

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMMERCIAL SUMMARY SUIT NO. 443 OF 2019

Pentagon Premises Pvt. Ltd.

.. Plaintiff

v/s.

Excellent Estate and Properties

and & Ors.

.. Defendants

...

Mr. Prosper D'souza i/b. Ms. Ruchira H. Shetty for the Plaintiff.

None for the Defendants.

...

CORAM : KAMAL KHATA, J.

DATE : 21ST JUNE 2023.

P.C. :

1. This commercial suit is instituted for recovery of an amount of ₹ 6,25,43,105/- along with interest at the rate of 18% per annum on ₹ 4,75,00,000/- from the defendants who are engaged in the business of construction.

2. The defendant Nos. 2 and 3, partners of defendant No. 1 approached the plaintiff to transfer all the rights title and interest in respect of the land bearing F. P. No. 499, CTS no. F/ 126, TPS III admeasuring about 1087 square metres situated at V Patel Road

[linking road] village bandra, H/ West Ward, Bandra Mumbai. [In short. "the suit property".] along with the right to develop the said property For the total consideration of. Rs. 48,00,00,000/-. Upon receiving a part consideration of ₹ 1,50,00,000/-the defendant No.1 executed a Memorandum of Understanding dated 30th May 2008 there by agreeing to convey the said property with development rights with clear and marketable title and free from all encumbrances to the plaintiff. The defendant Nos. 2, 3, and 5 represented that M/ s. Omega (Defendant No.4.) which was the sister concern, had undertaken a scheme of slum redevelopment and we're entitled to TDR of about 15,000 square feet. The Plaintiff, Defendant Nos.1 & 4 entered into a tripartite agreement dated 15th March 2017 whereby the Defendants agreed to compensate the Plaintiff with a sum of ₹ 4,75,00,000/- if they failed to fulfil the terms and conditions of the MOU dated 30th May 2008 and also issued a cheque bearing no. 620737 dated 15th April 2017, drawn on Oriental Bank of Commerce, Khar (West) Mumbai.

3. Since there was no progress in the matter the Plaintiff deposited cheque of ₹ 4,75,00,000/- which was returned with the remark "Account blocked". The Plaintiff further learnt that the Defendant Nos. 1 to 4 had entered into a Tripartite agreement 25th March 2017 even though the Slum Rehabilitation Authority had

terminated the scheme of Slum Redevelopment and issuance of TDR on 27th October 2015.

4. It is stated that though the notice dated 30th June 2017 was received by the Defendant sent by the Plaintiff through their Advocate the Defendants failed to pay. Consequently, the Plaintiff filed a complaint with the ACMM 58th Court, Bandra bearing CC No. 1929/SS/2017 u/s 138 of the Negotiable Instruments Act.

5. The Plaintiff were entitled to claim a sum of ₹ 625,43,105 as per the Agreement dated 15th March 2017 from the Defendants who are jointly and severally liable.

6. The Writ of Summons was duly served on the Defendants through substituted service for which an affidavit of service is filed on behalf of the Plaintiff. On 7th January 2020 this Court directed that the suit to proceed as an undefended suit against Defendant No. 5 and exparte against the Defendant Nos. 1 to 3, 4 and 6.

7. The Plaintiff has tendered the Affidavit in lieu of Examination in chief of the Plaintiff under Order XVIII Rule 4 of the Code of Civil Procedure 1908 and the compilation of original documents both dated 4th March 2020.

8. In view of the provisions contained in Order XXXVII Rule 2(3) of the Code of Civil Procedure, 1908, in the event of default on the part of the defendants to enter appearance, the averments in the plaint are required to be deemed to be admitted and the Plaintiff becomes entitled to a decree.

9. I have examined the original documents tendered by the Plaintiff in support of his claim. It is apparent from the averments and the documents that the Plaintiffs have been beguiled of money by the Defendants and thus are entitled to a decree.

10. Hence, the following order:

- (a) The suit stands decreed against the Defendants.
- (b) Defendants do pay the sum of ₹ 4,75,00,000/- along with further interest @ 18 % from 3rd June 2017 till 25th January 2019 being the sum of ₹ 1,50,43,104/- (Exhibit H)
- (c) Defendants do pay interest @ 18% per annum on the principal sum of ₹ 4,75,00,000/- from the date of the decree till payment or realization.
- (d) Defendants to pay costs of the suit estimated at ₹ 5,00,000/-
- (e) Refund of Court fees in accordance with High Court

Rules and the shortfall shall form the additional component of the costs.

- (f) Decree to be drawn up expeditiously.
- (g) The Plaintiffs are at liberty to move in execution without awaiting the sealing of the decree.

(KAMAL KHATA, J.)