

**IN THE COURT OF SH. GURDEEP SINGH
DISTRICT JUDGE (COMMERCIAL COURT)
NORTH WEST DISTRICT, ROHINI COURTS, DELHI.**

IN THE MATTER OF :-

[CS \(COMM.\)/27/2019](#)

CNR NO. : DLNW01-001827-2019

VIPIN ARORA

Vs.

M/S ANTRIKSH DEVELOPERS AND PROMOTERS PVT.LTD

AND

[CS \(COMM.\)/28/2019](#)

CNR NO.: DLNW01-001826-2019

ANIL KUMAR GOEL

Vs.

M/S ANTRIKSH DEVELOPERS AND PROMOTERS PVT.LTD

AND ORS

AND

[CS \(COMM.\)/29/2019](#)

CNR NO. : DLNW01-001825-2019

SURESH KHURANA

Vs.

M/S ANTRIKSH DEVELOPERS AND PROMOTERS PVT.LTD

AND ORS

AND

[CS \(COMM.\)/33/2019](#)

CNR NO. : DLNW01-001908-2019

SURESH KHURANA

Vs.

ANTRIKSH DEVELOPERS AND PROMOTERS PVT.LTD AND

ORS

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AND

[CS \(COMM.\)/34/2019](#)

CNR NO. : DLNW01-001910-2019

ANIL KUMAR GOEL

Vs.

**ANTRIKSH DEVELOPERS AND PROMOTERS PVT.LTD AND
ORS**

AND

[CS \(COMM.\)/35/2019](#)

CNR NO. : DLNW01-001909-2019

VIPIN ARORA

Vs.

ANTRIKSH DEVELOPERS AND ORS

ORDER / 31-05-2022

1. Vide this common, order I shall decide application moved on behalf of defendants nos. 1 to 4 under Order 1 Rule 10 CPC for striking off their name from array of parties in above noted cases.
2. As the facts of all the above stated suits are similar, defendants are also common and issue raised in the application are also common and hence facts of CS(COMM) NO. 34/2019 title as *Anil Kumar Goel & Ors v. Antriksh Developers And Promoters Pvt. Ltd. & Ors.* are recorded as representative of other cases.
3. The relevant facts for the disposal of the application are that plaintiff has filed suit under Order XXXVII CPC for recovery of Rs.4,50,000/- alongwith interest and cost against the

defendant stating therein that defendant no.1 M/s Antriksh Engineers Construction claimed to be special purpose company comprising of M/s Antriksh Engineers Construction, M/s Vyom Infrastructures & Projects Pvt. Ltd. And M/s Ocean Realcon Pvt. Ltd. And further represented they planned to develop and allot dwelling unit in Antriksh Golf View '*Morpheus Greens*' Plot No. GH-5A, Sector 78, Noida-201301, Gautam Budh Nagar, U.P. In this relation, it was represented to the plaintiffs that the defendant no.1 company has engaged the defendant no.5 for the sale/ allotment of the aforesaid dwelling units who shall also be responsible for the return of the amount invested by the plaintiffs as per agreement with the defendant companies from time to time. It was further represented that defendants no.2 to 4 are the directors and responsible officers of defendant no.1 company and are engaged in day to day affairs of the same. Similarly, the defendants nos. 6 to 8 are directors and responsible for defendant no. 5 company and involved in day to affairs of defendant no.5 company. It was further represented that the construction of the aforesaid projects/ units shall be completed within a period of 12 months from the date of allotment of the same. Further, the defendants had also stated that during that period of 12 months, the allottee/s shall be given unconditional assured return as interest of the amount

invested and in order to secure the payment of this assured return, the PDCs will be handed over to the allottee/s to be presented in their accounts on the respective due dates of the cheques during the period of said 12 months. It is stated that on continuous perusal and relying upon the promise, the plaintiffs invested Rs.20/- lacs in the defendants company. Allotment letter was issued which was duly signed and issued for and on behalf of the defendant no.1 company and plaintiff was stated to have allotted the unit in the project. In addition to the allotment letter, one memorandum of understanding was also signed and executed by the defendant no.5 under the signature of defendant no.6 and same was executed in favour of plaintiffs. In the MoU, the defendant no.5 had not only acknowledged the receipt of the aforesaid amount from the plaintiffs but also handed over 12 PDCs of Rs.50,000/- each with the agreement that the plaintiff shall present the said cheques on their respective due dates. In addition to this, the defendant no.5 under the signature of defendant no.6 had also handed over three cheques of principle amount/ amount invested in favour of plaintiffs.

4. It is alleged that except first two cheques of 'assured return' of Rs.50,000/- each, remaining cheques were dishonoured when they were presented for encashment. Plaintiffs had filed various criminal complaint cases under S. 138 of Negotiable &

Instruments Act against defendants. Despite several requests and reminders, the defendants had failed to return the amount and hence the suit is filed for recovery of Rs.4,50,000/-

5. Summons of the suit was directed to be issued. The defendants nos. 1 to 4 appeared and none appeared on behalf of remaining defendants and hence they were proceeded *ex parte*.
6. The defendants nos.1 to 4 had filed the present application stating therein that they have already put in their appearance under Order 37 Rule 3 CPC and the defendants nos. 1 to 4 has nothing to do with the transaction that took place between the plaintiffs and defendants no.5 and 6. The plaintiff had made the payment to the defendant no.5 and the payment towards assured return was made by the defendants nos. 5 and 6. Further the documents were executed by defendant no.6 and as such , the defendants nos. 1 to 4, are not at all concerned/ liable for the transaction undertook by the plaintiffs with other defendants. Further, the plaintiffs have filed the copies of the alleged cheques and as well as the statement of their account, but none of these documents reflect the name of the defendants nos.1 to 4 and they did not receive any payment from plaintiffs for its project nor any amount was deposited/ transferred by them through NEFT or otherwise in their bank. Further the criminal complaint under S. 138 N. I. Act was also filed only against

defendants nos. 5 to 8 and therefore it is prayed that defendants nos. 1 to 4 are liable to be deleted from the array of parties on account of mis-joinder of parties.

7. Reply to application was filed contesting the application *inter alia* on the ground that property was being allotted to the plaintiffs by virtue of allotment letter which is duly signed for and on behalf of the defendant no.1 company which show that units were booked / allotted on behalf of defendant no.1 company. Further the defendant no.1 company had authorized defendant no.5 company for making allotment. It is further stated that defendant no.5 is sister concern of the defendant no.1 company and the land on which the project was to build is owned by the defendant no.1 company and others and defendant no.5 was given authority to book / allot flats on behalf of defendant no.1 and therefore the application is liable to be rejected.
8. Vide order dated 09-5-2022, the arguments on the application was heard and matter was adjourned for today i.e. 31-5-2022 for order and liberty was given counsel for defendants to argue 3 days prior to date of order or to file written submission two days before the order. Today Sh. Rahul Kadyan, counsel for defendants nos. 1 to 4 appeared and addressed arguments, however, no written submission is filed.

9. I have heard counsel for parties and gone through the record. I have also perused to record.
10. It is contended on behalf of defendants nos. 1 to 4 that they have nothing to do with the transactions and have no concern with the present dispute. The allotment letter categorically mentions that it is given on behalf of M/s Antriksh Developers & Promoters Pvt. Ltd., the defendant no.1 company and therefore it cannot be said that defendant no.1 company has no concern. Further agreement has been signed on behalf of defendant no.1 company through authorized signatories, however, it has been denied that same had been signed on their behalf, which is a matter of trial and defendants nos. 1 to 4 are necessary parties for effective adjudication of the case. Application is accordingly devoid of merit and liable to be rejected with cost.
11. In view of above, the application is dismissed with cost of Rs.5000/- to be paid to plaintiff by defendant.

Announced in open court
today *i.e.* 31-5-2022

(GURDEEP SINGH)
DISTRICT JUDGE (COMMERCIAL COURT)
NORTH WEST/ROHINI/DELHI