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

+ **CS(COMM) 551/2019**

**HOUSING DEVELOPMENT FINANCE
CORPORATION LIMITED**

..... Plaintiff

Through: Ms. Sonali Malhotra and Mr. Amit
Sanduja, Advs. with Mr. Aju Ashok,
Senior Manager (Legal) of plaintiff.

Versus

COLOSSAL PROPERTIES PRIVATE LIMITED Defendant

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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28.01.2020

1. The plaintiff has instituted this suit against defendants No.1 to 5 namely (i) Colossal Properties Private Limited, (ii) Ajay Chandra, (iii) Sanjay Chandra, (iv) Ramesh Chandra and (v) Preeti Chandra, for specific performance of contract and for permanent injunction, pleading (a) that the defendant No.1 had availed financial facility of Rs.50 crores from the plaintiff and the said amount was disbursed by the plaintiff to the defendant No.1 on 31st March, 2008; (b) that in order to secure the said loan with interest and other dues thereon, the defendant No.1 had mortgaged immovable property, being land admeasuring 12 bigha 4 biswa in Killa Nos.34//20 min (2-6), 21 min (2-16), 35//16 (4-0), 25/2 (0-6) 41//1 min (2-16) at Village Mehrauli, Tehsil Hauz Khas, New Delhi along with construction thereon, both present and future and all entitlements emanating therefrom, with the plaintiff; (c) that the defendant No.1 registered a Mortgage Deed dated 6th June, 2008 in favour of the plaintiff with respect to the said land; (d) that the defendant No.1 failed to maintain financial

discipline and defaulted in repayment of the loan and the account of the defendant No.1 with the plaintiff, on 31st July, 2015 was declared as a non-performing asset; (e) that proceedings under The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) were initiated by the plaintiff; (f) that the defendant No.1 through the defendant No.2 offered to transfer property aforesaid to the plaintiff in discharge of the defendant No.1's liability to repay the outstanding dues and a Settlement Agreement dated 30th December, 2015 was executed by the defendant No.2 on behalf of the defendant No.1 and the plaintiff, whereunder the defendant No.1 agreed to unconditionally transfer and convey the property aforesaid to the plaintiff and that the discharged amount i.e. the amount owed to the plaintiff shall be treated as full and final consideration of the property; (g) that a separate Agreement to Sell dated 30th December, 2015 was also executed between the defendant No.1 through the defendant No.2 and the plaintiff, whereunder the defendant No.1 agreed to sell, transfer and convey rights, title and interest in the said property to the plaintiff; (h) that the defendant No.1, under the Agreement aforesaid, had also agreed to obtain the permission for transfer and to hand over the physical possession of the property to the plaintiff; and, (i) that the defendant No.1 applied for permission and which was granted for a period of thirty days but the defendant No.1 did not execute the transfer documents and deliver possession of the property to the plaintiff. Hence this suit was instituted on 1st August, 2019 and re-filed on 27th August, 2019 and 28th August, 2019, for the relief of specific performance by directing the defendants to hand over the vacant peaceful

physical possession of the property to the plaintiff and to execute sale deed and for permanent injunction to restrain the defendants from dealing with the property.

2. The suit, unaccompanied with any application for any interim relief, came up before the Joint Registrar of this Court on 30th August, 2019 when summons thereof were ordered to be issued. The order dated 16th October, 2019 records that defendants No.1,4&5 had been served on 9th October, 2019 and the defendants No.2&3 had been served through the Jail Superintendent on 9th October, 2019. Mr. A.K. Singh, Advocate appeared before the Joint Registrar on 16th October, 2019 on behalf of the defendant No.1 and sought time to file written statement. No written statement was however filed, though Mr. A.K. Singh, Advocate appeared for the defendant No.1 before the Joint Registrar on 10th December, 2019 also.

3. None appears for the defendants today.

4. The defendants are proceeded against *ex-parte*.

5. I have enquired from the counsel for the plaintiff, the reason for impleadment of defendants No.2 to 5.

6. The counsel for the plaintiff states that the defendants No.2&3 had signed the Settlement Agreement, in terms whereof the Agreement to Sell was executed and defendants No.4&5 had been in touch with the plaintiff during the imprisonment of defendants No.2&3.

7. I have enquired from the counsel for the plaintiff, whether the defendant No.1 is part of Insolvency and Bankruptcy Code proceedings against Unitech Group.

8. The counsel for the plaintiff, on instructions of Mr. Aju Ashok, Senior
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Manager (Legal) of the plaintiff, present in Court, answers in the negative.

9. I have further enquired from the counsel for the plaintiff, whether there is any other encumbrances on the subject property and whether the plaintiff, at any time has issued no objection for creation of any other charge on the property.

10. The answer, again on instructions, as aforesaid, is in the negative.

11. The plaintiff, on the basis of averments made in the plaint and documents filed therewith, has made out a case for grant of relief of specific performance as sought and the need to relegate the plaintiff to *ex-parte* evidence is not felt, also since the plaint is accompanied with an affidavit on behalf of the plaintiff and affidavit by way of examination-in-chief in *ex-parte* evidence would be nothing but reiteration of the averments already supported by affidavit and the documents on record.

12. A decree is accordingly passed, in favour of the plaintiff and against the defendant No.1 Colossal Properties Private Limited, of specific performance of the Agreement to Sell dated 30th December, 2015, by directing the defendant No.1 to execute sale/transfer deed in favour of the plaintiff in terms thereof and by further directing the defendant No.1 to deliver vacant peaceful physical possession of the property agreed to be sold to the plaintiff. The decree shall however be subject to all permission required under law for transfer being granted and mutation in favour of the plaintiff.

13. In the facts, no costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

JANUARY 28, 2020 'bs'..

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