



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Pronounced on: 6th April, 2022**

+ **CS(OS) 2155/2011**

DIPIKA SEN & ANR

..... Plaintiffs

Through: Dr. Amitabha Sen, Advocate/
plaintiff No.2 in person with
Ms.Aditi Pandey, Advocate

versus

P K AGRAWAL & ORS

..... Defendants

Through: Mr. T. S. Thakraon and Mr.Sumit,
Advs. for D-2 to D-5

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. This suit had been filed originally for the execution of a Conveyance Deed and recovery of amount allegedly/illegally withheld by the defendants and for damages for abuse of process, harassment, criminal intimidation, blackmail and extortion.

2. The case set up by the plaintiffs who are husband and wife is that they are the joint owners of Apartment No. E-103, situated at Ambience Lagoon Apartment Residential Complex, Ambience Island, NH-8, Gurgaon, Haryana, which they had purchased from the defendants on 20th October, 2001 vide the Apartment Buyer's Agreement. It is stated that the plaintiffs had paid a sum of Rs.54,47,706/- towards the purchase of the flat. They were then required to pay an additional 13% of the sale price towards the registration charges for the conveyance of the said flat and



thus, the defendants collected from the plaintiffs, as also from the other apartment owners, a sum of Rs.6,61,760/- which the plaintiffs paid in two installments in the hope that the Sale Deed would be registered in their names.

3. The said sum of Rs.6,61,760/- was paid in two installments. One of Rs.3,61,750/- vide cheque No.544287 dated 10th April, 2003 and the second installment of Rs.3,00,000/- vide cheque No.544288 dated 12th May, 2003. This was duly acknowledged by the defendants vide receipt dated 10th April, 2003. The defendants did not execute the Conveyance Deed for over a year after collection of the registration charges, and despite promising to do so within a period of 75 days from 3rd August, 2004, nothing happened, and until 19th August, 2014, when this Court directed the defendants to do so, no Conveyance Deed was executed in favour of the plaintiffs.

4. It may be mentioned here that after the directions of this Court on 19th August, 2014, a Conveyance Deed was executed by the defendants No.2 to 5 and a sum of Rs.4,35,800/- was spent on 27th August, 2014 for registration of the Conveyance Deed. The suit was thereafter amended to incorporate the subsequent events and to adjust the amount claimed, as due and recoverable by the plaintiffs after adjusting the said sum of Rs.4,35,800/- utilized for registration of the Conveyance Deed. Thus, now, the claim for recovery is for Rs.4,70,960/- being the difference of the original total amount claimed i.e., Rs.9,06,760/- minus Rs.4,35,800/-, and Rs.65,700/-, which the plaintiffs claim was also illegally collected from them at the time of registration of the Conveyance Deed, and was



liable to be returned, with interest w.e.f. 28th August, 2014 till the amended plaint was filed. Compoundable interest @ 27% has also been claimed.

5. The further case of the plaintiffs is that the defendants had illegally charged money for parking space, whereas, parking areas were common areas under the Haryana Apartment Ownership Act, 1983 and could not be sold separately. Yet a sum of Rs.1,75,000/- and another sum of Rs.70,000/- had been collected from the plaintiffs for covered parking space. The plaintiffs have claimed that this amount be returned to them.

6. A further sum has been claimed towards harassment. It is stated in the plaint that when the plaintiffs were out of the country, the defendants issued a letter dated 25th May, 2011, which was received by the plaintiffs on 04th June, 2011, asking the plaintiffs to be present before the Sub-Registrar on 4th June, 2011 itself, failing which, the allotment of the flat would be cancelled. Thereafter a letter of a similar nature was sent on 16th June, 2011, threatening to cancel the allotment. The defendants sent another letter dated 06th July, 2011, cancelling the allotment of the flat to the plaintiffs and asking them to vacate the same. This, the defendants did with full knowledge that the plaintiffs were not living in India at that time and had gone abroad. It was only on 8th July, 2011, after their return to India that the plaintiffs filed the contempt petition before this Court as the RWA of the Apartment Complex and the defendants were already in conciliation.

7. Again, on 8th July, 2011 itself, without verifying the availability of the plaintiffs, the defendants called upon them to be present at the Sub-



Registrar's office on 12th July, 2011 at 11:00 a.m. for execution of the Conveyance Deed. Thus, they did not even care for the suggestions of the court. On 16th July, 2011, the defendants wrote another letter to the plaintiffs, cancelling the allotment of the premises and asking them to surrender the physical, vacant and peaceful possession of the apartment owned by the defendants/plaintiffs, which was completely illegal and unlawful, as it was in violation of the provisions of Section 12 of the Apartment Buyer's Agreement dated 20th October, 2001. It was submitted that the defendants had adopted scare tactics and illegal means to somehow drive away the plaintiffs from their own apartment. Thus, the plaintiffs have sought compensation and exemplary damages from the defendants for these acts.

8. The defendant No.1 is a lawyer. On being served with the summons, he filed an application under Order VII Rule 11 CPC and vide order dated 2nd November, 2011, was exempted from filing his written statement. Subsequently, on 15th April, 2013, on submissions being made in this regard by the learned counsel for the defendant No.1, I.A. 15709/2011 under Order VII Rule 11 CPC, was treated as one for deletion of name under Order I Rule 10 CPC. This application does not seem to have been disposed of. The defendant No.1 has not been deleted from the array of parties nor has he filed any written statement.

9. The written statement was filed by defendants No.2 to 5 to the original as well as the amended plaint. Reference is now made to the latter. Preliminary objections were raised to the effect that the suit was an abuse of the process of law as the plaintiffs had filed O.P. No.28/2005



before the National Consumer Disputes Redressal Commission (NCDRC). The question of jurisdiction was also raised contending that the property being located in Gurgaon, the courts at Gurgaon and the Punjab & Haryana High Court alone had jurisdiction to deal with the matter. Valuation was questioned.

10. It was also submitted that the refund of the sum of Rs.9,06,760/- could not be claimed as the said amount had been paid, even as per the averments made in the plaint, on 26th November, 2002, 10th April, 2003 and 12th May, 2003 and therefore, were time barred claims. It was also submitted that the Apartment Buyer's Agreement contained an arbitration clause, being clause no. 50, and the disputes between the plaintiffs and the defendant No.4 had to be referred to arbitration, and the Civil Courts had no jurisdiction.

11. It was submitted that since the Conveyance Deed was ultimately executed on 27th August, 2014, for which a sum of Rs.4,35,736.48/- had been utilized, the only claim remaining was Rs.2,26,023.52/- and therefore the suit ought to have been transferred to the District Court, being beyond the pecuniary jurisdiction of the High Court.

12. On merits, it was contended that the defendant No.2 is the Director of defendants No.3, 4 & 5, and defendant No.1 was their advocate and had no role to play in the entire matter. It was submitted that the defendants never refused to execute the Conveyance Deed, as it was the plaintiffs, who refused to get the Conveyance Deed registered under the pretext that the defendant No.4 should execute and register a Sale Deed in accordance with the Haryana Apartment Ownership Act, 1983. There has



been no denial of the amounts paid by the plaintiffs to defendants No.4, but it is denied that the defendants were liable to make any payments to the plaintiffs and that too with interest. It was further submitted that with regard to the sum of Rs.2,26,023.52/-, the defendants were ready to repay the said amount. It was denied that the plaintiffs were subjected to any harassment by the defendants. It was denied that the parking space was not chargeable, as these were completely in accordance with the Haryana Apartment Ownership Act, 1983 as well as the Apartment Buyer's Agreement dated 20th October, 2001 between the parties. Thus, it was prayed that the suit be dismissed.

13. A replication was filed reiterating the averments in the plaint and refuting the contents of the written statement.

14. On the basis of the pleadings of the parties, the following issues were framed:

“i. Whether the Defendant No. 2 to 5 have illegally collected the registration fees of Rs. 6,61,760/- from the Plaintiffs?

OPP?

ii. Whether the Defendant No. 2 to 5 have illegally sold the parking spaces for Rs. 2,45,000/-? **OPP**

iii. Whether the Defendant No. 2 to 5 have illegally collected Rs.65,700/- for conveyance deed? **OPP**

iv. Whether the Plaintiff is entitled to a decree of Rs.5,36,660/- against Defendant Nos. 2 to 5? **OPP**

v. Whether the Plaintiff is entitled to interest at the rate of 2% compounded monthly or at such other rate? **OPP**

vi. Whether the suit is bad for misjoinder of parties? **OPD”**



Despite other claims made by the plaintiffs and objections raised by the defendants, no other issue was pressed. In fact, prayer ‘c’ i.e., “*to award compensatory and exemplary damages in the interest of justice, equity and as a way of example, to the Plaintiffs for the reprehensible conduct of the Defendants*” was given up, as recorded in the order dated 10th May, 2019. The findings of this Court will, therefore, be only in respect of these issues.

15. The plaintiffs examined plaintiff No.2 as PW-1 and closed evidence. The defendants examined Mr. Sumit Chaudhary as DW-1 and closed their evidence.

16. I have considered the documents and evidence on record as well as the written submissions filed by the parties and have also heard plaintiff No.2 in person for the plaintiffs and learned counsel Sh. T. S. Thakraon, for defendants No.2 to 5.

17. My findings on the issues are as follows:

Issue No.(i) - Whether the Defendant No. 2 to 5 have illegally collected the registration fees of Rs. 6,61,760/- from the Plaintiffs? OPP

18. The contention of the plaintiffs is that the defendants No.2 to 5 had collected the registration charges of Rs.6,61,760/- from the plaintiffs as 13% of the consideration, unlawfully, much in advance of the execution of the Conveyance Deed and had retained the said money in excess from the time of payment, namely, w.e.f. 10th April, 2003 (Rs.3,61,760/-) and 12th May, 2003 (Rs.3,00,000/-).



19. The grievance of the plaintiffs is that this amount was illegally retained by the defendants No.2 to 5 until, upon the directions of this Court, the Conveyance Deed was actually executed on 27th August, 2014. Thus, for 13 years, they had retained the money with them. Moreover, when the Conveyance Deed was actually executed, only a sum of Rs.4,35,800/- was utilized towards registration charges.

20. There is no dispute that the said sum of Rs.6,61,760/- had been paid way back by May, 2003. The defendants alleged that it was the fault of the plaintiffs that the Conveyance Deed could not be executed in their favour. However, when the plaintiffs found no way out but to accept the Conveyance Deed rather than the Sale Deed, the document was executed by the defendants. Thus, the retention of the amount was not legal.

21. It is submitted by the defendants that the plaintiffs had voluntarily paid the stamp duty @ 13% of the sale price. Moreover, the defendants in the letter dated 25th May, 2011 had informed the plaintiffs that in lieu of the registration fee and stamp duty being reduced by the Government of Haryana, the same shall be adjusted after the execution of the Conveyance Deed.

22. It is to be noted that as per the documents of the defendants themselves, the existing rate of stamp duty at the time of payment was 12.5% which stood reduced to 6.5% by order of the Government of Haryana vide its notification dated 26th January, 2004 and the benefit of any reduction was to be given to the plaintiffs. The stamp duty stood at 7% in 2014 when the Conveyance Deed was in fact executed. It was further submitted that the registration charges of Rs.4,35,736.48 was a



calculation furnished by the plaintiffs themselves, for which the defendants were not liable.

23. Various documents have also been placed on the record being communications by the defendants to the plaintiffs calling them to appear before the Sub-Registrar. Even granting that in the month of June 2011, the plaintiffs were out of India, there does not seem to be any explanation for the refusal to appear before the Sub-Registrar in 2010 or in April and May, 2011 or thereafter, till the directions of the court in August, 2014. There does not appear to be any justification in the plaintiffs' insisting on a Sale Deed when Clause 13 of the Apartment Buyer's Agreement dated 20th October, 2001 provided for a Conveyance Deed. *Prima facie* therefore, there is nothing to suggest that a wrong amount had been claimed towards registration or the retention of the same was unlawful.

24. However, since August, 2014, after a sum of Rs.4,35,800/- was utilized for buying stamp paper for execution of Conveyance Deed, there was no reason why the defendants did not return the sum of Rs.2,25,960/- immediately to the plaintiffs.

25. This issue is accordingly partly answered in favour of the plaintiffs and against the defendants, whereby the plaintiffs are found entitled to Rs.2,25,960/-, paid in excess of the total cost for execution of the Conveyance Deed.

Issue No.(ii) - Whether the Defendant No. 2 to 5 have illegally sold the parking spaces for Rs. 2,45,000/-? OPP

26. It is argued by the plaintiffs that the parking charges were illegally levied as parking spaces could not be sold by the builders.



27. Learned counsel for the defendants has submitted that the parking did not constitute part of the super area and therefore, was charged separately. Attention of this Court has been drawn to Annexure 2 of the Apartment Buyer's Agreement, where, super area has been clearly defined for the purpose of calculating the sale price and that it did not include covered car parking area and open parking area allotted to the Apartment allottees for exclusive use. This definition of super area (Annexure II of the Apartment Buyer's Agreement) may be reproduced for ready reference :

“Super Area for the purpose of calculating the sale price in respect of the said Apartment shall be the sum of Apartment area of the said Apartment and its pro rata share of Common areas in the entire said building.

Whereas the Apartment area of the said Apartment shall mean the entire area enclosed by its periphery walls including area under walls, columns, balconies, cupboards.....with other premises, which form integral part of said Apartment, and Common areas shall mean all such parts/areas in the entire said building which the Apartment Allottee shall use by sharing with other occupants of the said building including entrance lobby .at ground floor, lift lobbies, lift shafts, electrical shafts, fire shafts and walls of plumbing shafts on all floors, common corridors and passages, staircases, munties, services area including but not limited to lift machine room, overhead water tank, maintenance office/stores etc., architectural features, if provided and security/fire control rooms.

xxx xxx xxx



It is specifically made clear that the computation of Super Area of the apartment does not include the following:

- a) Dwelling Units/ Building/ Site for Economically Weaker Section (EWS) (Excluded from the scope of Agreement)*
- b) Shops; schools and site reserved for shops, schools etc. (Excluded from the Scope of Agreement)*
- c) Roof/terrace above Apartments/Penthouses. (excluding exclusive terraces for Penthouses).*
- d) Covered Car parking area allotted to Apartment Allottee for exclusive use at Lower or Upper Basement level.*
- e) Open car parking area allotted for Apartment Allottee for exclusive use around buildings.*
- f) Roads, passages, lawn and other open areas within the complex.” (emphasis added)*

28. The plaintiffs have laid emphasis on the description of the parking spaces as common areas in the Delhi Apartment Ownership Act, 1986. However, what will be applicable would be the terms of the Apartment Buyer's Agreement as also the Haryana Apartment Ownership Act, 1983. Under the said Act, Section 3(f)(3) provides that parking area shall constitute a common area, “unless otherwise provided in the declaration or lawful amendments thereto”. As per the Annexure II and IV of the Apartment Buyer's Agreement, the parking area provided for exclusive use of the allottee was not included in the super area, which was to be ascertained for determining the sale price as per Clause 1.1 of the Agreement. As far as the Agreement was concerned, in clause 1.1, covered parking areas were to be transferred for consideration. The Annexure III pertaining to Schedule of Payments of the Agreement also provides for a separate payment for parking. The plaintiffs accepted all



these terms when they purchased the flat. Now they cannot change their stance to question clauses which they find inconvenient.

29. Thus, the defendants No.2 to 5 have not illegally sold parking space for a sum of Rs.2,45,000/- and the issue is answered against the plaintiffs and in favour of the defendants.

Issue No.(iii) - Whether the Defendant No. 2 to 5 have illegally collected Rs. 65,700/- for conveyance deed? OPP

30. According to the plaintiffs, this amount was not payable by the plaintiffs, as it was towards registration.

31. The learned counsel for the defendants, however, has relied on the order of this Court dated 6th August, 2014. On that day, it appears that the defendants No.2 to 5 had submitted that there were more charges required to be paid for the purposes of execution of the Conveyance Deed, and as the defendants would not be able to spend the same, the plaintiff No.2 had agreed to pay the same without prejudice. Thus, it is not as if, a consent order had been passed on that day to the effect that the plaintiffs would have to meet all extra expenditures.

32. Now, the sum of Rs.65,700/- has been paid by the plaintiffs and the DW-1 has explained that Rs.15,700/- had been paid as registration fee and Rs.50,000/- as documentation, deed writing facilitation and other charges. It is common practice for the purchaser to foot these expenditures. By making a claim that the receipts and bills were not furnished to the plaintiffs, would not suffice to hold that this was an unjust claim as the bills and receipts have been brought on record as Ex. DW-1/4 and there is no doubt cast on their authenticity.



33. In these circumstances, this issue is also answered against the plaintiffs and in favour of the defendants.

Issue No.(iv) - Whether the Plaintiffs are entitled to a decree of Rs.5,36,660/- against Defendant Nos. 2 to 5? OPP

34. In the light of the afore-going discussions and findings on issues (i), (ii) & (iii), it is clear that the plaintiffs are not entitled to a decree of Rs.5,36,660/- against defendants No.2 to 5.

35. In view of the issue no. (i) being partly allowed in favour of the plaintiffs, they are entitled only for a sum of Rs.2,25,960/-, payable by the defendants.

36. The issue is answered accordingly.

Issue No.(v) - Whether the Plaintiffs are entitled to interest at the rate of 2% compounded monthly or at such other rate? OPP

37. There has been some confusion in the mind of the plaintiffs that the Sale Deed has been executed in their favour and therefore, held out against the execution of only of the Conveyance Deed.

38. The suit was filed in 2011 and the defendants No.4, who received the amount, could have in fairness deposited the same in the court if the only issue as explained by DW-1 was the reluctance of the plaintiffs to execute the Conveyance Deed. To now say that due to the delay in execution of the Conveyance Deed, the defendants would not be liable under the Agreement for the payment of any interest would not be acceptable as an absolute defence.



39. Since, ultimately, it was only a sum of Rs.4,35,800/-that was paid by the defendants towards the stamp duty, the plaintiffs would be entitled to interest on the sum of Rs.2,25,960/-.

40. However, since the rate of interest agreed to is only in favour of defendants in case of default accruing on the part of the procedure, the same rate cannot be made available to the plaintiffs as prayed for. The prevailing rate of interest for senior citizens can be fairly awarded to the plaintiffs in terms of the Interest Act, 1978.

41. Thus, interest @ 6.5% is granted to the plaintiffs on the sum of Rs. 2,25,960/-from 27th August, 2014 till the date of payment.

42. The issue is answered accordingly.

Issue No.(vi) - Whether the suit is bad for misjoinder of parties? OPD”

43. It is the stand of the defendants that except defendant No.4, who had signed the Apartment Buyer’s Agreement and who had received the amounts from the plaintiffs, none of the other defendants were necessary and proper parties to the suit. The documents placed on the record bear out this fact, as according to the Agreement, no specific role has been assigned to the remaining defendants. They are therefore neither necessary nor proper parties to the suit. However, their impleadment in the suit is not fatal and does not call for dismissal of the suit only on this ground. It is not a case where a necessary and proper party had been excluded from the array of parties.

44. This issue is answered against the defendants and in favour of the plaintiffs.



RELIEF

45. On the basis of the findings recorded above in respect of the issues, the suit is decreed for a sum of Rs.2,25,960/-, with interest @6.5% from 27th August, 2014 till the date of payment.
46. Costs of the suit are also awarded to the plaintiffs.
47. Decree-sheet be prepared accordingly.
48. The suit along with pending applications, if any, stands disposed of.
49. The judgment be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

APRIL 06, 2022

ck

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