OD-1, 2 & 3

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

IA No.GA/1/2024
In

CS/93/2023

MANISH AGARWAL AND ORS.

VS.
OSWAL RESIDENTIAL BUILDINGS LLP AND ANR.

IA No.GA/3/2024
In

CS/93/2023

MANISH AGARWAL AND ORS.
VS.
OSWAL RESIDENTIAL BUILDINGS LLP AND ANR.

IA No.GA/4/2025
In

CS/93/2023

MANISH AGARWAL AND ORS.
VS.
OSWAL RESIDENTIAL BUILDINGS LLP AND ANR.

BEFORE:
The Hon'ble JUSTICE ARINDAM MUKHERJEE
Date: 24th November, 2025.

Appearance:
Ms. Priyanka Agarwal, Adv.
. . .For plaintiffs

Mrs. Ramya Hariharan, Adv.
Mr. S. Rao, Adv.
. . .For defendants

The Court: The plaintiffs and the defendants entered into an agreement on 11th February, 2013 by an order which the defendants agreed to sell and the plaintiffs agreed to purchase a flat (hereinafter referred to as the said flat) for an aggregate consideration of Rs. 63,138,45/- to be paid in instalments till the said flat was made ready and handed over.

The aggregate consideration comprised of Unit Charges, Car Parking, Utility Charges and ancillary charges and included therein the service tax payable for the said flat. The plaintiffs paid an aggregate sum of Rs. 38,46,275/- but could not pay any further amount despite demand from the defendants. Ultimately, the agreement stood cancelled. The defendants sold the said flat to a third party but did not refund the money after deducting the forfeiture charges therefrom.

The plaintiffs say that the defendants agreed to refund a sum of Rs. 23,81,309/- although the defendants were obliged to refund the money after adjusting a sum of Rs.1,89,450 from the said sum of Rs. 38,46,275/- on account of forfeiture charges.

Disputes and differences persisted between the parties although by a letter dated 5th August, 2021 the defendants had cancelled the agreement. There is, however, a dispute as to the date of cancellation as according to the defendants, the agreement stood cancelled with the expiry of 31st August, 2021. This led to the filing of the suit.

In case of hearing, the defendants were unable to say as to the amount collected by them as service tax from out of the sum, of Rs. 38,46,275/-.

The defendants have filed a fresh set of documents as recorded in the order dated 19th November, 2025. The defendants say that they had deposited the service tax collected from the plaintiffs referring to the documents, the defendants say that a sum of Rs.1,23,745/- was deposited as service tax against the payments made by the plaintiffs for purchase of the said flat till the agreement stood cancelled. However, no document has been shown regarding the amount of service tax, the defendants had collected from the third party to whom the defendant had sold the flat after the agreement between the plaintiffs and the defendants got cancelled. In respect of the self-same flat when the sale between the plaintiffs and the defendants stood cancelled, there cannot be imposition of service tax twice. The sale transaction which at the end took place in respect of the said flat in question was between the defendants and the third party. The defendants were required to collect the entire service tax payable for the sale of the flat from the third party and deposit the same. The defendants were, therefore, liable to refund the service tax they had collected from the plaintiffs and should have taken benefit thereof from the Goods and Service Tax authorities owing to the cancellation of the agreement for sale of the flat in question between the plaintiffs and the defendants. Even if the defendants had deposited the service tax collected from the plaintiffs then also the defendants under the prevailing provisions of law were liable to refund the same treating it to be a deposit in respect of a transaction which fell through.

In the aforesaid facts and circumstances, the defendants are directed to pay a sum of Rs.1,23,745/- on account of service tax collected from the plaintiffs corresponding to the part consideration paid by the plaintiffs prior to the agreement stood cancelled within a period of three weeks from date.

It is evident from the facts of this case that the defendants had held on to the money received from the plaintiffs even after the agreement stood cancelled may be for one reason or the other though the defendants were obliged to refund the amount after deducting the amount which on cancellation got forfeited as per the agreement. The defendants, therefore, have derived benefit of the principal sum paid by the plaintiffs after adjusting the amount required to be forfeited. The defendants have derived benefit out of such money and are liable to compensate the plaintiffs for the same since the plaintiffs were deprived of the benefits of such money.

In terms of the order dated 18th September, 2025 the defendants have without prejudice to their rights and contentions paid a sum of Rs.35,00,000/- to the plaintiffs which was also accepted by the plaintiffs without prejudice to their rights. The payment, although, was made beyond the prescribed period of time but this Court is inclined to ignore the delay in paying the sum of Rs.35,00,000/-. The plaintiffs will be entitled to appropriate the said sum of Rs.35,00,000/- and the defendants will be absolved from the liability of such sum. On a scrutiny of the amounts paid by the plaintiffs to the defendants and the amount to which the defendants were entitled to refund on account of forfeiture it will appear that a sum of Rs.38,46,275/-was paid as principal sum for the sale consideration which includes the service tax amount of Rs.1,23,745/-. After deducting Rs.1,23,745/- from Rs.38,46,275/- the balance sum is Rs.37,22,530/-. A sum of Rs.1,89,450/- is to be further deducted from the said sum of Rs.37,22,530/- on account of cancellation charges. After deducting Rs.1,89,450/- from Rs.37,22,530/-, the balance sum is Rs.35,33,080/-. The plaintiffs have already received Rs.35,00,000/-. So they are to receive Rs.33,080/- on account of unrefunded principal sum. The defendants are directed to pay this sum of Rs.33,080/- also within three weeks from date. The defendants shall pay interest on Rs.35,33,080/- at the rate of 6% simple interest per annum from 1st November, 2022 till 30th September, 2025. The interest amount is also to be paid within a period of three weeks from date.

Though the plaintiffs have insisted for refund of the court fees amount by way of cost to be borne by the defendants but I am not inclined to grant the same since the disputes flared out of non-payment by the plaintiffs leading to cancellation of agreement and I have already granted interest to the plaintiffs on the principal sum refundable, for the period of same remained with the defendants.

Nothing further remains to be adjudicated in the suit. By consent of the parties, the suit is treated as on the day's list and is disposed of by the judgment and order as aforesaid. The department is directed to draw up the decree expeditiously.

Since the suit is finally disposed of, the pending applications being GA 1 of 2024, GA 3 of 2024 and GA 4 of 2025 also stand disposed of without any further order.

Interim order including appointment of Receiver, if any, stands vacated and/or discharged.

(ARINDAM MUKHERJEE, J.)

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