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

+ **CS(COMM) 218/2017**

ARHAM SURANA FAMILY TRUST Plaintiff

Represented by: Ms. Esha Verma, Advocate.

versus

PARSVNATH LANDMARK DEVELOPERS

PVT. LTD Defendant

Represented by: Ms. Minakshi Jyoti and Ms.
Sabah Khan, Advocates.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

02.11.2017

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I.A. No. 8199/2017 (under Order XII Rule 6 CPC-by plaintiff)

1. Despite opportunity no reply has been filed by the defendant to the present application. Hence on the basis of the admitted pleadings in the plaint and written statement, this Court is proceeding to decide the present application.

2. Plaintiff has filed the present suit seeking a decree of recovery of ₹3,13,04,717/- (Rupees three crores thirteen lakhs four thousand seven hundred and seventeen only) along with pendente lite and future interest from the defendant. Claim of the plaintiff in the suit is that the plaintiff entered into an agreement dated 26th September, 2013 with the defendant for purchasing Flat No. T-9-U2 in Tower No.T-10 having an area of 4250 sq.ft. approximately in the complex 'La-Tropicana' being built by the defendant for a total consideration of ₹6,89,98,750/-. The plaintiff paid a total sum of

₹1,88,00,429/- to the defendant. However, despite promises the defendant did not get the construction completed in a period of 24 months from the commencement of the construction of the particular tower in which the flat is located nor has refunded the money despite more than 3 years having elapsed. Thus claiming the principal sum of ₹1,88,00,429/- with the interest from 1st March, 2014 till 31st January, 2017, the plaintiff seeks a sum of ₹3,13,04,717/- with pendente lite and future interest.

3. In the written statement the plaintiff took the preliminary objections that the land was transferred on leasehold rights for a period of 90 years to the defendant by the Delhi Metro Rail Corporation Ltd. (in short DMRC) vide letter 8th March, 2004 and an agreement was entered into between DMRC and the defendants on 30th March, 2004. The defendant made the payment of ₹ 194 crores along with interest to DMRC in terms of the agreement on 30th March, 2004, the possession of the land was handed-over to the defendant on 17th October, 2005 and a transfer deed was executed between DMRC and the defendant on 1st September, 2006. After getting the confirmation from the DMRC regarding the allotment of project land, the defendant planned a Group Housing Complex of residential plots known as 'La-Tropicana'. In the year 2007 there were major changes in the Master Plan of Delhi 2007 which resulted in changing the total scheme of the complex, compelling the defendant to change its lay-out plans and building plans. The lay out plans for the Group Housing were duly approved by the Deputy Town Planner vide letter dated 28th February, 2008 and building plans were approved by the MCD on 27th May, 2009. In furtherance of the said approval MCD required a copy of the agreement between L&DO and DMRC but DMRC did not provide the said letter. It is further stated that in

the Master Plan of Delhi in 2011 there were further changes and the building plans were further revised and sent for approval to the MCD which were pending approval in view of the execution of the lease deed between the L&DO and DMRC. Though it is stated that a MOU has been signed between L&DO and DMRC but no date of the said agreement has been noted. In the written statement the defendant does not deny the execution of the agreement or the terms and conditions or that the plaintiff did not pay a sum of ₹1,82,00,430/- to the defendant.

4. In the written statement the further defence of the defendant is that the plaintiff entered into the agreement knowing fully well the pace of construction, thus admittedly construction had started when the agreement was entered between the parties. Inaction or lethargy on the point of defendant cannot be held to be a force majeure.

5. Be that as it may, all objections taken in the written statement are past history for the reason the plaintiff entered into agreement with the defendant for the flat on 26th September, 2013. In this regard Clause 11(a) of the Flat Buyer Agreement dated 26th September, 2013 is relevant and is noted as under:

“11(a). Construction of the Flat is likely to be completed within a period of Twenty Four (24) months of commencement of construction of the particular Tower in which the Flat is located Or from the date of booking, whichever is later, with a grace period of six (6) months, on receipt of sanction of building plans and all other requisite approvals for construction subject to force majeure including any restraints/restrictions from any authorities, non-availability of building materials or disputes with contractors/work force and circumstances beyond the control of the Developer and subject to timely payments

by the Flat Buyers in the Complex. No claim by way of damages/compensation shall lie against the Developer in case of delay in handing over possession on account of the said reasons. For the purpose of this Agreement, the date of making an application to the concerned authorities for issue of completion/part completion/occupancy/part occupancy certificate of the Complex shall be treated as the date of completion of the Flat. ”

6. It is not denied in the written statement that the construction in the particular tower has commenced. As per Clause 11(a) as noted above construction of the flat was likely to be completed within 24 months of the commencement of construction or from the date of booking whichever is later with a grace of period of six months on receipt of the sanction of building plans and all other requisite approvals. Construction having commenced before the plaintiff entered into agreement, the defendant was duty bound to hand-over the possession of the flat within 24 months with a grace period of six months i.e. within 30 months from the date of construction or the agreement whichever is later. Assuming the date of agreement being later and the defendant not in a position to hand-over the possession of the flat as agreed, the defendant is liable to refund the amount paid by the plaintiff with interest thereon.

7. Consequently, application is disposed of decreeing the suit in favour of the plaintiff and against the defendant.

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Consequently, Suit is decreed in favour of the plaintiff and against the defendant directing it to pay the admitted amount of ₹1,88,00,429/- with an

interest @ 9% per annum from the date of agreement i.e. 26th September, 2013 till realization.

MUKTA GUPTA, J.

NOVEMBER 02, 2017

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