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

Date of Decision: 14.11.2018

+ CS(OS) 406/2017

SMT. SWARN KAUR Plaintiff

Through Mr. Joginder Sukhija, Adv.

Versus

SMT. POONAM ARORA & ORS Defendant

Through Defendants are *ex- parte*

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. This is a suit filed for specific performance to direct the defendants to execute a sale deed in the favour of the plaintiff with respect to the agreement to sell dated 01.07.2011 for the property at Sardar Nagar, near C.C. Colony, Delhi, measuring 2100 sq. ft. Other connect reliefs are also sought.

2. A perusal of the plaint shows that the plaintiff was offered to purchase a proposed first floor (front portion) without roof rights/terrace rights covered area measuring 2100 sq. ft comprising of 5 bedrooms, hall kitchen with proportionate rights of land underneath the new building along with common passage and stair case (*herein referred to as "the suit property"*) with pre-fitted water and electricity connections. The said building was to be constructed by Late Sh. Satish Arora, the deceased husband of defendant no. 1 and father of defendant no: 2 and 3, and defendant no. 4.

3. The plaintiff purchased the said proposed first floor (front portion) measuring 2100sq. ft. from Late Sh. Satish Arora and defendant no. 4(*herein referred to as "the vendors"*) and an agreement to sell dated 01.07.2011 was

executed between the plaintiff and the vendors for a total sale consideration of Rs. 2,31,00,000/- out of which Rs. 10 lakhs was paid at the time the said agreement was executed.

4. Thereafter, the vendors assured the plaintiff that the entire construction of the new building would be completed on or before 31.03.2013 and by that time the vendors will also execute the sale deed of the suit property in favour of the plaintiff.

5. As per the assurance of the vendors and the agreement to sell dated 01.07.2011, the plaintiff made regular payments to the vendors till 09.02.2015.

6. That apart, brother of defendant no. 4, namely, Sh. Akhil Nanda also entered into an agreement to sell dated 19.09.2012 with the plaintiffs' sons to sell the second floor without roof rights/terrace rights arising out of another property bearing No. 10A/XII, Samjay Nagar, Gulabi Bagh, Delhi (*herein referred to as "the flat"*) for a total consideration of Rs. 1.5 crores out of which Rs. 50 lakhs was paid on 21.09.2012 to Sh. Akhil Nanda. It was also agreed that the said agreement was executed on the condition of buy-back basis, whereby it was agreed that Sh. Akhil Nanda would be eligible to buy-back the flat after the period of 180 days expires at a premium of 2% per month, the said period was extendable upto 12 months.

7. After the lapse of 12 months, Sh. Akhil Nanda failed to buy back the flat due to which a MOU dated 21.09.2013 was executed between Sh. Akhil Nanda and plaintiffs' sons whereby, an extension to buy back the flat was agreed for another 12 months.

8. The said MOU dated 21.09.2013 states that a premium of 2% per month would be levied on the deposited amount of Rs. 50 Lakhs for another

12 months. Hence, the total amount to be paid by Sh. Akhil Nanda was agreed to be Rs. 74 Lakhs (i.e. Rs. 50 Lakhs + Rs. 24 Lakhs (towards premium calculated for 24 month)). It was further agreed that the said amount of Rs. 74 lakhs shall be paid to Sh. Satish Arora and Defendant No. 4 towards the satisfaction, as the part consideration on behalf of the plaintiff towards the present agreement to sell dated 01.07.2011. The receipt of the said payment was duly accepted by Sh. Satish Arora and Defendant No. 4 and in acknowledgement thereof Sh. Satish Arora signed the said MOU as one of the witnesses.

9. Accordingly, till 09.02.2015 the plaintiff has paid a sum of Rs. 2.20 crores to the said vendors and vacant, physical possession of the suit property was handed over to the plaintiff on March, 2015. It was further agreed between the parties that the sale deed with respect to the suit property would only be executed when the plaintiff would pay the remaining amount of Rs. 11 lakhs.

10. It is further pleaded in the plaint that plaintiff has always showed her willingness to pay the remaining amount of Rs. 11 lakhs and get the sale deed executed by the vendors in the favour of the plaintiff. Despite plaintiff efforts the vendors were reluctant to accept the remaining amount and get the sale deed executed in favour of the plaintiff.

11. In the meanwhile, Sh. Satish Arora (i.e. one of the vendors) expired on May, 2017 making his family (i.e. defendant 1 to 3) liable to accept the remaining amount and execute the sale deed with respect to the suit property. However, defendant no. 1 to 3 are still neglecting to such request. Legal Notice was issued dated 31.07.2017 by the plaintiff to the defendants to

perform their part of the contract dated 01.07.2011, by executing the sale deed with respect to the suit property.

12. Despite service of notice dated 31.07.2017, the defendants have neither executed the sale deed with respect to the suit property in favour of the plaintiff nor have accepted the remaining consideration amount.

13. Thereafter, the plaintiff was approached by the defendants for execution of the sale deed of the suit property at an increased amount of Rs. 25 lakhs. The plaintiff was also threatened by defendant no. 4 to sell the suit property to any third party on throw away price showing their dishonesty.

14. Hence, this present suit is filed.

15. Notices were served to the defendants in the present suit by this court on 01.09.2017 and counsel for defendants entered appearance on 11.10.2017. Learned counsel for the defendants sought time to file their written statement. Thereafter, no one has appeared for the defendants and no written statement is filed. This court on 13.11.2017 ordered the defendants be proceeded *ex-parte*. Evidence was led by the plaintiff.

16. I have heard the learned counsel for the plaintiff and have also examined the contents of the plaint and the documents placed on record.

17. The plaintiff has filed her evidence of herself and her son, namely, Sh.Paramjeet Singh by way of affidavit as PW 1 and PW 2. The plaintiff has also led evidence of Mr. Anirudh Kumar Sinha as PW-3, Mr. Anil Khatri as PW-4 and Mr. Ajitesh Kumar as PW-5.

18. Plaintiff in her evidence by way of affidavit has on oath repeated the contentions, as noted above. In her affidavit she has affirmed that the agreement to sell was executed on 01.07.2011 which bears her signatures

and also bears the signatures of the vendors. The same is exhibited and marked as Ex. PW 1/1. The plaintiff has stated that she has paid various installments towards the suit property and the vendors have duly acknowledged various receipts with respect to the said installments. Receipts are marked and exhibited from PW 1/3 to PW 1/7. It is further stated by the plaintiff that another agreement to sell dated 19.09.2012 was executed by the brother of defendant no. 4 and the sons of the plaintiff with respect to the flat for a total consideration of Rs. 1.5 crores out of which Rs. 50 lacs was paid on 21.09.2012 to the brother of defendant no.4, namely, Sh. Akhil Nanda by the sons of the plaintiff. The said agreement to sell for the flat is marked and exhibited as Ex. PW 1/8 and the receipt dated 21.09.2012 of Rs. 50 lacs is marked and exhibited as Ex. PW 1/9. It is also pleaded by the plaintiff that as per the agreement to sell dated 19.09.2012 Sh. Akhil Nanda agreed to buy back the flat after 180 days, extendable to 12 months, at a premium calculated @ 2% per month. Due to the lapse of 12 months, Sh. Akhil Nanda entered into a MOU for extension of another 12 months and also agreed to pay Rs. 74 lacs to the vendors towards the satisfaction of the agreement to sell dated 01.07.2011. The MOU is marked and exhibited as Ex. PW 1/10. It is also pleaded by the plaintiff that till 09.02.2015, the plaintiff has paid a sum of Rs. 2.20 crores to the vendors and is in the full possession of the suit property since March, 2015. It is further pleaded by the plaintiff that for execution of the sale deed for the suit property the plaintiff has made various attempts to the vendors but the vendors have failed to execute the sale deed with respect to the suit property in favour of the plaintiff and has also failed to accept the balance consideration of Rs. 11 Lakhs as the full and final

payment of the suit property. Legal Notice by the plaintiff to call on defendants to execute the sale deed is marked and exhibited as Ex. PW 1/11.

19. Sh. Paramjeet Singh PW2, in his affidavit by way of evidence has affirmed that he is one of the sons of the plaintiff and is residing with the plaintiff in the suit property since March, 2015. A perusal of the said affidavit shows that Sh. Paramjeet Singh has affirmed the documents exhibited by the plaintiff and has also affirmed that the documents/receipts which are duly executed/signed between the plaintiff and vendors are done in his presences.

20. Mr. Anirudh Kumar Sinha PW-3, is an Assistant Manager, Tata Power Delhi Distribution Ltd., Lawrence Road, Keshavpuram, Delhi who in his evidence has exhibited the records pertaining to an electricity connection in the name of the plaintiff vide notification no. 2008869545 and CA no. 60019185481 as PW 3/1. Mr. Anil Khatri PW-4, Junior Assistant, Sub-registrar office-VI A, Pitampura, New Delhi, in his evidence has exhibited a sale deed registered as document no. 17609 in Additional Book No. 1 Volume no. 3868 Pages 84 to 93 registered on 07.12.2011 as Ex. PW 4/1. Mr. Ajitesh Kumar PW-5, an ITO Officer, Ward no. 35(2), Shyama Prasad Mukherjee, Civic Centre, Minto Road, New Delhi, in his evidence has exhibited the income tax returns for assessment year 2015-2016 of defendant no. 4 and has said that no assessment is pending for the said person. The assessment report is marked and exhibited as Ex. PW5/1.

21. I have perused the evidence placed on record and examined the exhibited documents, which shows that an agreement to sell dated 01.07.2011 was executed by vendors and the plaintiff with respect to the suit property. It further shows that the plaintiff is in possession of the suit

property since March, 2015. It establishes that a total consideration of Rs. 2.2 crores has been paid by the plaintiff to the vendors, with respect to the suit property, leaving a balance of Rs. 11 Lakhs. The plaintiff has further established that she is a bonafide purchaser of the suit property and has always shown her willingness to pay the remaining balance of Rs. 11 Lakhs and get the sale deed executed in her favour. She has also established that Late Sh. Satish Kumar (i.e. one of the vendors) has expired on May, 2017 leaving behind defendant no.1 to 3 as his legal heirs who are bound by all the agreements/MOUs executed between the parties.

22. It is clear from the aforementioned facts that a decree of specific performance with respect to the agreement to sell dated 01.07.2011 can be passed in favour of the plaintiff and against the defendant subject to payment of the balance amount of Rs. 11 Lakhs. Accordingly, a decree for specific performance is passed in favour of the plaintiff and against the defendants for the suit property. The defendants are also directed to execute the sale deed with respect to the subject property of the sale agreement dated 01.07.2011 being the suit property (i.e. first floor (front portion) without roof rights/terrace rights covered area measuring 2100 sq. ft comprising of 5 bedrooms, hall kitchen with proportionate rights of land underneath the new building along with common passage and stair case) in favour of the plaintiff. The plaintiff shall deposit the balance consideration of Rs. 11 Lakhs in court in advance.

23. Accordingly, the suit and all pending applications, if any, stand disposed of.

JAYANT NATH, J.

NOVEMBER 14, 2018/ss

Corrected and released on: 10.12.2018