IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 17.03.2017

\+ **CS (OS) 417/2011**

M/S EXPERION DEVELOPERS PVT. LTD. ..... Plaintiff

versus

M/S ANS CONSTRUCTIONS LTD. ..... Defendant

Advocates who appeared in this case:
For the Plaintiff : Mr Pankaj Vivek and Mr Atul Tripathi, Advocates.
For the Defendant : None being *ex parte*.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. M/s Experion Developers Private Limited (then known as M/s Gold Developers Private Limited) has filed the present suit *inter alia* for recovery of ₹2,46,82,912/- from the defendant, M/s ANS Constructions Ltd. (hereafter 'ACL') in relation to a sale deed executed between them on 09.04.2008.

2. Summons in the present suit were issued on 07.03.2011, which were duly served on the defendant on 23.03.2011. Despite being served, ACL did not participate in the present proceedings and was accordingly, proceeded *ex- parte* by an order dated 15.09.2011. During the course of the proceedings, the plaintiff filed an application (I.A. No. 2760/2012) under Order I Rule 10 of the Code of Civil Procedure, 1908 seeking amendment

of the name of the plaintiff from M/s Gold Developers Private Limited to M/s Experion Developers Private Limited (hereafter "EDPL"). The same was allowed by this Court on 13.02.2012.

3. Mr Gaurav Maheshwari [being Manager (Accounts & Finance), EDPL and hereafter referred to as "PW1"] has filed an Affidavit by way of Evidence affirming the averments made in the plaint. The facts that emerge from the affidavit of PW1 are as follows:

3.1 EDPL is a company incorporated under the Companies Act, 1956 and is engaged in the business of real estate development.

3.2 ACL was allotted a plot bearing No. TCG/-A-V-6, Vibhuti Khand, Lucknow, Uttar Pradesh (hereafter 'the Plot') from the Lucknow Development Authority (hereafter 'LDA') admeasuring approximately 9215 square meters by way of an allotment letter dated 11.10.2006 for a total sale consideration of ₹9,67,57,500/-.

3.3 It is stated that during April-May, 2007, ACL through its Chief Finance Controller, Mr Amit Kumar Jha, offered to sell the Plot to EDPL. Thereafter, an Agreement to Sell dated 12.05.2007 (hereafter 'the Agreement') was executed between the parties whereby EDPL agreed to buy and ACL agreed to sell the Plot at the rate of ₹18,000/- per square meter. The total consideration for the Plot was fixed at ₹16,58,70,000/- (9215 x 18000). The Agreement also indicated that ACL had deposited ₹3,68,84,547/- with LDA and further an amount of ₹5,98,72,953/- was outstanding towards the consideration of the Plot to LDA.

3.4 It is averred by PW1 that in terms of the Agreement, out of total sale consideration of ₹16,58,70,000/-, EDPL had to pay an amount of

₹5,98,72,953/- directly to LDA and the balance amount was to be paid to ACL.

3.5 It is stated by PW1 that EDPL has paid a total amount of ₹8,75,00,000/- as consideration of the Plot to ACL or to M-Tech Developers Private Limited (hereafter 'M-Tech') on behalf of ACL. The details of which are as under:

a. EDPL made a payment of ₹5,50,00,000/- to M-Tech by way of cheque bearing No. 572003 dated 23.03.2007 drawn on ING Vysya Bank. The said payment was acknowledged to have been received by ACL as consideration for the Plot by a letter dated 13.05.2007, which has been exhibited as Ex.PW-1/6.

b. EDPL further made a payment of ₹2,25,00,000/- on 14.05.2007 to M-Tech by way of cheque bearing No. 572046 dated 12.05.2007 drawn on ING Vysya Bank, which was also duly acknowledged to have been received by ACL.

c. EDPL also paid ₹1,00,00,000/- directly to ACL by cheque bearing No. 794036 dated 28.05.2007 drawn on ING Vysya Bank .

3.6 It is averred by PW1 that before execution of sale deed by LDA in favour of ACL, the area of Plot was found to be 9409.15 square meters, which was larger than estimated. The total consideration payable was determined at ₹10,01,88,620/- out of which ACL had paid only ₹3,39,00,000/- and the balance amount payable to LDA was ₹6,62,88,620/-. The said amount was enhanced by LDA on account of delay in making payment of instalments by ACL, costs, penalty and interest from ₹6,62,88,620/- to ₹7,40,41,481/-.

3.7 Thereafter, a sale deed dated 20.03.2008 was executed by LDA in favour of ACL whereby the total sale consideration for the Plot was indicated at ₹11,99,68,521/- (which included 12% free hold charges of ₹1,20,22,635/-; interest; and ₹500/- as miscellaneous charges), excluding the stamp duty. PW1 has deposed that at the time of execution of the sale deed mentioned above, EDPL had paid - on behalf of ACL - Stamp Duty and Freehold charges to LDA.

3.8 Thereafter, the sale deed dated 09.04.2008 was executed between ACL and EDPL for sale of the Plot and the consideration for the Plot was fixed at ₹16,93,80,000/-.

3.9 PW1 has deposed that besides an amount of ₹8,75,00,000/-, EDPL has paid a sum of ₹9,80,65,516/- to LDA - on behalf of ACL - as consideration for the Plot, conversion charges and stamp duty. The details of which are as follows:

a. EDPL paid ₹7,40,41,481/- to LDA on behalf of ACL as instalments pursuant to the allotment letter dated 11.10.2006. The break-up of the amount paid by EDPL along with relevant details of challan issued by LDA accepting the payments, are as under:

Challan ID	Date of Challan	Amount paid	Demand Draft No.	Drawn on Bank
82-18507	11.06.2007	₹3,80,27,935/-	794049	ING Vysya Bank
20-17548	30.06.2007	₹1,32,49,428/-	180456	ING Vysya Bank
38-25287	28.09.2007	₹1,32,49,428/-	272069	ING Vysya Bank
61-25287	20.02.2008	₹ 28,60,397/-	865072	ING Vysya Bank
67-25827	04.03.2008	₹ 66,54,293/-	288560	ING Vysya Bank

b. ₹ 1,19,97,000/- were paid by EDPL to LDA on account of stamp duty for execution of sale deed by LDA in favour of ACL through Challan No. 015558371 dated 18.03.2008.

c. ₹1,20,27,035/- (being 12% of the sale consideration- ₹10,01,88,620/-) were paid to LDA for converting the land in question into a free hold land by way of cheque bearing No. 288589 dated 10.03.2008.

3.10 It is deposed by PW1 that EDPL has paid ₹18,55,65,516/- (₹8,75,00,000 /- to ACL/M-Tech and ₹9,80,65,516/- to LDA) while the total consideration price for the Plot as per the sale deed dated 09.04.2008 was only ₹16,93,80,000/- and therefore, an amount of ₹1,61,85,616/- has been paid by EDPL, in excess to what was agreed in said sale deed.

4. PW1 has also placed on record a letter dated 25.08.2010 (Ex. PW-1/10) sent by EDPL requesting ACL to "*settle and reconcile the accounts mutually*". Thereafter, EDPL also sent a legal notice dated 27.09.2010

(Ex.PW-1/12) calling upon the ACL to make the payment of ₹1,61,85,516/- along with interest @ 18% p.a. within 15 days of the receipt of the said notice. PW1 has produced a copy of the allotment letter dated 11.10.2006 which has been exhibited as Ex. PW-1/3. PW1 has also produced the original Agreement to Sell dated 12.05.2007 between EDPL and ACL as Ex. PW-1/5.

5. Mr Mahendra Pratap Singh - PW5 (wrongly numbered as PW3) - working as Lower Division Clerk (Commercial) Lucknow Development Authority, was examined on 30.09.2014. Mr Singh produced a copy of the allotment letter dated 11.10.2006 (Ex.PW3/1), a copy of the possession letter dated 26.08.2008 issued by LDA in favour of ACL (Ex.PW3/2). Thus Mr Singh duly proved the issuance of the allotment letter in favour of ACL.

6. Mr Rajesh Kumar - PW6 (wrongly numbered as PW4) - working as Registration Clerk, Sub Registrar Office-II, Lucknow, Uttar Pradesh was examined on 30.09.2004 and he had produced the original register of the sale deed dated 20.03.2008 in book No. 1 Volume No. 7348 at pages 125-150 at Serial No. 2712. He has therefore proved the fact that Sale Deed dated 20.03.2008 was executed by LDA in favour of ACL in respect of the Plot. A photocopy of the said sale deed duly attested by the Sub-Registrar is exhibited as Ex. PW4/1. He had also produced original register of sale deed dated 09.04.2008 in book No. 1 Volume No. 7404 at pages No. 103-134 at Serial No. 3516 executed by ACL in favour of EDPL in respect of the Plot and has therefore, duly proved the execution of the said sale deed as well. A photocopy of the said sale deed duly attested by the Sub-Registrar is exhibited as Ex. PW4/2.

7. Mr Bhupesh Nautiyal (PW3) working as Assistant Manager, State Bank of India, CAG Branch, New Delhi, was examined on 29.03.2012 and he produced Bank Statement of EDPL for the period 01.08.2007 to 31.03.2009 exhibited as Ex. PW-3/1 (colly).

8. Mr Ashish Mahajan (PW4) working as Regional Legal Advisor, ING Vysya Bank, KG Marg, Delhi was examined on 29.03.2012 and he had produced the Bank Statements of EDPL for the period 01.04.2007 to 31.05.2008, which are exhibited as Ex. PW-4/1(colly). The said statements show that EDPL had paid an amount of ₹8,60,68,516/- (which included charges incurred to make the Plot free hold - ₹1,20,27,035/-) to LDA during the period of 11.06.2007-10.03.2008. The said statements also show that EDPL had paid ₹2,25,00,000/- to M-Tech and ₹ 1,00,00,000/- to ACL. Thus it is evident from the bank statements filed by PW4 that EDPL had paid a sum aggregating ₹11,85,68,516/- to ACL, M-Tech and LDA.

9. PW1 has placed on record a letter dated 13.05.2007 from ACL acknowledging receipt of payment of ₹5,50,00,000/- from EDPL by cheque bearing No. 572003 dated 23.03.2007 drawn on ING Vysya Bank, as Ex. PW-1/6.

10. In view of the above, PW1 has duly proved that EDPL had paid a sum of ₹18,55,65,516/- (1,19,97,000 + 11,85,68,516+ 5,50,00,000) to ACL/LDA as consideration for the Plot. PW 1 has duly proved that in terms of the sale deed dated 09.04.2008, the total consideration for the Plot was fixed at ₹16,93,80,000/- and therefore, a sum of ₹1,61,85,516/- has been paid in excess to what was agreed to be paid in terms of the sale deed dated 09.04.2008 executed between the parties.

11. In view of the above, the plaintiff is entitled to a sum of ₹1,61,85,516/-. In addition, the plaintiff shall also be entitled to interest at the rate of 12% p.a., from the date of execution of the sale deed dated 20.03.2008 till the date of payment. The plaintiff is also awarded costs.

12. The suit is decreed in the aforesaid terms. Let the decree sheet be drawn up.

VIBHU BAKHRU, J

MARCH 17, 2017
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