

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I. CR-272-2024

VANDANA KAPOOR (SINCE DECEASED)
THROUGH HER LEGAL HEIRS PETITIONER

Vs.

SONAM NAGRATH AND OTHERS RESPONDENTS

II. CR-1406-2024

VANDANA KAPOOR (SINCE DECEASED)
THROUGH HER LEGAL HEIRS PETITIONER

Vs.

S.K. NAGRATH (DECEASED) THROUGH THEIR HEIRS RESPONDENTS

Reserved on: 16.07.2024
Pronounced on: 31.07.2024

CORAM: HON’BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Tushar Sharma, Advocate, for the petitioner.
Mr. Sanjay Vij, Advocate, for the respondents.

DEEPAK GUPTA, J.

This order shall dispose of two Civil Revisions as titled above, as both of them have arisen out of the same proceedings between the same parties.

2.1 By way of Civil Revision No.272 of 2024, under challenge is the order dated 10.11.2023 (Annexure P16) passed by the trial Court, whereby objections of the JDs Sonam Nagrath etc. against an application moved by petitioner Vandana Kapoor through her LRs for executing the award dated 18.02.2016 passed in terms of a Memorandum of Understanding, were allowed by holding the execution of Vandana Kapoor to be not maintainable.

2.2 In CR No.1406 of 2024, under challenge is another order also dated 10.11.2023 passed by the trial Court, whereby the objections filed by the JD Vandana Kapoor (*petitioner herein*) in the execution filed by respondents Sonam Nagrath and others, were allowed.

3.1 To understand the controversy involved in these revisions, mention of brief facts of the case is necessary. Facts are being noticed from CR N: 272 of 2024. Subject matter of dispute is House No. 968, Sector-14, Gurugram, which was owned by Sh. S.K. Nagrath, who expired on 21.04.2013 leaving behind 04 daughters namely Vandana Kapoor (*petitioner herein*), Sonam, Dr. Priya and Poonam (*respondents herein*) as his only legal heirs. During his life time, a conveyance deed dated 22.07.2004 was executed, whereby apart from the name of Sh. S.K.Nagrath, the names of two of the daughters Sonam and Poonam were also included to be amongst owners of the property in dispute. The disputes arose, during the lifetime of Shri S.K.Nagrath regarding the ownership of the aforesaid property, which led to filing of the following two suits.

i) Civil Suit No.CIS-449/RBT-2023 - *CIS No.12720 of 2013*, which was filed by Sh. S.K. Nagrath titled as 'S.K. Nagrath Vs. Vandana Kapoor etc' seeking a decree of mandatory injunction.

ii) On the other hand, Vandana Kapoor filed a separate suit bearing *CIS No.267-2007* titled as 'Vandana Kapoor Vs. S.K. Nagrath' seeking specific performance.

3.2 After the death of Shri S.K.Nagrath and during pendency of the above two suits, with the interventions of the respectables of the family, a family settlement was arrived at in respect of the property in dispute, which was reduced to writing vide a memorandum of understanding (in short 'MOU') dated 18.02.2016 (*copy Annexure P-1*). The entire dispute is regarding the interpretation of said MOU. The said MOU was executed amongst the four sisters after the death of their father Sh. S.K. Nagrath. Pursuant to the said MOU dated 18.02.2016, the suit bearing CIS No.12720-2013 titled 'Sh. S.K. Nagrath Vs. Vandana Kapoor and others' was decreed in terms of MOU *Annexure P1* vide award of the same date (*Annexure P2*); whereas Civil Suit No.267 of 2007 titled 'Vandana Kapoor Vs. Sh. S.K. Nagrath' was dismissed as withdrawn on the same day i.e. 18.02.2016.

4.1 Alleging that Vandana Kapoor had failed to make compliance of terms of the family settlement executed vide MOU (*Annexure P1*), decree holders - Sonam etc. (who were impleaded as Legal representatives of Shri S.K.Nagrath in the suit) filed an execution petition (*Annexure P6*) for getting the award/decreed dated 18.02.2016 (*Annexure P2*) implemented.

4.2 On the other hand, Smt. Vandana Kapoor, also claiming to be decree holder, filed a separate execution (*Annexure P14*) seeking partition of the property in dispute in terms of the same document i.e. *Annexure P1* by getting the award *Annexure P2* implemented.

4.3 It is also worthwhile to mention that during pendency of these executions, Vandana Kapoor also filed a Civil Suit No.3263 of 2021 titled as 'Vandana Kapoor Vs. Sonam Nagrath etc.' for partition and permanent injunction. However, on an application moved by defendants of that case i.e., Sonam etc. under Order VII Rule 11 CPC, plaint of that suit was rejected vide an order dated 30.05.2022 (*copy Annexure P13*) by Ld. Civil Judge, Gurugram.

4.4 In response to the executions filed by decree holders Sonam etc., Vandana Kapoor, filed objections (*copy Annexure P7*), which have been dismissed by way of one of the impugned order dated 10.11.2023 (*Annexure P17*), against which said Vandana Kapoor through her LRs has filed CR No.1406 of 2024 (*Vandana Kapoor had expired during proceedings*).

4.4 On the other hand, in the execution petition, which was filed by Vandana Kapoor, objections were filed by Sonam and others, which were allowed and the execution of Vandana Kapoor was dismissed as not maintainable, vide the impugned order dated 10.11.2023 (*Annexure P16*), which has been assailed in CR No.272 of 2024.

5. Similar contentions have been raised in both the revisions. It is contended by learned counsel for the petitioner-Vandana Kapoor that as per settlement/memorandum of understanding (*Annexure P1*), though it was required for Vandana Kapoor to vacate House No. 968, Sector-14, Gurugram within a period of 06 months, but it was subject to the condition that the house in question shall be sold and 17% of the earnest money to be received, shall be paid to her, so as to make alternative arrangement of her accommodation. Though it is conceded that Vandana Kapoor/her family did not vacate the house within 60 days, but it is contended that since the house was not sold and 17% of the earnest money was not be paid to her and it is for this reason that she could not make the alternative arrangement as per the MOU and so, she was not bound to vacate the house. Learned counsel contends further that Clause No.6 of the MOU has been wrongly interpreted by the Court below in this regard.

6.1 Refuting the aforesaid contentions, learned counsel for the respondent submits that in fact Sh. Sanjay Kapoor, the husband of Vandana Kapoor, being the son-in-law of Sh. S.K. Nagrath, was inducted in the house as a licensee. He did not vacate the house, which had forced Sh. S.K. Nagrath to file the suit for mandatory injunction. On the other hand, Vandana Kapoor filed another suit. It is urged that it was in this background of the earlier litigations that MOU had been entered into between 04 sisters after the death of Sh. S.K. Nagrath. It is further contended that petitioner is trying to take benefit of only one of the Clause No.6 of the MOU, without referring to other clauses. Learned counsel contends that entire MOU is required to be looked into so as to know its pith and substance and the true intentions of both the parties, as per which it is only after vacating the house by Vandana Kapoor that it was required to be sold and then 17% of the sale consideration was to be paid to Vandana Kapoor. It is contended that after receiving the earnest money, the initial earnest amount was to be paid to Vandana Kapoor so as to make alternative arrangement, but it was subject to the condition that she first vacates the house. It is contended that the prior vacation of the house as a condition precedent was inserted because an occupied house under litigation was not expected to fetch good price. However, she did not make compliance of this condition.

6.2 Learned counsel for the respondents further contends that the Civil Revision as filed by petitioner-Vandana Kapoor is not maintainable and the impugned order being under Order 21 Rule 103 CPC, therefore, only the appeal could have been filed and on this ground also, the Revision deserves to be dismissed. With these submissions

6.3 It has also been brought to the notice that after passing of the impugned orders, the execution petition as filed by Sonam and others has since been dismissed as withdrawn being fully satisfied, as possession has since been handed over to the decree holders-Sonam and others.

6.4 Learned counsel has defended both the impugned orders as passed by the Court below and has prayed for dismissal of both these petitions.

7. I have considered the submissions of both the sides and have gone through entire paper book carefully.

8. Execution of MOU dated 18.02.2016 (Annexure P1) amongst the parties is not in dispute. Since, entire dispute revolves around and depend upon

the true interpretation and intention of the parties emanating from the said MOU (Annexure P1), therefore, it is necessary to reproduce the same. It reads as under:-

“MEMORANDUM RECORDING THE FAMILY SETTLEMENT

“This Memorandum recording the Family Settlement is drawn at Gurgaon on this 18th day of February 2016 between:

1. *Mrs. Vandana Kapoor W/o Mr. **Sanjay Kapoor, D/o Late Sh. Surendar Kumar Nagrath R/o House # 968, Sector-14, Gurgaon 122001, Haryana hereinafter called as First Party.***

AND

2. *Mrs. Poonam Bhasin W/o Mr. Mahinder Pal Bhasin D/o Late Sh Surendar Kumar Nagrath R/o. C4D/11A Janakpuri New Delhi hereinafter called as **Second Party.***

AND

3. *Ms. Sonam Nagrath Kohli W/o Mr. Tushar Kohli D/o Late St. Surendar Kumar Nagrath R/o 406 Technology Apartment, 24 | P Extension, Patparganj, New Delhi 92 hereinafter called as **Third Party***

AND

4. *Dr. Priya Nagrath D/o Late Sh. Surendar Kumar Nagrath R/O, H-49A, Second Floor Kalkaji New Delhi 110019, hereinafter called as **Fourth Party.***

AND WHEREAS *the expression First Party, Second Party, Third Party and Fourth Party Includes their legal heirs, children, nominees, successors, executors, etc.*

AND WHEREAS *Late Sh Surendar Kumar Nagrath was the Sole owner of the built up house bearing No. 968, Sector-14, Gurgaon Haryana, measuring 500 Sq. Yds. (hereinafter referred to as the said property)*

AND WHEREAS *Late Sh. Surendar Kumar Nagrath unfortunately expired on 21.4.2013.*

AND WHEREAS *all the parties to this Family Settlement are the only legal heirs of Late Sh. Surendar Kumar Nagrath (Sh. S.K Nagrath).*

AND WHEREAS *House No. 968, Sector 14, Gurgaon was purchased by Late Sh. Surendar Kumar Nagrath.*

AND WHEREAS *during the lifetime of Late Sh. Surendar Kumar Nagrath, he also got included the name of 3rd Party Ms. Sonam Nagrath and 4th Party Dr. Priya Nagrath as the co-owners of the House # 968, Sector-14, Gurgaon, Haryana*

AND WHEREAS *in pursuance thereof a conveyance deed bearing vasika no. 8700 dated 22.7.2004 was duly registered in favour of Late Sh. Surendar Kumar Nagrath and Ms. Sonam Nagrath and Dr. Priya Nagrath in respect of the said property with the Sub Registrar, Gurgaon.*

AND WHEREAS *Late Sh Surendar Kumar Nagrath filed a Suit for Mandatory injunction in respect of the House No. 968 sector-14 Gurgaon Haryana against the*

first Party and her husband i.e. Civil Suit titled as “S.K Nagrath Versus Vandana Kapoor etc.” which is pending before Sh. Rajesh Sharma, Additional Civil Judge (Senior Division) Gurgaon. After the demise of Late Sh Surendar Kumar Nagrath, the third party and fourth party are prosecuting the said suit against the first party and her husband.

AND WHEREAS, another Suit for Specific Performance of Contract was filed by 1st Party against late Sh. Surendar Kumar Nagrath i.e. Civil Suit titled “Vandana Kapoor Versus S.K Nagrath” which is also pending before Sh. Rajesh Sharma, Additional Civil Judge (Sr. Division) Gurgaon.

AND WHEREAS, the parties to this agreement with the intervention of the respectables of the family had orally arrived at a family settlement and have now further agreed to reduce the same into writing in order to avoid any future misunderstanding.

NOW, THEREFORE, THIS DOCUMENT REDUCES IN WRITING THE ORAL FAMILY SETTLEMENT/ PARTITION, WITNESSES AND THE PARTIES HERETO AGREE AND DECLARE FOR ENSURING ALL LOVE AND AFFECTION AMONG THE FAMILY MEMBERS AS UNDER:

1. That all the parties have represented that the House No. 968, Sector -14, Gurgaon i.e. suit property is free from all encumbrances.

2. That the first party alongwith her husband have undertaken to vacate the house no. 968, Sector 14, Gurqaon within 60 (sixty) days of the execution of this memorandum and shall handover the possession thereof to third party & fourth party.

3. That in case the first party and her husband shall vacate the said house within the time framed mentioned in the preceding para, in that event the first party shall have 17% share, the second party and fourth party shall have 25% share each, while the third party shall have 33% undivided share in the said house. In case the first party and her husband would not vacate the said house within the said time frame, in that event the first party and second party shall not be entitled to claim any right, interest or title in the said house and the said house shall belong exclusively to the third party and fourth party as per will dated 18.6.2003 of late Shri S.K.Nagrath. In such event the suit for specific performance filed by the first party shall stand dismissed and the suit for mandatory injunction titled “S.K.Nagrath Vs. Vandana Kapoor etc”. shall stand decreed and the third party and fourth party shall be entitled to take out execution and obtain possession of the house through process of law.

4. That in case the first party and her husband would hand over vacant peaceful possession of the said house in the aforesaid time frame to third party & fourth party, in that event it is further agreed and acknowledged between the parties that the first party shall have 17% share, the third party shall have 33% share and the second party and fourth party shall have 25% undivided share each in the said property. In such event third party & fourth party will dispose off the House No. 968 Sector-14 Gurgaon, preferably within a period of three months and the sale proceeds of the same will be proportionately taken from prospective vendee/divided between all the four parties to this Memorandum as per their

aforesaid shares. All the parties shall fully cooperate with each other and shall do all such acts as may be required by in this regard including execution of power of attorney or signing of agreement to sell, sale deed etc.

5. That after the delivery of vacant physical possession of the said house within the agreed time frame by the first party and her husband to third party & fourth party, the parties to this agreement will get the two suits described above and all other consequential proceedings arising there from including proceeding under section 340 of Cr.PC against each other decided as per this memorandum forthwith. The said proceedings shall be withdrawn/ disposed off in terms of the present memorandum after vacation of the house by the first party within the agreed time frame The second party, third party and fourth party shall then give up/ disclaim their claims if any against the first party towards license fees/ rent damages for use and occupation of the said property. In case the respective plaintiff(s) fail to move appropriate application, then such application can be moved by any of the other parties to the suit but only after vacation of the house by the first party and her husband within the agreed time frame of 60 days of the execution of this memorandum. In such event the third party and the fourth party shall not claim exclusive right over the suit property on the basis of the will dated 16.6.2003 of Late Shri Surendar Kumar Nagrath, which has been propounded by them in the aforesaid proceedings. The Family Settlement arrived at between the parties and as recorded herein shall supersede the said will or any other document. The third party and fourth party undertake not to rely upon the said will subject to vacation of the house and her husband within the agreed time frame.

6. That as first Party will be vacating the House No. 963, Sector- 14, Gurgaon, the initial earnest amount as will be received at the time of entering into the agreement to sell with respect to the said property, will be immediately paid/ transferred to the first Party, so as to enable her to make arrangement for alternative accommodation for her family. The said amount shall be adjusted towards her 17% share in the sale proceeds of the said property.

7. That if for any reason the aforesaid house is not sold within a period of eight months from the date of execution of this Memorandum, either of the parties may take appropriate legal action before the competent court at Gurgaon for partition of the house.

8. This Deed of Family Settlement is signed before the court in Five Original Sets. One set will be filed in the concerned court and one Original Deed is retained by Each Party. That Sanjay Kapoor, husband of the first party has no right, interest or title in the house in question and he shall also remain bound by this memorandum and has signed it in token of its correctness. The parties shall be entitled to get the respective two civil suits decided in terms of this memorandum of family settlement by producing its copy before court concerned. The parties shall remain bound by the terms and conditions of this memorandum of family settlement.

9. That the parties have signed on this Memorandum with their sound mind, good health, without any force from any side and this MEMORANDUM RECORDING THE FAMILY SETTLEMENT IS IRREVOCABLE.

IN WITNESS WHEREOF, we the parties hereto have set their respective hands on this memorandum on this 18th day of February, 2016.”

9. Perusal of the above MOU would reveal that as per Clause No.2, the first party i.e. Vandana Kapoor along with her husband undertook to vacate the suit house within 60 days of the execution of this MOU i.e. from 18.02.2016.

10. Clause 3 of MOU would reveal two eventualities - one of vacating the house and the other of not vacating the house and the consequences thereof. In the first eventuality, in case first party i.e. Vandana Kapoor and her husband vacates the house within the time frame mentioned in the preceding clause i.e. within 60 days, then first party i.e. Vandana Kapoor was to get 17%, second party i.e. Poonam was to get 25%, the third party i.e. Sonam was to get 33% and fourth party i.e. Dr. Priya was to get 25% share each in the said house. The word used ***“within the time framed mentioned in the preceding para”*** clearly indicates the intention of the parties that the four sisters – parties to MOU were to get their respective shares as per this clause, only if the first party i.e., Vandana Kapoor alongwith her husband vacates the house within agreed time frame of 60 days from the date of execution of MOU.

11. The Clause 3 also mentions the consequence of the alternative eventuality i.e. when the first party i.e. Vandana Kapoor and her husband do not vacate the house within the agreed time frame of 60 days. The word ***“said time frame”*** used in this clause clearly indicates that this eventuality will arise in case the first party fails to vacate the house within 60 days as agreed and in that event the first party and second party i.e. Vandana and Poonam were not entitled to claim any right, title or interest in the house and in that eventuality, the house shall belong exclusively to the third party and fourth party as per the Will dated 18.06.2003 of Sh. S.K. Nagrath. Meaning thereby, in this eventuality, Dr. Priya and Sonam were entitled to get the suit house in equal share to the exclusion of other sisters i.e., Vandana Kapoor & Poonam. This Clause further makes it clear that in the case of the second eventuality, the suit for specific performance, which was filed by first party i.e. Vandana Kapoor, shall be dismissed; whereas the suit for mandatory injunction titled as ‘Sh. S.K. Nagrath Vs. Vandana Kapoor & other’, shall stand decreed and third party and fourth party i.e. Sonam and Dr. Priya were entitled to take out execution and obtain possession of the house through the process of law.

12. Clause No.4 of the MOU is to be read in continuation of Clause Nos.2 and 3. Its speaks of the consequence of the first eventuality of Clause No.3 i.e. when the first party i.e. Vandana and her husband vacates the house within the agreed time frame and hand over the possession to the third and fourth party i.e. within 60 days as has been agreed in Clause No.2. In that event, not only the four sisters were to get the shares as agreed in Clause No.3, in such an event, the third and fourth party i.e. Dr. Priya and Sonam were to dispose off the suit house preferably within a period of 03 months and in that case, the sale proceeds of the house are to be proportionately taken from the prospective vendee and were to be divided amongst the 04 parties according to their respective shares as per this memorandum.

13. Then comes Clause No.5. Its speaks that after delivery of vacant possession of the house within the agreed time frame i.e. within 60 days, as mentioned in Clause No.2, by the first party i.e. Vandana Kapoor and her husband to the third and fourth party, then the two suits as has been described earlier i.e. Civil Suit No. *CIS-449RBT-2023 (CIS) No.12720 of 2013* titled as 'Sh. S.K. Nagrath Vs. Vandana Kapoor' and *CIS No.267 of 2007* titled as 'Vandana Kapoor Vs. Sh. S.K. Nagrath' were to be withdrawn/disposed of in terms of MOU after vacation of the house by the first party within agreed time frame. The word used in this clause is again ***"agreed time frame"*** clearly indicating the intention of the parties about essence of the time.

14. It may be noted here itself that MOU was entered on 18.02.2016 and on the same day i.e. 18.02.2016, suit bearing CIS No.12720 of 2013 was decreed in terms of the said MOU, as evident from Annexure P-2; whereas, the suit No.267 of 2007 titled as 'Vandana Vs. Sh. S.K. Nagrath' was dismissed as withdrawn. Meaning thereby that at that time, Vandana Kapoor clearly intended to vacate the house as per Clause No.5. However, actually she and her husband did not vacate the house as had been agreed by them.

15. The 5th Clause also shows that it is only in case the first party i.e., Vandana Kapoor vacates the house within the agreed time frame, then the other 03 parties were to give up their claim against the first party regarding any license fee/ rent/ damages for use and occupation of the property etc. But this was to

happen only in case the house was vacated within the agreed time frame of 60 days from the date of execution of the MOU.

16. The use of the words '**within agreed time frame**' in all clauses, clearly shows the intention of the parties that Vandana Kapoor and her husband were required to vacate the house within 60 days of execution of the MOU to get the other benefits emanating from the MOU, otherwise not.

17. Petitioner-Vandana Kapoor wants to take benefit of the use of the words '**so as to enable her to make arrangement for alternative accommodation for her family**' as used in Clause No.6 of the MOU. It is contended that the terms of the agreement were to come into force only after 17% of the share of the petitioner was given to her so as to seek alternative arrangement for her family. This interpretation as put forth by learned counsel for the petitioner is absolutely not tenable. The intention of the parties is very-very clear that Vandana Kapoor along with her family were to vacate the house within 60 days of MOU and it is only thereafter that she was to get 17% of the share in the sale proceeds of the house, after the same is sold.

18. Clause No.7 further makes it clear that in case the house was not sold within a period of 08 months from the execution of the MOU, then either of the parties could seek legal action before the Competent Court at Gurugram for partition of the house.

19. The contention of learned counsel of the petitioner is that terms of MOU (Annexure P1) are not clear, as the 2 sisters i.e. Dr. Priya and Vandana, had conversation amongst themselves through WhatsApp chat, and the third sister Sonam sent an email in this regard to Sh. M. K. Dang, Advocate, which would reveal the intention of the parties to the effect that Vandana Kapoor had to vacate the house only after 17% share is paid to her. He has relied upon the WhatsApp Chat & email (copy *Annexure P3 & P4*) in this regard. He has further referred to ***The Godhra Electricity Company Limited Vs. State of Gujarat, (1975) 1 SCC 199***, wherein it has been observe by Hon'ble Supreme Court:-

"In the process of interpretation of the terms of a contract, the court can frequently get great assistance from the interpreting statements made by the

parties themselves or from their conduct in rendering or in receiving performance under it. Parties can, by mutual agreement, make their own contracts; they can also, by mutual agreement, remake them. The process of practical interpretation application, however, is not regarded by the parties as a remaking of the contract; nor do the courts so regard it. Instead, it is merely further expression by the parties of the meaning that they give and have given to the terms of their contract previously made. There is no good reason why the courts should not give great weight to these further expressions by the parties, in view of the fact that they still have the same freedom of contract that they had originally. The American Courts receive subsequent actions as admissible guides in interpretation. It is true that one party cannot build up his case by making an interpretation in his own favour. It is the concurrence therein that such a party can use against the other party. This concurrence may be evidenced by the other party's express assent thereto, by his acting in accordance with it, by his receipt without objection of performances that indicate it, or by saying nothing when knows that the first party is acting on reliance upon the interpretation (see Corbin on contracts, Vol. III, pp. 249 and 254-55)."

20. This Court does not find any merit in the said contention. The extrinsic evidence, which is sought to be relied by learned counsel for the petitioner, in order to interpret the provisions of the MOU, is absolutely not liable to be taken into consideration, as the terms and conditions of the MOU and intention of the parties are quite clear. There being no ambiguity in the terms of the MOU, so the Court is not required to look into the later correspondence to interpret the MOU.

21. In case titled as ***Ashish Seth and another Vs. Sumit Mittal and Others, (2022) 8 SCC 724***, it has been held by Hon'ble Supreme Court:

"The entire object and purpose of entering into the settlement was to resolve all the disputes between the parties. Therefore, it is the duty of the Court that the settlement entered into between the parties and the consent order passed by this Court should be given effect to in its letter and spirit. All the parties to the consent terms are required to fully comply with the terms of settlement/consent terms and the consent order. One party cannot be permitted to say that that portion of the settlement which is in their favour be executed and/or complied with and not the other terms of the settlement/consent terms/consent order."

[underlined portion emphasised by this court]

22. In yet another recent judgment titled as ***Venkataraman Krishnamurthy and another Vs. Lodha Crown Build Mart Private Limited, 2024 (4) SCC 230***, it has been held by Hon'ble Supreme Court as under: -

“Once the parties committed themselves to a written contract, whereby they reduced the terms and conditions agreed upon by them to writing, the same would be binding upon them. In the event such a written contract provided for the consequences that are to follow in the event of breach of the conditions by one or the other of the parties thereto, such consequences must necessarily follow and if resisted, they would be legally enforceable. In the case on hand, the Agreement stipulated the date of delivery of possession of the apartment for fit outs with a grace period of one year. In terms thereof, the date for delivery of possession of the apartment for fit outs, with the grace period, was 30.06.2017. Admittedly, the respondent-company did not offer delivery of possession of the apartment for fit outs by that date. The ‘date of offer of possession’, under Clause 1.14, linked with issuance of the ‘Occupation Certificate’ was distinct and separate from the ‘date of delivery of possession for fit outs’ and Clause 11.3 unequivocally provided the consequences in the event of delay in that regard. The right of election given thereunder to the appellants to either continue or to terminate the Agreement within ninety days from the expiry of the grace period was absolute and it was not open to the NCDRC to apply its own standards and conclude that, though there was delay in handing over possession of the apartment, such delay was not unreasonable enough to warrant cancellation of the Agreement. It was not for the NCDRC to rewrite the terms and conditions of the contract between the parties and apply its own subjective criteria to determine the course of action to be adopted by either of them.”

[underlined portion emphasised by this court]

23. Thus, parties to an agreement (*MOU Annexure P-1 in this case*) are bound by the terms and conditions contained therein. None of the party can be allowed to wriggle out of the agreed terms by referring only to the term beneficial to it, without giving effect to the other terms.

24. In present case, it appears that in order to wriggle out of the terms and conditions of the MOU, under which petitioner alongwith her husband were

required to vacate the house in dispute within 60 days from the date of execution of the MOU in order to receive the benefit of 17% share in the sale proceeds, petitioner now wants to read Clause N: 6 of the MOU in isolation, without looking at the other clauses, all of which are to be read together to elicit the true intention of the parties. In the facts and circumstances of the present case, observations made by Hon'ble Supreme Court in ***The Godhra Electricity Company Limited's case (supra)*** are not applicable, as the facts of that case are quite distinguishable from the facts of present case.

25. In all the aforesaid circumstances, when petitioner Vandana Kapoor and her family did not vacate the house within the agreed time frame of 60 days from the date of execution of MOU, due to which house could not be sold, petitioner-Vandana Kapoor cannot take benefit of the fact that she was not paid 17% of the amount or that she became entitled for seeking partition of the house.

26. As such, the impugned order dated 10.11.2023 (Annexure P-16), assailed in CR N: 272 of 2024, whereby the execution filed by petitioner Vandana Kapoor, for seeking partition of the house in terms of the MOU has been dismissed and the objections filed by Sonam and others in that execution, have been allowed, is hereby upheld. Similarly, another order dated 10.11.2023 assailed in CR N: 1406 of 2024, whereby the objections filed by petitioner Vandana Kapoor, in the execution filed by Sonam & others, have been dismissed, is also upheld.

27. It will not be out of place to mention that after passing of both the impugned orders dated 10.11.2023, the warrants of the possession were issued in respect of suit property and the possession of the same has since been delivered to the decree holders i.e. Sonam and others. Consequent thereto, the execution filed by them has since been dismissed as satisfied, as is evident from the order dated 30.11.2023 passed by Ld. Civil Judge Junior Division, Gurugram (*copy of which is Annexure P-19 in CR No.272-2024*).

28. Consequent to entire discussion as above, it is held that there is absolutely no merit in any of the two petitions. There is no reason to interfere in the well reasoned orders as passed by the Courts below in both the cases. As such upholding both the impugned orders and holding the present revisions to be devoid of any merit, same are hereby dismissed.

29. Pending application(s), if any, also stand disposed of.

A photocopy of this order be placed on the file of other connected case.

31.07.2024
Vivek

(DEEPAK GUPTA)
JUDGE

<i>Whether speaking/reasoned?</i>	<i>Yes</i>
<i>Whether reportable?</i>	<i>Yes</i>