Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMM SUIT NO. 531 OF 2017

Naresh K Chandra HUF ...Plaintiff
Versus
Shubh Enterprises & Ors ...Defendants

Ms Sheetal Shah, *i/b M/s. Mehta and Girdharlal, for the Plaintiff.*

CORAM: G.S. PATEL, J
DATED: 6th December 2018

PC:-

1. The suit is undefended. It is listed for disposal under Rule 89 of the Bombay High Court (Original Side) Rules as an undefended suit. It was filed by the Plaintiff HUF as a Summary Suit under Order XXXVII Rule 2 of the Code of Civil Procedure 1908. The Writ of Summons was served and there are Affidavits of Service proving service of the Writ of Summons including after obtaining an order of substituted service. None of the Defendants have entered appearance. Hence, in Ms Shah's submission, the Plaintiff is now entitled to a decree on the footing that the suit is undefended.

2. The Plaint says that the Plaintiff HUF's Karta had decided to purchase two residential flats in the 1st Defendant's then proposed construction at Andheri (West), intending to acquire one flat for each of his two sons. Acting on the basis of a brochure and other material issued by the 1st Defendant, the Plaintiff through its Karta agreed to purchase two Flat Nos. 1204 and 1404 in the building known as Shubh Heights. Both flats were in "D" Wing. The building is at Andheri (West), Mumbai 400 058.

3. In regard to these purchases, the 1st Defendant issued an allotment letter dated 11th October 2010 confirming the purchase of Flat No. D-1204. The allotment letter itself, a copy of which is at Exhibit "A" to the Plaint, sets out a payment schedule and confirms receipt by the 1st Defendant of an earnest amount of Rs. 24,62,985/-. This amount was paid by the Plaintiff by two cheques: Cheque No. 175874 dated 6th September 2010 for Rs. 1 lakh and Cheque No. 109851 dated 29th September 2010 for the remaining earnest money of Rs. 23,62,985/-, aggregating to Rs. 24,62,985/-. In regard to the second Flat No. D-1404, the 1st Defendant similarly issued another allotment letter also of 11th October 2010, a copy of which is at Exhibit "B" to the Plaint. The consideration for this is the same as for the first flat. Again the Plaintiff issued two cheques: Cheque Nos. 175875 dated 6th September 2010 for Rs. 1 lakhs and cheque No. 109852 dated 29th September 2010 for Rs. 23,62,985/-, aggregating to Rs. 24,62,985/-.

4. The Plaint says that the allotment letters clearly stated that if work did not commence before 1st October 2011, the Defendants would pay interest at the rate of 18% per annum from 1st October 2011. This is stated in an annexure to each of the allotment letters, copies of which are at pages 14 and 17 respectively of the Plaint. No work began by that date.

5. The Plaintiff demanded payment of interest by its letter dated 20th April 2012. On 28th April 2012, the Defendants wrote to various flat purchasers requesting them to wait for some time since the Defendants had (allegedly) resubmitted amended plans. There being no reply to the Plaintiff's letter of 20th April 2012, the Plaintiff sent reminders on 17th August 2012. Further reminders followed on 25th October 2012 and 7th February 2013. Then the Plaintiff received a letter on 15th March 2015 from the Defendants, a copy of which is at Exhibit "H" to the plaint. By this letter, the Defendants informed that the development agreement in favour of the Defendants had been terminated, but the Defendants went on to say that the Plaintiff's money was "safe and fully secured" with the Defendants.

6. The Plaintiff responded on 14th April 2015 denying that there were any meetings or discussions and now demanding a return of the earnest money paid with interest as agreed at the rate of 18% per annum. The Plaint then goes on to say that there were public notices which put the Plaintiff on alert that the 1st Defendant would not in fact be able to deliver the flats in question. The Plaintiff wrote again on several occasions, most recently on 5th April 2017, demanding repayment of the earnest money with interest. There is no compliance.

7. Although the claim is for 18% compound interest, obviously that is not a claim that can be granted. There can be no dispute that the Defendants have agreed to pay interest at the rate of 18% per annum. The 1st Defendant's own letter says so. There is also no dispute that the Defendants agreed by their letter of 15th March 2015 to make payment. No issue of limitation arises either.

8. In view of the failure of the Defendants to enter appearance or to defend the suit and having regard to the facts and circumstances set out above, the suit is decreed in the amount of Rs. 49,25,970/- which is the principal amount of Rs. 24,62,985/- in respect of Flat No. D-1204 with simple interest at the rate of 18% per annum. There will also be a decree in the same amount in regard to Flat No. D-1404.

9. The aggregate amount recoverable jointly and severally from the Defendants is thus Rs. 99,90,944/- comprising aggregate principle of Rs. 49,25,970/- and aggregate interest of Rs. 50,64,974/-. The interest is calculated up to the date of the suit.

10. There will be further interest on the principle of Rs. 49,25,970/- at the rate of 12% per annum from the date of the suit till payment or realization.

11. Refund of Court Fees in accordance with the Rules.

12. The Plaintiff is also entitled to a decree in costs having regard to the provisions of Section 35 of the Code of Civil Procedure 1908 as amended by the Commercial Courts Act 2015. These costs will undoubtedly include that portion of the amount of Rs. 1,80,090/- that is not recovered as a refund of Court Fees paid, and a reasonable amount towards legal fees and expenses. I will assume this to be an additional amount of Rs. 2 lakhs. There will be a decree in costs in these terms the decreed costs will carry no interest.

13. The documents tendered by Ms Shah are taken on record and marked **Exhibit "P1"** in evidence. The originals will be returned to the Plaintiff in accordance with Rule 306 of the Bombay High Court (Original Side) Rules and upon these being substituted with a compilation of authenticated photocopies.

14. The suit is disposed of in these terms.

(G. S. PATEL, J)