

Rakesh Mayor and Others Vs Vigneshwara Developers Pvt. Ltd. and Others

Court: Delhi High Court

Date of Decision: July 23, 2015

Acts Referred: Civil Procedure Code, 1908 (CPC) - Order 37 Rule 37

Citation: (2015) 151 DRJ 675

Hon'ble Judges: Manmohan Singh, J

Bench: Single Bench

Advocate: Vishal Verma, for the Appellant; Jomal Joy, Advocates for the Respondent

Final Decision: Disposed off

Judgement

Manmohan Singh, J

The present suit has been filed by the plaintiffs under Order XXXVII CPC for recovery of a sum of Rs.

95,48,687.50/- along with interest @ 18% p.a. against the defendants.

2. Brief facts of the case as stated in the plaint are that the defendant No. 1 is a private limited company and defendant No. 2 and 3 are the

directors of the defendant No. 1 who are responsible for managing the affairs of the defendant No. 1.

3. It is stated that defendant No. 1 was allotted a land area of 10 acres on Industrial Model Township (IMT), Manesar, Gurgaon for development

of Information Technology Park (IT Park) to promote IT, ITES, communication technology, biotechnology and nanotechnology and other frontier

technologies. Subsequently, the defendants invited investors from general public, through advertisements in newspaper and through other

advertising mediums (namely Project Brochures, etc), to invest and/or buy space in above referred project.

4. The plaintiffs having read defendants offers and believing the representations made by defendants to be true during the meeting with their

Marketing Executives/Directors at defendant's site at Orchid Center, 2nd Floor, Golf Course Road, Sec. 53, Gurgaon agreed to invest in this

project.

5. Thereafter the parties entered into a Developer-Anchor Unit Agreement dated 24th January, 2009, thereby the plaintiffs agreed to purchase an

area of 1000 Sq. Feet in proposed Technology Park at the rate of Rs. 5,500/- per Sq. Feet for a total consideration of Rs. 55,00,000/- and the

defendants provisionally allotted an area of 1000 Sq. Feet in proposed Technology Park. The plaintiffs further entered into Developer-Anchor

Option Agreement-Buy Back Plan dated 24th January, 2009 with defendants (hereinafter referred to as the "Buy-Back Agreement"), whereby

defendants had given an assurance to plaintiffs that plaintiffs may avail an option whereby defendants will buy back the allotted Unit at the rate of

Rs. 8882.5 per Sq. Feet after a period of 30 Months from the date of the agreement irrespective of the market price prevailing at the time of

exercising this option, subject to plaintiff making the entire payment of the consideration amount to defendants either on completion of the project

or up to July 2011 (i.e. expiry of 30 months) whichever is earlier.

6. It is further stated that the plaintiffs have already made the payment of entire consideration amount of Rs. 55,00,000/- as agreed and as on

today there is nothing due on part of the plaintiffs as per Developer Anchor Unit Agreement dated 24th January, 2009.

7. The plaintiffs as per Developer-Anchor Option Agreement-Buy Back Plan dated 24th January, 2009 wrote a letter dated 24th July, 2011

thereby calling upon defendants to make good their promise of Buy-Back Option as mentioned hereinabove and further calling upon defendants to

make the payment @ Rs. 8882.5 per Sq. Feet (i.e. Rs. 88,82,500/-) within 90 days as per the terms of the Buy Back Agreement and further

showed their intention to return the allotted unit back to defendants for disposal as per their convenience. The said letter was duly received and

acknowledged by Ms. Bhavna on behalf of the defendants on 24th July, 2011 with assurance that the defendants will courier formal letter of

acknowledgement subsequently though the plaintiffs never received any separate acknowledgement of the same.

8. It is stated that on 26th July, 2011, to the utmost surprise of the plaintiffs, a demand letter dated 16th July, 2011 for a fresh demand of Rs.

23,25,000/- on account of Parking (Rs. 10,00,000/-), PLC (Rs. 3,25,000/-) and ALC (Rs. 10,00,000/-) charges along with an enormous interest

of Rs. 24,75,000/- at the rate of 18% p.a. was received by the plaintiffs. The said letter was intentionally issued in a back date and further there

was no description of the period for which the interest claimed was provided in the said demand letter dated 16th July, 2011. The plaintiffs were

shocked and surprise to receive the Demand Letter since they have already showed their intention to return the Unit as well as have opted for the

Buy Back Option and demanded the payment of Rs. 88,82,500/- from the defendants as per the above mentioned Buy Back Agreement.

9. Thereafter, the defendants assured the plaintiffs that the matter will be discussed and resolved in consultation with the director No. 1 and 2 in

upcoming board meeting. However, the plaintiffs received another demand letter dated 28th July, 2011 for a demand of Rs. 23,25,000/- on

account of Parking (Rs. 10,00,000/-), PLC (Rs. 3,25,000/-) and ALC (Rs. 10,00,000/-) charges along with an enormous interest of Rs.

10,46,250/- at rate of 18% p.a. once again with no description of the period for which it is claimed for.

10. It is further stated that the defendants demand for the PLC/ALC charges and enormous interest thereon have been raised only after the

plaintiffs surrendered the Unit and demanded the payment of Rs. 88,82,500/- as per the Buy Back Agreement. The defendants have raised the

demand with ulterior motives and same is illegal and uncalled for.

11. It is stated that on many occasions various correspondences were exchanged between the plaintiffs and defendants regarding the payment of

entire amount of Rs. 88,82,500/-. However, the defendants avoided the plaintiffs on one pretext or the other.

12. Thereafter, the plaintiffs issued a legal Demand Notice dated 28th January, 2012 to the defendants calling upon them to make the payment of

the sum of Rs. 88,82,500/- as the principal amount along with interest @ 18% p.a. and Rs. 21,000/- as expenses of the legal notice but the

defendants failed to comply with the notice.

13. It is stated that in spite of the notice being served on the defendant, the defendant failed/neglected to pay to the plaintiff the said loan amount of

Rs. 88,82,500/- along with interest @ 18% p.a. and cost despite of service.

14. No written statement was filed by the defendants despite of several opportunities. It was mentioned in the order dated 6th February, 2014 that

no issues were required to be framed as there was no written statement filed by the defendants. The plaintiffs were directed to file affidavits by way

of ex-parte evidence.

15. In ex-parte evidence, the plaintiffs have filed affidavit of Ms. Mona Mayor, plaintiff No. 2 as Ex. PW-1/A reiterating the contents of the plaint

and also exhibited certain documents exhibited as Ex. P1 to Ex. P7 and Ex. PW 1/1 to Ex. PW 1/6 in support of its case. The documents

exhibited are as follows:

(i) Original copy of the project brochure has been exhibited as Ex.-P1;

(ii) Original copy of the Developer-Anchor Unit Agreement dated 24th January, 2009 has been exhibited as Ex.-P2;

(iii) Original copy of the Developer-Anchor Option Agreement Buy-Back Plan dated 24th January, 2009 has been exhibited as Ex.-P3;

(iv) Original payment receipts issued by the defendants has been exhibited as Ex.-P4 (collectively);

(v) Copy of the demand letter dated 16th July, 2011 has been exhibited as Ex.-P5;

(vi) Copy of the demand letter dated 28th July, 2011 has been exhibited as Ex.-P6;

(vii) Copy of the letter dated 24th September, 2011 has been exhibited as Ex.-P7;

(viii) Copy of the letter dated 24th July, 2011 has been exhibited as Ex. PW-1/1;

(ix) Copy of the letter dated 6th August, 2011 in response to letters dated 16th July, 2011 and 28th July, 2011 has been exhibited as Ex. PW-1/2;

(x) Copy of the second request letter dated 6th August, 2011 in furtherance of earlier request dated 24th July, 2011 surrendering the unit and

Opting for Buy Back option along with postal receipt has been exhibited as Ex. PW-1/3;

(xi) Copy of the letter dated 10th September, 2011 requesting for a meeting with the Directors of the defendant to discuss the Buy Back Option

has been exhibited as Ex. PW-1/4;

(xii) Copy of the letter dated 15th November, 2011 in response to letter dated 24th September, 2011 requesting for intimation regarding the

rescheduling of cancelled meeting along with courier receipt has been exhibited as Ex. PW-1/5;

(xiii) Copy of the Legal Demand Notice has been exhibited as Ex. PW-1/6.

16. Thereafter, Ms. Mona Mayor, plaintiff No. 2 as PW-1 was duly cross examined by the learned counsel for the defendant. She has affirmed

that the payment schedule plan is as per the agreement placed on record (admitted by the defendant as P2 and P3) and the payment is paid to the

defendant as per schedule plan as mentioned in para 7 of her, affidavit in chief. She has affirmed that the plaintiff has paid a total amount of Rs. 55

lakhs to the defendant. She has denied that other charges as mentioned in clause 3 at page 19 of Ex. P2 is a vague term. She has affirmed that she

has not breached any agreement with the defendant by not paying any PLC and ALC charges. She has denied that the letter dated 6th August,

2011, 24th July, 2011 and 10th September, 2011 are not written by plaintiff to the defendant. She has further denied that she did not deliberately

attend the meeting with defendant on 25th October, 2011 and that the plaintiff did not send any letter dated 15th November, 2011 to the

defendant. The other issue raised by the defendant in the cross examination about the attestation of the affidavit-has no force as it has not been

proved by the defendant.

17. The ex-parte evidence was closed vide order dated 27th September, 2014.

18. Under these facts and circumstances, the plaintiff is entitled for a decree for recovery of a sum of Rs. 95,48,687.50/- (Rs. 88,82,500/- being

the principal amount and Rs. 6,66,187.50/- being the interest) @ 18% per annum as claimed in terms of the prayer clause of the plaint from the

date of filing of the suit till the date of payment.

19. The plaintiff is also entitled for costs.

20. The decree be drawn accordingly. The suit is disposed of.