

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

% Decided on: 2nd September, 2019

+ **CS(COMM) 516/2017**

SACHIN TALWAR Plaintiff
Represented by: Mr. Jugal Wadhwa, Mr. Rishabh
Wadhwa, Mr. Raghav Goyal, Advs.
with plaintiff in person.

versus

SANDEEP AGRAWAL Defendant
Represented by: Defendant ex-parte

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By the present suit the plaintiff, inter alia, seeks a decree of specific performance for the agreement to sell dated 11th March, 2016 further extended by the supplementary agreement/ MOU dated 30th September, 2016 and 6th April, 2016 by receiving the balance consideration of ₹20 lakhs thereby transferring the suit property by executing a registered sale deed and handing-over peaceful and vacant possession of suit property. In the alternative a money decree for a sum of ₹1,04,00,000/- along with interest, a decree of permanent injunction and cost.

2. Case of the plaintiff is that the defendant who is a builder is the owner and in possession of an immovable property, i.e., entire ground floor (without roof rights) with common passage and separate water and electricity connection along with proportionate share of land underneath in

respect of property No. 23-A, a plot measuring 150 Sq. Yds. (125.4 Sq. Mts.), Satyawati Nagar, Ashok Vihar, Phase-III, Delhi-110052, situated in the erstwhile land of Village Sidhora Kalan (hereinafter referred to as the "suit property").

3. According to the agreement to sell & purchase dated 11th March 2016 defendant agreed to sell the suit property to plaintiff for total consideration of ₹70,00,000/-. In order to repose confidence of the plaintiff, defendant handed him over the original registered sale deed dated 28th December 2015 which was executed by the erstwhile owner Sh. Om Prakash in his favour.

4. Besides paying a sum of ₹25 lakhs at the time of entering into agreement to sell, the plaintiff paid a further sum of ₹20 lakhs in various installments and the balance amount of ₹20 lakhs was to be paid at the time of execution of the sale deed to be executed finally on or before 31st May, 2017. On 25th May, 2017 the plaintiff intimated to the defendant that he would be reaching the office of Sub-Registrar VI-A, Pitampura, Delhi on 30th May, 2017 at 10.00 AM where he reached with the necessary documents and demand draft of the balance payment of ₹20 lakhs, however the defendant failed to appear, hence no sale deed could be executed. Plaintiff issued a legal notice dated 3rd June, 2017 calling upon the defendant to abide by the agreement dated 11th March, 2016 which was duly delivered at his residential address by courier. However, the defendant failed to act nor responded to the notice, hence the suit.

5. Summons in the suit were issued to the defendant vide order dated 8th August, 2019 when this Court also directed parties to maintain status quo with respect to the suit property. Despite service of summons, none entered appearance on behalf of the defendant and hence defendant was proceeded

ex-parte vide order dated 8th February, 2019 and the matter was listed for framing of issues on 30th April, 2019. By order dated 30th April, 2019 the following issues were settled.

“(i) *Whether the plaintiff has entered into an agreement to sell dated 11.03.2016 with the defendant regarding the property No.23-A, Satyawati Nagar, Ashok Vihar, Phase-Ill, Delhi situated in Village Sidhora Kalan? (OPP)*

(ii) *If the answer to the above question is in the affirmative, whether the plaintiff has been ready and willing to perform the terms and conditions of the agreement to sell dated 11.03.2016? (OPP)*

(iii) *Relief.”*

6. In his affidavit by way of evidence which was tendered vide Ex.PW-1/X, the plaintiff who appeared in the witness box reiterated the contents of the plaint. He also exhibited the site plan of the suit property vide Ex.PW-1/1, copy of the agreement to sell and purchase dated 11th March, 2016 as Ex.PW-1/2 and copy of the registered sale deed dated 28th December, 2015 of the suit property in favour of the defendant as Ex.PW-1/3.

7. The initial sum of ₹20 lakhs was paid by the plaintiff to the defendant in the form of a RTGS for a sum of ₹10 lakhs dated 11th March, 2016 through ICICI Bank and a cheque for a sum of ₹15 lakhs dated 11th March, 2016 drawn on ICICI Bank. A receipt in this regard was executed by the defendant, copy whereof was exhibited as Ex.PW-1/4 and the copy of MOU/supplementary agreement dated 30th September, 2016 extending the time was exhibited as Ex.PW-1/5. Further payment of ₹10 lakhs was made by the plaintiff to the defendant by way of three separate RTGS dated 15th September, 2016; 19th September, 2016 and 20th September, 2016 for ₹5

lakhs, ₹2 lakhs and ₹3 lakhs respectively and the copy of the receipt in this regard was exhibited as Ex.PW-1/6. Copy of the further MOU/supplementary agreement dated 6th April, 2017 was proved as Ex.PW-1/7 when after plaintiff paid a further sum of ₹15 lakhs by way of 4 RTGS dated 17th October, 2016; 29th October, 2016, 20th October, 2016 and 6th April, 2017 for a sum of ₹5 lakhs, ₹3 lakhs, ₹2 lakhs and ₹5 lakhs respectively. Copy of the receipt dated 6th April, 2017 was exhibited as Ex.PW-1/8.

8. The plaintiff also proved letter dated 25th May, 2017 as Ex.PW-1/9 informing the defendant about his willingness to pay the balance amount and to appear before the Sub-Registrar on 30th May, 2017 which along with the speed post receipt dated 25th May, 2017 were exhibited as Ex.PW-1/9 and Ex.PW-1/10 respectively and the receipt of courier of the even date as Ex.PW-1/11. The plaintiff also proved copy of the demand draft No.504920 dated 29th May, 2017 as Ex.PW-1/12. To show his presence at the office of Sub-Registrar on 30th May, 2017 he exhibited the document Ex.PW-1/13 and the parking receipt as Ex.PW-1/14. The plaintiff also proved his statement of account maintained at ICICI Bank as Ex.PW-1/15, besides copy of the legal notice and the courier and postal receipts along with tracking report vide Ex.PW-1/16 to Ex.PW-1/23. The original documents of all these exhibits were brought to the Court, shown and returned to the plaintiff.

9. From the evidence of the plaintiff and the documents exhibited, it has been proved that a valid agreement to sell & purchase was executed between the plaintiff and defendant in respect to the suit property which was duly described in the agreement to sell & purchase dated 11th March, 2016 as

entire Ground Floor part of property No. 23-A, (without roof rights) land measuring 150 sq.yds. i.e. 125.4 sq.mtrs. situated at village Sidhora Kalan, Delhi now colony known as Satyawati Nagar, Ashok Vihar, Phase-III, Delhi-110052 with common passage & separate water and electricity connection/ meter along with proportionate, undivided, impartiable share of the land underneath for a total sum of ₹70 lakhs. The plaintiff also proved having paid a sum of ₹25 lakhs at the time of entering into the agreement to sell & purchase and thereafter a further sum of ₹25 lakhs in installments. The plaintiff also proved his willingness to perform his part of the contract by being present along with the balance sale consideration before the Sub-Registrar on 30th May, 2017 before the final date of conclusion of the agreement, as extended by the supplementary agreements/ MOUs.

10. It is thus proved that the defendant was in clear breach of the terms of agreement having not accepted the balance sale consideration and not executed the sale deed.

11. The issue which needs consideration is whether in view of the facts noted above whether the plaintiff is entitled to the decree of specific performance of the agreement to sell & purchase or is entitled to refund of the money with interest thereof. From the evidence led by the plaintiff it is proved that the plaintiff earnestly carried out his part of the promise, was always and even today willing to perform his part of the agreement and it is the defendant who after taking substantial amount of the money has failed to complete his obligation and despite having taken substantial amount has continued to enjoy the possession of the property, thereby demonstrating a non-bonafide conduct. Hence, the plaintiff is entitled to grant of specific performance of the agreement on balancing the equities.

12. For the discussion aforesaid, the suit is decreed in favour of the plaintiff and against the defendants in terms of prayer 'A' & 'C'. The plaintiff is directed to deposit the sum of ₹20 lakhs with interest thereon @ 7% per annum from 1st June, 2017 till the date of deposit, within four weeks from today. On the plaintiff depositing the balance sale consideration of ₹20 lakhs with interest @ 7% per annum, the defendant shall execute the sale deed and deliver the possession of suit property in favour of the plaintiff within four weeks thereafter.

13. In default on the part of the defendant in executing the sale deed and handing over the possession, the officer/Joint Registrar of this Court shall execute the sale deed in favour of the plaintiff and hand-over the vacant physical possession of the suit property to him.

14. Suit is disposed of.

15. Decree sheet be drawn accordingly.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 02, 2019
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