

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**SUIT NO.1814 OF 2012
WITH
NOTICE OF MOTION NO.46 OF 2015**

Shri Ashok Vijhay Jain And Another ... Plaintiffs
Versus
Vaidehi-Akash Housing Private Ltd. ... Defendant
.....
Mr. V.C. Khatri a/w Radhika Vyas for the Plaintiffs.
....

CORAM : S.C.GUPTE, J.

DATE : 9 MARCH 2018

P.C. :

. The suit is an undefended suit. Despite specific directions of the Prothonotary & Senior Master, neither is appearance entered nor written statement filed. An affidavit of service, proving service of writ of summons, has been duly filed by the Plaintiffs. The Suit is, accordingly, placed for *ex parte* decree.

2 The Suit seeks specific performance of eight agreements to sell between Plaintiff No.2 and the Defendant in respect of eight flats, viz. Flat Nos.201, 202, 203, 204, 1601, 1602, 1603 and 1604 situated in a development project undertaken by the Defendant by the name of "Sagar Sahawas Colony", at Survey No.106, Plot No.5, CTS No.195, New D.N. Nagar, Andheri (West), Mumbai-400 053 and four agreements in the form of allotment letters in respect of Flat Nos.1801, 1802, 1803 and 1804, issued in the name of Plaintiff No.1 in the same project. By these

agreements, the Defendant agreed to sell to the Plaintiffs twelve flats referred to above for consideration referred to in the respective agreements for sale and allotment letters. It is the Plaintiffs' case that a substantial amount from out of the sale consideration was paid by cheque by the Plaintiffs to the Defendant. The balance amount was to be paid at the time of possession. It is the case of the Plaintiffs that till date, the Defendant has failed and neglected to hand over possession of the aforesaid flats to the Plaintiffs. It is submitted that the Plaintiffs have always been, and even today are, ready and willing to perform their part of the contract.

3 The Plaintiffs have produced documentary evidence in the form of eight registered agreements of sale along with receipts issued by the Defendant, acknowledging payment of consideration thereunder by Plaintiff No.2 and four allotment letters issued by the Defendant in favour of Plaintiff No.1, which contain agreement for sale of the four respective flats. The Plaintiffs have led oral evidence of P.W. 1 in support of their case in the form of Affidavit of evidence dated 8 March 2018. The affidavit is taken on record as examination-in-chief of Plaintiff No.1. Based on oral evidence, documents are admitted in evidence, marked **Exhibits -'P-1' to 'P-16'** in accordance with the serial numbers of the respective documents in the Index of 'compilation of documents'. Index is marked **'X'** for identification.

4 The Plaintiffs are permitted to substitute originals with true copies certified by the Plaintiffs' Advocates. Office to return originals to the Plaintiffs against supply of such certified copies. Certified copies shall be kept on record, marked with the same exhibit numbers as their originals

and by adding letter 'A' thereafter.

5 Based on the oral and documentary evidence led by the Plaintiffs, as referred above, the Plaintiffs have made out a case for specific performance of the agreements for sale contained in eight registered agreements and four allotment letters referred to above. There is nothing on record to counter the Plaintiffs' case.

6 The Suit is, accordingly, decreed in terms of prayer clauses -(a), (b) and (c). Possession of Flat Nos. 201, 202, 203, 204, 1601, 1602, 1603 and 1604 shall be handed over to Plaintiff No.2, whereas Flat Nos. 1801, 1802, 1803 and 1804 shall be handed over to Plaintiff No.1. Possession of these flats shall be handed over against payment of the balance consideration in each of the cases as referred to in the plaint. As far as allotment letters are concerned, requisite stamp duty shall be paid, and registration shall be effected, on the final documents of title to be executed in favour of the Plaintiffs.

(S.C. GUPTE, J.)