

**IN THE COURT OF MS. MEENU KAUSHIK**  
**DISTRICT JUDGE – 03, NEW DELHI DISTRICT**  
**PATIALA HOUSE COURT**

CS 731/2017  
CNR No. DLND010084482017



In the matter of:

Ashok Kumar Soni,  
S/o Late Shri Achint Ram Soni,  
R/o C-5, Gulmohar Park,  
New Delhi

....Plaintiff

Versus

M/s Bestech India Pvt. Ltd.  
Having its registered office at:  
5D, Fifth Floor, Aria Signatures Offices,  
JW Marriot Delhi, Delhi Aerocity Hospitality District,  
Near India Gandhi International Airport,  
New Delhi-110037

Local Office at:  
Bestech House-124,  
Sector-44, Gurgaon,  
Haryana

....Defendant

Date of institution	:	03.07.2017
Date on which reserved for judgment	:	01.04.2026
Date of decision	:	25.04.2026
Decision	:	Dismissed

## JUDGMENT

1. The present suit is filed for recovery of Rs.41,59,000/- (principal amount of Rs.20 Lakhs, damages of Rs. 5 Lakhs and interest from date of filing of the suit i.e. Rs.16,59,000/-) along with interest @ 18 % p.a.

### FACTS AS PER PLAINT

2. As per the plaintiff, he is a Senior Citizen and defendant is a company which proposed to develop a group housing company in the name of Park View, Sanskurti at Sector 92, Village Wazirpur, District Gurugram, Haryana. Believing the offer to be genuine and true, plaintiff approached the defendant and met with the director of the defendant company for the purpose of purchasing the flat in the month of November, 2012. Thereafter, plaintiff applied for a 3BHK Flat in the aforesaid housing scheme in the month of November 2011 and a cheque of Rs. 10 Lakhs was given towards consideration as part payment for purchase of Flat. The defendant provisionally allotted apartment no. 604, measuring 1920 sq. ft. in Tower D of the apartment. The application cum proposal form was duly accepted by the defendant and the said cheque was duly honored on 29.11.2012. Thereafter, plaintiff requested for providing the copy of proposal form of allotted apartment and acknowledgment receipt from the director of defendant company, however believing the assurances, plaintiff did not press for supply of the aforesaid documents. After passing of about 6 months, Manager of defendant company visited the house of plaintiff and asked for further payment of Rs. 10 Lakhs. One cheque of Rs. 10 Lakhs was issued by the plaintiff upon demand and the

same was got encashed on 11.06.2013. After about 10 months, plaintiff received a copy of draft agreement sent by the defendant to utter surprise which was found that basic price for the booked flat by the defendant was unilaterally and illegally changed by the defendant from Rs.5,345/- per sq. ft to Rs.5,710/- per sq. ft. and an additional payment of Rs.15,70,108/- was raised and charges on account on EDC and PLC were also included in the said agreement which were not there in the original agreement. It is further stated that changes in offer prices were never informed to the plaintiff and thus, defendant betrayed plaintiff by making material alterations in the terms and conditions of the payment. Plaintiff further contacted the defendant to reconcile defects and alternatives of return the part paid consideration price on several occasions. The plaintiff was assured that money shall be returned in short time. The plaintiff also got served an legal notice dated 24.12.2013 through his counsel upon the defendant seeking return of Rs. 20 Lakhs along with interest @ 18 % p.a., but no amount was paid by the defendant. One letter dated 01.07.2014 was sent by the defendant to the plaintiff, thereby cancelling the allotment of the apartment no. 604 in Tower D and the amount paid by the plaintiff towards part payment of the consideration amount was forfeited and such act of the defendant was totally illegal, arbitrary and unilateral. In January 2015, Mr. Pankaj Verma one of the representatives of defendant visited the residence of plaintiff and extended threats threats of dire consequences in case the plaintiff continued with the demands for recovery of Rs. 20 Lakhs. One police complaint was made by the plaintiff against the defendant on 30.05.2015. Since, defendant has not made the payment, the present case is filed.

### **WRITTEN STATEMENT:**

3. Defendant has taken primarily objections that the present suit is time barred. It is further stated that the plaintiff was not interested to buy the apartment and sought return of Rs. 20 Lakhs along with interest. Dispute arose between the parties on 03.12.2013 itself and as such the present suit is not filed within the period of limitation. The legal notice was sent by the plaintiff on 24.12.2013 and the same was replied vide letter dated 25.12.2013. It is further stated that the defendant called upon the plaintiff to make payment of due amount of Rs.15,70,108/- along with interest and further cause of action at best and latest accrued on 25.12.2013, when the defendant clearly disputed the alleged stand of the plaintiff raised vide letter dated 03.12.2013. It is further stated that this court does not have territorial jurisdiction to entertain the present suit as the property to be purchased by the plaintiff is situated in Gurugram and the fact that the registered office of defendant company is in Delhi does not give right to the plaintiff to invoke the jurisdiction before this court. It is further pointed out that as per clause 17 of terms and conditions of the allotment duly signed by the plaintiff, the courts in Gurugram alone shall have jurisdiction in all matters arising out of said transactions between the parties. It is further stated that the channel partner i.e. M/s SRK Residency Pvt. Ltd. through whom the apartment was booked by the plaintiff which is a necessary party is not impleaded in the present suit and hence, the suit is bad for non-joinder. It is further stated that the suit is not even properly valued and sufficient court is not affixed by the plaintiff.

### **ISSUES:**

4. After completion of pleadings of parties following issues were framed:

- i) Whether the suit of the plaintiff is barred by time? OPD.
- ii) Whether this court has no territorial jurisdiction to try and entertain the present suit? OPD.
- iii) Whether the suit of the plaintiff is bad for non-joinder/misjoinder of necessary party? OPD.
- iv) Whether the suit has been properly valued for the purposes of court fees? OPD.
- v) Whether the plaintiff is entitled to recover an amount of Rs. 41,59,000/- as claimed in the plaint? OPP.
- vi) Whether the plaintiff is entitled to interest. If so, at what rate? OPP.
- vii) Relief.

**PLAINTIFF'S EVIDENCE:**

5. Plaintiff has examined himself as PW-1 who tendered his examination in chief by way of affidavit Ex. PW-1/A and relied upon the following documents:-

- a) Copy of Buyer's Agreement is Ex.PW1/1.
- b) Copy of Legal Notice dated 24.12.2013 is Ex.PW1/2.
- c) Copy of letter dated 01.07.2014 is Ex.PW1/3.
- d) Copy of letter from Rajnish Kehair Director SRK Residency Pvt. Ltd. dated 24.06.2014 is Ex.PW1/4.
- e) Copy of letter from Bestech India Pvt. Ltd. demanding additional amount dated 05.06.2013 is Ex.PW1/5.
- f) Copy of letter from Bestech India Pvt. Ltd. demanding additional amount dated 25.12.2013 is Ex.PW1/6.

- g) Copy of Receipt of Rs. 10,00,000/- dated 01.06.2013 is Ex.PW1/7.
- h) Copy of Receipt of Rs. 10,00,000/- dated 04.06.2013 is Ex.PW1/8.
- i) Copy of complaint dated 30.05.2015 is Ex.PW1/9.
- j) Copy of complaint dated 30.05.2015 is Ex.PW1/10.
- k) Copy of order dated 07.11.2016 is Ex.PW1/11.

**DEFENDANT'S EVIDENCE:**

6. Defendant has examined Mr. Kuldeep Parashar, AR of defendant company as DW-1 and tendered his examination- in-chief by way of affidavit as Ex. DW-1/A and relied upon the following documents:

- a) Certified copy of Board Resolution dated 10.08.2023 is Ex.DW1/1.
- b) Copy of letter dated 03.12.2013 from plaintiff to defendant is Ex.DW1/2.
- c) Copy of application for allotment by plaintiff to defendant is Ex.DW1/3.
- d) Copy of letter of allotment dated 01.06.2013 is Ex.DW1/4.
- e) Copy of details of the apartment is Ex.DW1/5.
- f) Copy of details of the payment plan is Ex.DW1/6.
- g) Copy of notice dated 03.01.2014 is Ex.DW1/7.
- h) Copy of reply to notice dated 29.01.2014 is Ex.DW1/8.
- i) Order dated 28.02.2018 of the Hon'ble High Court of Punjab and Haryana is Ex.DW1/9.

7 Final arguments addressed on behalf of parties are taken into consideration. Record perused. My issues-wise findings are as under:

**ISSUE No.5:**

***Whether the plaintiff is entitled to recover an amount of Rs. 41,59,000/- as claimed in the plaint? OPP.***

8 The onus to prove this issue is upon the plaintiff. As per the plaintiff, the defendant had proposed to develop a group housing complex in the name of Parkview, Sanskruti, in sector 92, Gurugram, and when he came to know through an advertisement, that the defendant was offering flats at pre-launch price of Rs.5,345/- per square feet and the same was confirmed to the plaintiff by broker/agent, namely, M/s SRK Residency, Private, Ltd. through Rajnish Keher, plaintiff approached the defendant in the month of November 2012 and applied for three BHK+3T flat in the aforesaid housing scheme. The defendant provisionally allotted Flat number 604 to the plaintiff. Plaintiff thereafter requested for copy of proposal come allotment form, however, no such letter was given to the plaintiff. And then, after around 10 months, plaintiff received a copy of draft agreement, sent on behalf of the defendant, upon which he was surprised to know that the basic price for the booked flat was unilaterally and illegally changed from Rs. 5,345/- to Rs.5,710/- per square feet and an additional demand of Rs.15,70,108/- was raised and charges on the account of EDC and PLC were also included in the said agreement, which were not there in the original agreement. As per plaintiff, since he was not informed, regarding the change in the offer price, and payment of rupees 20 lakh had already been taken by the defendant, he was betrayed by the defendant. Upon this when the defendant did not reconcile, the plaintiff asked to return the part payment towards consideration price made by him to the defendant. As per the plaintiff to the counterblast of his letter, the defendant

cancelled the allotment and the amount paid by the plaintiff was forfeited by the defendant. Contrary to this, as per the defendant it was incumbent upon the plaintiff to comply with the terms of payment and other terms and conditions of the allotment/sale as contained in the application form. It is further stated that after payment of the entire booking amount, the letter of allotment dated 01.06.2013 was issued and along with the letter of allotment, details of apartment, as well as payment plan were also made available by the defendant to the plaintiff. It is further stated that when plaintiff realized that he would not be able to generate the anticipated profits from making booking of the said apartment, the plaintiff sent letter dated 03.12.2013 to the defendants, as well as M/s SRK Residency Private Limited wherein the plaintiff falsely claimed that the apartment had been offered to him at pre-launch price of Rs.5,345/- per square feet. It is further denied on part of defendant that after span of 10 months, a copy of new contract or agreement with changed rates had been sent to him. It is further stated that, the basic sale price was Rs.5,710/- inclusive of right to use 2 covered car parking spaces, and the same had been conveyed to all the associates at the time of allotment itself.

Plaintiff placed on record one buyer's agreement Ex. PW1/1, however, the same nowhere bears the signature, on part of the defendant. Thus, the same cannot be considered against the defendant with respect to the offer price of the apartment. One application form is placed on record by the defendant, as Ex.PW1/D3. It is the claim of the plaintiff that there is tempering at one of the page of the said agreement/ document, and the offer price that is Rs.5,345/- is strike off and changed to Rs.5,710/-. The said document mentions various

rates under various heads charged by the defendant. There is striking off of the price only at one place and at another place on the same page, it is clearly mentioned that the basic price of the unit, along with right to use two covered parking, is Rs.5710/-. This document bears signature of the plaintiff at each and every page. No other document showing that the offer price for the flat along with two covered car packings at the rate of Rs. 5,345/- per square feet is placed on record by the plaintiff. Plaintiff during cross examination has admitted, the letter dated, 01.06.2013 given by the defendant to the plaintiff, mentioning the allotment of the apartment, along with the details of the apartment and the payment schedule. Plaintiff also stated that the said documents Ex.PW1/D4, PW1/ D5 and PW1/D6 bear his signatures at point A. In the document, Ex.PW1/D5, the basic price of the flat offered to the plaintiff is clearly mentioned as Rs.5,710/- per square feet. The said documents were received by the plaintiff mentioning date of receiving as 20.11.2013. No objection is mentioned by the plaintiff, at the time of receiving the said documents, and the same bears signature of the plaintiff, along with the mentioning the date, and the receiving. At the time of receiving the said document, plaintiff could have mentioned about his objections with respect to the offer price, but he has simply mentioned that he has received the document on the said date. As no such objection is mentioned regarding the basic price of the unit by the plaintiff at relevant time, the defence of the defendant is found tenable. Plaintiff had sent the letter to the defendant on 03.12.2013 i.e. after more than 10 days of receiving of the documents Ex.PW-1/D4 to D6. Thus, the claim of the plaintiff that the defendant had changed the offer price unilaterally and illegally seems only an

afterthought. In view of the said documents, it can be safely concluded that the offer price by the defendant was at the rate of Rs.5,710/-. Plaintiff has failed to adduce any cogent evidence to show that the offer price was Rs.5,345/-. Plaintiff in his cross examination admitted that as per clause 11 of the application form Ex.PW-1/D3 the earnest money could be forfeited. As per clause 11, the earnest money was quantified to be 20% of the basic sale price and the same could be forfeited at the discretion of the defendant company in case cancellation of allotment was sought by any applicant. As per the defendant, the part consideration amount paid by the plaintiff was part of the 20% of the basic consideration amount i.e. paid towards earnest money and thus, liable to be forfeited as per the agreed terms and conditions of the allotment. No evidence is adduced by the plaintiff to show that the amount paid by him was not part of the consideration amount. It is admitted fact on part of the plaintiff that earnest money could be forfeited. It is also not proved on part of the plaintiff that the defendant had failed to perform his part of contract. The only issue between the plaintiff and the defendant was over the alleged enhancement of the basic price by the defendant. However, the plaintiff could not prove by leading evidence that the defendant unilaterally and illegally changed the basic price of the flat which was allotted to the plaintiff. Thus, the present issue is decided in favour of defendant and against the plaintiff.

**ISSUE No.6:**

**Whether the plaintiff is entitled to interest. If so, at what rate?**

**OPP.**

9 As issue no. 5 is decided in against the plaintiff, the present issue is also decided against the plaintiff.

**ISSUE No.1:**

**Whether the suit of the plaintiff is barred by time? OPD.**

10 Onus of this issue is upon the defendant. As per the defendant the cause of action arose when the plaintiff sent letter dated 03.12.2013 to the defendant clearly stating that he was not interested to buy the apartment and further sought the recovery of fund of Rs.20 lacs with interest of interest at the rate 18%. It is further stated that the defendant also sent the letter in reply on 25.12.2013 disputing the allegations raised by the plaintiff and thus, the cause of action arose latest on 25.12.2013. It is further stated that legal notice was sent by the plaintiff on 24.12.2013 and thus, the present suit is not filed within the period of limitation. It is further argued that the plaintiff cannot invoke cause of action by sending subsequent communications. Plaintiff in his cross examination admitted that the documents Ex. PW-1/ DW4 to 6 bear his signatures at point A. The said documents mention the offer price of the apartment allotted to the plaintiff as Rs. 5,710/- per square feet. The said documents were received by the plaintiff mentioning the date as 20.11.2013. Accordingly, it can be safely concluded that on the said date the plaintiff was aware of the allegedly changed offer price. Thus, the cause of action arose on the very same date. The letter to the defendant was sent by the plaintiff on 03.12.2013 mentioning his objections and then the defendant sent its letter dated 25.12.2013 demanding additional amount. Thus, the period of limitation cannot be said to have started latest by 01.07.2014 when the defendant issued letter to the plaintiff thereby cancelling the allotment of the flat. Further even if it is believed that

cause of action arose latest by 01.07.2014, then also the suit is not filed within the period of three years. The present suit is filed by the plaintiff on 03.07.2017 i.e. not within the period of limitation of 3 years. Thus, the present issue is decided against the plaintiff.

**ISSUE No.2:**

**Whether this court has no territorial jurisdiction to try and entertain the present suit? OPD.**

11 Onus of this issue is upon the defendant. As per the defendant, this court does not have territorial jurisdiction to entertain the suit as no part of cause of action arose within the jurisdiction of this court nor any payment was made to the defendant within the jurisdiction of this court. It is further argued that the apartment in question was situated in Gurgaon and as per the clause 17 of the terms and conditions for Provisional Allotment, the plaintiff has unequivocally agreed that *“Courts at Gurgaon alone shall have jurisdiction in all the matters arising out of or touching and/ or concerning this transaction”*. It is further argued that merely presence of registered office of the defendant company at Delhi does not entitle the plaintiff to invoke jurisdiction of the court at Delhi. Here reliance is placed upon *Swastik Gases Private Limited v. Indian Oil Corporation Limited (2013) SCC Online SC 564*, wherein it was held that territorial jurisdiction cannot be invoked merely on the basis of the location of the registered office of the defendant, when no part of cause of action has arisen at that place. The contentions raised on behalf of the defendant are found tenable. No evidence is adduced by the plaintiff to show that any part of cause of action was arose within the territorial

jurisdiction of this court. Accordingly, present issue is decided in favour of the defendant and against the plaintiff.

**ISSUE No.3:**

**Whether the suit of the plaintiff is bad for non-joinder/ misjoinder of necessary party? OPD.**

12 The onus to prove this issue is upon the defendant. As per the defendant, the plaintiff had applied in the project through the agent M/s SRK Residency Pvt. Ltd. and thus, the suit is bad for misjoinder of the party. The plaintiff has filed this suit for dispute with respect to the offer price and for recovery of the paid amount towards part of consideration. Thus, the grievance of the plaintiff was against the defendant. Accordingly, the court is of considered opinion that the M/s SRK Residency Pvt. Ltd. was not the necessary party. Thus, the present issue is decided in favour of the plaintiff and against the defendant.

**ISSUE No.4:**

**Whether the suit has been properly valued for the purposes of court fees? OPD.**

13 The plaintiff has filed the present suit for recovery and has claimed total amount of Rs. 41,59,000/-. Plaintiff has affixed the court fees of Rs. 42,950/- . Thus, it cannot be said the plaintiff has not properly valued the suit. Accordingly, present issue is decided in favour of the plaintiff.

**RELIEF:**

14 In view of my findings on issues No.1, 2, 5 & 6, the suit of plaintiff is dismissed. No order is passed with respect to costs.

15 Decree sheet be prepared accordingly.

16 File be consigned to the Record Room after due compliance.

*(Announced in the open Court*

*on 25.04.2026)*

(Meenu Kaushik)  
District Judge-03  
Patiala House Courts, New Delhi District  
New Delhi