of the attesting witness of the appellants. It is material to note that the respondent having denied the signatures on Exhibit 77, the learned Trial Court compared the signatures of respondent by comparing document Exhibits 45 and 77 with admitted signature of respondent on the written statement. The learned Trial Court has recorded a finding that there is difference in signatures.

26. We have also compared the signatures and find that the difference in the signatures is apparent. It is also material to note that though documents Exhibits 45 & 77 are executed on

the same day i.e. 30/06/1997, the learned Trial Court in paragraph 31 has recorded a finding that the ink is different, status of Sonam Builders is different, date and stamp is different. The learned Trial Court further found that Exhibit 77 is not a promissory note since the same is attested by 2 witnesses and therefore it is a money bond. The learned Trial Court therefore came to the conclusion that Exhibit 77 cannot be read in evidence as the same is insufficiently stamped as per Sections 34 and 38 of the Stamp Act.

27. In our opinion, having regard to the evidence on record and more particularly the difference in the signatures of Bharat Jain on Exhibit 77 and the signature of Bharat Jain on the written statement, it is not at all safe to rely upon the document Exhibit 77 in support of the case of the appellants.

28. Insofar as the case of the appellants that the respondent agreed to adjust the amount with 17 flats which were allotted to the appellants by allotment letters dated

03/05/1995 and 25/07/1995 which are at Exhibits 63 to 76 is concerned, the respondent has come out with a case that after inspection of the original documents viz. letters of allotment of 17 flats, it is realised that signature is forged and bogus and hence signature on the allotment letters are denied. According to the appellants, amount adjusted towards the 17 flats was Rs.79,16,160/-. Earnest money of Rs.1,03,000/- was already paid by the appellants to the respondent and the flats are allotted in building no. 21 of Golden Nest Phase – III. According to the respondent Kirtibhai Shah brother of appellant No.1 as an investor booked 17 flats in the name of his family members @ Rs. 750 per sq.ft. A sum of Rs. 1,03,000/- was paid by Kirtibhai Shah to the respondent being earnest money of 17 flats and receipts were issued by the respondent.

29. It is the specific case of the respondent that the unsigned allotment letters prepared by Bharat Jain and handed over to Kirtibhai Shah in 1995 for the purpose of bringing the signatures of the appellants in whose names the flats were

booked were misused and appellant no.1 forged the signature of the respondent on the said allotment letters. The bookings came to be cancelled on 15/01/1999. The learned Trial Court upon comparing admitted signatures at Exhibit 20 i.e. written statement and the payment receipts at Exhibits 59 to 61 with Exhibits 45 and 77 and the allotment letters came to conclusion that difference in the signatures is apparent.

30. We have also gone through the said Exhibits and are of the opinion that the view of the learned Trial Court cannot be faulted with. Having come to the conclusion that the document Exhibit 45 viz. letter of statement of accounts cannot be relied upon, it is not possible for us to accept the case of the appellant that the amount adjusted towards the 17 flats was Rs.79,16,160/-. In fact there is no other material on record to accept the case of the appellant No.1 that the amount adjusted towards 17 flats was Rs.79,16,160/- to be paid by the respondent to appellant no.1.

31. As discussed earlier, the entire case of the appellants is about a joint venture for the development of the properties with respondent. Appellant No.1 based his claim about the joint venture on the oral agreement. We have arrived at a finding that the evidence on record does not at all support the case of the appellant No.1 about joint venture. Moreover, we have also arrived at a finding that the document at Exhibit 45 executed on 30/06/1997 purported to be a letter of statement of accounts of settlement of joint venture cannot be relied upon. Even promissory note at Exhibit 77 which is executed on 30/06/1997 cannot be relied upon for the reasons recorded hereinabove.

32. The whole foundation of the appellant No.1's claim about the existence of the joint venture is on the letter of statement of accounts at Exhibit 45, promissory note Exhibit 77, allotment letters at Exhibits 63 to 76 and the oral evidence which the appellants have adduced in the form of deposition of the appellant No.1 who has examined himself as P.W.1 and Pramod Shah as P.W.2 who is a witness to Exhibit 45 as well as

Exhibit 77. Appellant No.1 has admitted that the joint venture was on the basis of oral agreement which was not reduced in writing. For investment of Rs.5,50,000 made by the appellant No.1 in the joint venture in the year 1993, appellant No.1 claims his 30% share in the profit to the tune of Rs.5,05,33,590/- as on 30/06/1997, which in our opinion, is too far fetched and unrealistic to accept in the absence of there being any cogent and reliable evidence on record.

33. We have also gone through the findings recorded by the learned Trial Court. The learned Trial Court has appreciated and discussed the evidence on record in great detail with which we do not find any reason to interfere with.

34. We therefore do not find any merit in the Appeal. The same is dismissed with no order as to costs.

(M.S.KARNIK, J.) **(B.R.GAVAI, J.)**