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

+ **CS(COMM) 641/2018 & I.A. 4506/2018**

SMT. VANEETA CHANDWANI & ANR Plaintiffs

Through: Mr. Vaibhav Mehra, Advocate (M-9868279944).

versus

BPTP LTD Defendant

Through: Mr. Manish Sharma & Mr. Ninad Dogra, Advocates (M-9990090052).

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **11.09.2018**

1. The present suit has been filed by the Plaintiffs seeking recovery of a sum of Rs.1,53,95,657/- along with interest. The brief background is that the Defendant started a project by the name 'AMSTORIA' situated at Sector 102, Gurgaon, Haryana. Various plots in the said project were sold by the Defendant. One such Plot Buyers Agreement was entered into by the Defendant with Mr. Amitabh Tyagi on 7th October, 2011 for a plot bearing no.C-281 in Amstoria admeasuring 222 sq. yds. The said Mr. Amitabh Tyagi sold the plot to the Plaintiffs herein, under confirmation by the Defendant. The said sale was done with the complete consent of the Defendant and was duly endorsed by the Defendant. The total payment made by the Plaintiffs till date is Rs.92,35,383.50/- including interest on late payment. The present suit was filed by the Plaintiffs on the ground that

despite repeated requests to the Defendants to allot the plot – C-281, the same was not allotted. The allegation of the Plaintiffs in the plaint is that the said plot had in fact been deleted and communications were exchanged between the parties. The Plaintiffs thereafter filed the present suit seeking the following reliefs:

(a) Pass a decree of declaration. Declaring that agreement dated 07.10.2011 is illegal being one sided, and

(b) Pass a decree for recovery of a sum of Rs. 1,53,95,657/- (Rupees one crore fifty three lakh ninety five thousand six hundred and fifty seven only)) along with interest @ 18% from the date of filing the suit till realization against the defendant with cost and may pass such further order(s) as may do complete justice in the facts and circumstances of the case.”

2. The case of the Defendant is that the plot was always available and in fact, letter of possession was also given to the Plaintiffs on 31st October, 2017. The Defendant filed an application under Section 8 read with Section 5 of the Arbitration and Conciliation Act, 1996 relying upon the arbitration clause in the Plot Buyers Agreement.

3. The Court has heard the submissions on behalf of parties on the last three to four hearings. On the last date, a Local Commissioner was appointed to ascertain the availability of C-281. The report of the Local Commissioner was received on the last date. In view of the fact that C-281 is an irregularly shaped plot, after some submissions, parties have agreed to settle their disputes on the following terms and conditions:

i) The Defendant shall allot C-311 to the Plaintiff instead of C-281. Defendant assures and represents that the said plot is

unencumbered and the Defendant has the said plot in its power and possession. The Defendant further undertakes to transfer complete title and possession to the Plaintiffs, upon the payment of the balance dues;

ii) The Plaintiffs agree to pay all the BPMS charges (IFMS, Advance CAM etc.), Admin charges, Registration charges, Stamp Duty, Conveyance Deed Charges, etc. and GST if applicable towards the said allotment as also the difference in the price due to the area of C-311 being more than that of C-281. The Defendant has handed across a chart explaining the amounts to be paid by the Plaintiffs. Ld. Counsel for the Defendant agree that the 'Preferential Location Charges' of 15 mtr. road to the tune of Rs.4,31,143/- need not be paid and that the Defendant would also give credit for a sum of Rs.2,93,974.50/- which is the interest amount already deposited by the Plaintiffs. Stamp duty would however be payable as per the Agreement.

iii) The Plaintiffs shall pay the amounts as per (ii) above by way of a demand draft/pay order in favour of the Defendants. Upon handing over the said pay order/demand draft, the sale deed shall be executed by the Defendant for plot no.C-311 in favour of the Plaintiffs. The sale deed shall also be registered with the concerned Sub-Registrar's office.

iv) Upon payment of the sums as per (ii) above, the Plaintiffs shall be the exclusive owners of Plot No. 311, Amstoria, Sector 102, Gurgaon, Haryana.

4. The necessary documentation be prepared by the Defendant and the

exact amount payable be intimated to the Plaintiffs by the Defendant within 20 days. The Plaintiff would have a period of 8 weeks thereafter to arranging the payment. A mutually agreed date shall be fixing for handing over of the payment, execution and registration of sale deed. The said date will in any case be prior to 30th November 2018.

5. Upon execution and registration of the sale deed in respect of plot no.C-311, the Plaintiffs shall execute the documents for handing back the title and possession of the C-281, within a period of two days. The matter be listed for reporting compliance on 30th November, 2018.

6. Mr. Sagar Chandwani – son of Plaintiff and Mr. Dilip Kumar Chandwani – husband of Plaintiff are present on behalf of Plaintiff No.1. On behalf of Plaintiff no.2, her husband Mr. Rajesh Chatrath and her brother Mr. Sanjay Malhotra were also present. Mr. Rajiv Gupta, Vice President of the Defendant Company is present in Court. All parties have given their consent to the above settlement.

7. The suit is decreed as settled. All pending I.As are disposed of.

PRATHIBA M. SINGH, J.

SEPTEMBER 11, 2018

Rahul