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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 256/2012 & IA No.2716/2018 (of D-2&3 u/O XII R-6 CPC)**

TARUN KAPOOR & ORS Plaintiffs

Through: Mr. Vikas Dhawan, Mr. S.P. Das, Mr.
S.C. Nanda and Ms. Vanya Khanna,
Advts. with P-1 in person.

Versus

SURYA VINDER OBHRAI & ORS Defendants

Through: Mr. Rajat Aneja and Ms. Sonali
Chopra, Advts. for D-1 with D-1 in
person.
Mr. P.P. Malhotra, Sr. Adv. with Mr.
K. Singhal and Mr. Prasanna, Advts.
for D-2&3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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02.05.2018

1. The defendants No.2 & 3 namely Narippen Obhrai and Hari Gautam Obhrai, in this suit for specific performance of an agreement dated 4th March, 2011 of sale of property No.60, Sunder Nagar, New Delhi, state that they are ready and willing to, in accordance with the Agreement to Sell dated 4th March, 2011 sell their shares in the property to the plaintiffs.

2. The counsel for the defendant No.1 Surya Vinder Obhrai also states that the defendant No.1 is willing to sell his share but states that since the balance sale consideration under the Agreement to Sell dated 4th March, 2011 was payable in the year 2011 itself, the defendant No.1 be awarded interest at such rate as may be deemed appropriate by the Court for the delay in payment thereof.

3. The counsel for the three plaintiffs namely (i) Tarun Kapoor, (ii) Mrs. Pavan Kapoor and (iii) Geeta Passi under instructions from plaintiff No.1 states that the plaintiffs are also willing to effect the purchase but opposes the request of the counsel for the defendant No.1 for interest contending that the defendant No.1 has for the intervening period continued to enjoy possession of the property and deprived the plaintiffs of possession thereof. Attention is also invited to Clause 14 of the Agreement to Sell dated 4th March, 2011 Ex.P-1 whereunder for the period of delay on the part of the defendants, the defendants were to pay interest @ 24% per annum on the advance sale consideration received to the plaintiffs. It is stated that if the defendants do not claim any interest, the plaintiffs also will not press for interest under Clause 14.

4. The senior counsel for the defendants No.2&3 and the counsel for the defendant No.1 are agreeable subject to the balance sale consideration of Rs.50,94,68,753/- of the share of defendants no.1 to 3 being paid within 30 days of today.

5. All counsels inform that the four defendants had jointly under the Agreement to Sell dated 4th March, 2011 agreed to sell the property to the plaintiffs and the defendant No.4 Meera Obhrai Raichand has already sold her 3/24th share and executed Sale Deed in favour of the plaintiffs and received the sale consideration of her share and her name has been deleted from array of defendants.

6. The counsel for the plaintiffs also states that the plaintiffs were to pay the balance sale consideration by arranging for finance from the Banks and have already led evidence of the same and would need 90 days time for

again arranging finance from the Banks for payment of the balance sale consideration.

7. After some negotiations, it has been agreed that the plaintiffs be granted time till 3rd July, 2018, without interest, for payment of balance sale consideration and if plaintiffs are unable to pay the aforesaid balance sale consideration within the said time, additional time till 3rd September, 2018 subject to payment of interest @ 9% per annum on the balance sale consideration for the period from 3rd July, 2018 till date of payment, till 2nd August, 2018 and interest @ 11% per annum on the balance sale consideration for the period from 3rd August, 2018 till date of payment, till 3rd September, 2018.

8. It has further been agreed that if the entire balance sale consideration is not paid on or before 3rd July, 2018 as aforesaid or with interest as aforesaid till 3rd September, 2018, the entire advance sale consideration of Rs.8,99,06,247/- received by the defendants No.1 to 3 from the plaintiffs shall stand irrevocably forfeited to the defendants and the plaintiffs shall then, also not be entitled to purchase the property from defendants no.1 to 3 or to recover the advance sale consideration and will be left with no right, title, claim or interest against defendants or the share of the defendants no.1,2 & 3 in the property and the suit shall stand dismissed without any further orders.

9. On enquiry, it is stated that the plaintiff No.1, defendant No.1 are present in the Court and the defendant No.2 (who is also the attorney of the defendant No.3), defendant no.3 and the plaintiffs No.2&3 have also been called to the Court, for all the parties to sign this order in token of

acceptance of the compromise as contained herein.

10. It has further been agreed that the defendants no. 1 to 3, at the time of receiving the entire balance sale consideration and if applicable, with interest, shall deliver vacant, peaceful physical possession of the property and execute the documents as may be desired by the plaintiffs in relation to their share of the said property and register the same, all at the cost and expense of plaintiffs.

11. It has further been agreed that the defendants, on the date of receipt of entire balance sale consideration as aforesaid, will also furnish to the plaintiffs proof of upto date payment of electricity and water charges and house tax with respect to the property.

12. It is also informed that the defendant No.2 is in possession of the keys of the entire property except a study which is near the garage and one bedroom on the second floor, keys of which are with defendant no.1 and the original title deeds i.e. Conveyance Deed of freehold rights dated 28th June, 2011 of the land underneath the property and the following other documents:

a. Sale Deed;

b. Perpetual Lease Deed;

c. Sanction Building Plan / Completion Certificate; and,

d. all other relevant documents in power and possession of the defendant no.2,

and it is agreed that the defendant no.2, at the time of receipt of entire balance sale consideration as aforesaid by defendants no.1 to 3, handover the same to the plaintiffs.

13. Mr. S.C. Nanda, Advocate on behalf of the plaintiffs and Mr. P.P.

Malhotra, Sr. Advocate for the defendants No.2&3 have graciously agreed to communicate with each other for the purposes of inspection of property, if any required by the authorised bankers of the plaintiffs and inspection of the original documents of title of the property and preparation and scrutiny of Sale/Transfer Deed etc. and for smooth implementation of what is contained herein.

14. The date for completion of the transaction shall also be informed by plaintiffs to defendants no.1 to 3 at least three days in advance to enable the defendants to make arrangement therefor.

15. The plaintiffs shall be entitled to have the Sale Deed/Transfer Deed executed either in their own names or in the name/s of any nominee/s, without any liability to the defendants.

16. If the plaintiffs are ready to pay the balance sale consideration as aforesaid and if the defendants no.1 to 3 or any of them are refusing to perform their obligations as aforesaid, the plaintiffs shall deposit the entire balance sale consideration, if applicable, with interest, in this Court and the plaintiffs shall then be entitled to have Sale/Transfer Deed executed in their favour through process of Court and to recover possession by issuance of warrants of possession and balance sale consideration shall be released to defendant/s thereafter, after deducting therefrom and the interest earned thereon, the interest paid by the plaintiffs to their bank for the period from date of deposit by the plaintiffs till the date of execution of Sale/Transfer Deed and delivery of possession.

17. For clarity, it is specified that out of the balance sale consideration of Rs.50,94,68,753, Rs.16,98,22,918/-, Rs.16,98,22,917/- and

Rs. 16,98,22,917/- are payable to the defendants no.1 to 3 having 7/24th share each respectively and payment shall be subject to TDS if applicable in law. If TDS is deducted a certificate of deduction shall be duly furnished to the defendants.

18. All the disputes and claims *inter se* between the defendants are hereby also stand settled.

19. All pending applications stand disposed of.

20. A decree is accordingly passed in terms of above, leaving the parties to bear their own costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

MAY 02, 2018
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