

**IN THE Court OF DISTRICT JUDGE-08 WEST, TIS HAZARI
CourtS, DELHI**

Presided by: Ms. Susheel Bala Dagar

Civ DJ 610048/2016

CNR Number: DLWT01-001189-2014

In the matter of:

Shri Ram Bhaj Kapoor

S/o Late Shri Veer Bhan Kapoor,

R/o B-300, Sudershan Park,

New Delhi-110015.

..... Plaintiff

Versus

1. Shri Bhavnish Tulyani

S/o Shri Ravinder Tulyani

R/o 9/50B, Moti Nagar,

New Delhi.

Also at:

11/17B, Moti Nagar,

New Delhi-110015.

2. Shri Yogesh Kapoor

S/o Shri J.R. Kapoor,

R/o F-48B, Moti Nagar,

New Delhi-110015.

3. Smt. Urmila Rani

W/o Shri J.R. Kapoor,

R/o F-48B, Moti Nagar,

New Delhi-110015.

..... Defendants

Date of institution : 03.06.2014

Date of reserved for judgment : 20.05.2026

Date of judgment : 04.06.2026

**Suit for damages for breach of contract causing financial loss to the
plaintiff**

JUDGMENT

Brief facts of the case

1. The plaintiff is the lawful owner of property No. B-300, measuring

75 square yards, situated at Sudarshan Park, New Delhi. On 08.09.2012, the plaintiff entered into a Collaboration Agreement with defendant no.1, a builder, for redevelopment of the property by constructing a multi-storey building consisting of stilt parking, ground floor, first floor, second floor, and third floor with roof rights. Under the agreement, defendant no.1 was responsible for bearing all construction expenses and was also required to pay the plaintiff Rs. 10,00,000/- in installments. The agreement provided that the plaintiff would retain ownership of the ground floor, second floor, third floor, roof rights, and most of the stilt parking, while defendant no.1 would receive the first floor without roof rights and one parking space. The construction was to be completed within 8+3 months from the date of the agreement.

2. The plaintiff alleged that defendant no.1 failed to complete the construction within the stipulated period and also failed to pay the agreed amount of Rs. 10,00,000/-. Before completion of the construction, defendant no.1 requested the plaintiff to transfer ownership rights of the first floor in favour of defendant no.2, Yogesh Kapoor, who was stated to be the financier of the project. Consequently, a Memorandum of Understanding dated 09.04.2013 was executed between the plaintiff and defendant no.1. The plaintiff contended that this memorandum was obtained through misrepresentation and undue pressure, despite the fact that the building had not been completed as required under the Collaboration Agreement.

3. The plaintiff further stated that defendant no.1 falsely represented that two post-dated cheques of Rs. 5,00,000/- each had been provided to

him, whereas no such payment was ever made. Under continuous pressure from defendants no.1 and 2 and due to his weak financial condition, the plaintiff executed a Sale Deed on 15.04.2013. However, instead of transferring the first floor to defendant no.2 as contemplated in the Memorandum of Understanding, the Sale Deed was executed in favour of defendant no.3, Smt. Urmila Rani, who is the mother of defendant no.2. The plaintiff alleged that this was done fraudulently and without his informed consent, thereby cheating him.

4. According to the plaintiff, defendant no.1 subsequently abandoned the construction work, leaving substantial portions of the building incomplete and using substandard construction material. As a result, the plaintiff was compelled to spend approximately Rs. 5,00,000/- from his own funds to make the ground floor habitable and avoid paying rent elsewhere. The plaintiff estimated that an additional Rs. 12,00,000/- to Rs. 13,00,000/- is required to complete the remaining construction and finishing work, including plastering, electrical work, painting, flooring, modular kitchens, railings, and other essential fittings throughout the building.

5. The plaintiff served a legal notice dated 12.04.2014 upon defendant no.1 demanding completion of the remaining work and compensation for the losses suffered. However, defendant no.1 neither responded to the notice nor fulfilled his contractual obligations. The plaintiff claimed that he suffered financial losses due to the incomplete construction, expenditure incurred from his own pocket, and mental agony caused by the defendants' fraudulent conduct and breach of contract.

6. Accordingly, the plaintiff has filed the present suit seeking damages of Rs. 18,00,000/- from defendant no.1, comprising Rs. 5,00,000/- spent on completing part of the construction, Rs. 12,00,000/- towards the estimated costs of completing the unfinished work, and Rs. 1,00,000/- for mental agony. The plaintiff also seeks costs of the suit.

Written Statement of defendant no. 2 and 3

7. The defendants no. 2 and 3 raised preliminary objections that the suit filed by the plaintiff is not maintainable and is liable to be rejected under Order VII Rule 11 CPC as no cause of action exists against them. They contended that there is no privity of contract between the plaintiff and defendants no. 2 and 3 regarding the collaboration agreement entered into between the plaintiff and defendant no. 1. defendant no. 3 asserted that she is a bona fide purchaser of the first floor of property bearing No. B-300, Sudarshan Park, New Delhi, having purchased the same directly from the plaintiff through a registered Sale Deed executed on 11.04.2013 and registered on 15.04.2013 after payment of the entire sale consideration of Rs. 13,00,000/-. According to the defendants, defendant no. 2, Yogesh Kapoor, has no connection with the construction project and was never a financier as alleged by the plaintiff. They stated that the plaintiff himself approached Shri J.R. Kapoor, husband of defendant no. 3 and father of defendant no. 2, in January 2013 with an offer to sell the first floor of the property. Consequently, an Agreement to Sell was executed between the plaintiff and defendant no. 3, pursuant to which she paid Rs. 13,00,000/- through cheques and thereafter obtained ownership and possession of the first floor along with one car parking space.

8. The defendants denied all allegations that defendant no. 1 had requested transfer of the first floor in favour of defendant no. 2 or that defendant no. 2 had financed the construction project. They maintained that the Memorandum of Understanding dated 09.04.2013 was executed solely between the plaintiff and defendant no. 1, and that defendants no. 2 and 3 had no knowledge of or involvement in the said arrangement. They further denied any allegation of fraud, coercion, undue influence, or pressure being exerted upon the plaintiff for execution of the Sale Deed. According to them, the plaintiff voluntarily entered into the sale transaction and transferred the property to defendant no. 3 after receiving the full sale consideration.

9. The defendants consistently asserted that all disputes regarding construction quality, completion of work, payment obligations, or breach of the Collaboration Agreement relate exclusively to the plaintiff and defendant no. 1. Since defendants no. 2 and 3 were not parties to the Collaboration Agreement, they claimed to have no knowledge of its terms and conditions and cannot be held liable for any alleged breach committed by defendant no. 1. They submitted that the plaintiff is improperly attempting to involve them in a dispute that concerns only the builder and the plaintiff.

10. The defendants further alleged that, in fact, defendant no. 3 has suffered hardship due to the plaintiff's own conduct. They stated that although the Sale Deed entitled defendant no. 3 to a parking space on the ground floor, the plaintiff has failed to complete the parking area and has not obtained a water connection for the property by depositing the

required development charges with the Delhi Jal Board. As a result, defendant no. 3 and her tenants have faced considerable inconvenience and are compelled to rely on bore-well water. The defendants also alleged that the plaintiff is attempting to construct unauthorized rooms in the designated parking area and hand over possession thereof to third parties for commercial purposes, thereby affecting the rights of defendant no. 3.

11. The defendants denied the plaintiff's claims regarding financial losses, incomplete construction costs, and mental agony, stating that no loss was caused to the plaintiff by defendants no. 2 and 3. On the contrary, they asserted that defendant no. 3 has suffered financial loss and harassment due to the plaintiff's failure to fulfill his obligations under the Sale Deed. They further alleged that the plaintiff has not approached the Court with clean hands, has suppressed material facts, and has instituted a false and frivolous suit solely to harass defendants no. 2 and 3 and extract money from them.

12. Accordingly, defendants no. 2 and 3 denied all allegations made against them in the plaint, reiterated that no cause of action exists against them, and prayed that the suit be dismissed with heavy costs as being false, frivolous, and not maintainable in law.

Replication by the plaintiff to the WS of defendant no. 2 and 3

13. The replication filed by the plaintiff asserted that they are necessary parties to the suit because they actively participated in and facilitated the alleged fraud committed by defendant no. 1. The plaintiff submitted that the cause of action against defendant nos. 2 and 3 clearly existed as they were involved in securing the interests of defendant no. 1

before the completion of the construction work contemplated under the Collaboration Deed dated 08.09.2012. The plaintiff further contended that defendant nos. 2 and 3 were fully aware of the terms and conditions of the Collaboration Deed because the deed was witnessed by Mr. J.R. Kapoor, who is the father of defendant no. 2 and the husband of defendant no. 3. It is alleged that the sale deed dated 11.04.2013 in respect of the first floor of Property No. B-300, Sudershan Park, New Delhi, was not a bona fide transaction but was executed in collusion among the defendants to defeat the plaintiff's rights. According to the plaintiff, the first floor had been earmarked as consideration for construction under the Collaboration Deed, and defendant no. 1 received substantial amounts of money, including Rs. 5 lakhs on 13.04.2013, Rs. 1 lakh on 02.07.2013, and Rs. 7 lakhs on 27.04.2013, purportedly through arrangements involving defendant nos. 2 and 3. The plaintiff maintained that the entire sale consideration was received by defendant nos. 1 and 3 and that defendant no. 3 was also a witness to the sale deed, demonstrating her knowledge and involvement in the transaction. Consequently, the plaintiff argued that defendant no. 3 is in illegal possession of the suit property and that no valid rights accrued to her under the sale deed dated 11.04.2013, which was allegedly executed fraudulently.

14. In response to the merits of the written statement, the plaintiff reiterated the averments made in the plaint and denied the contrary allegations raised by the defendants. The plaintiff specifically stated that defendant no. 2, Yogesh Kapoor, acted as the financier of defendant no. 1,

while Mr. J.R. Kapoor witnessed the Collaboration Deed and was fully aware of its terms, including the stipulation that the first floor would belong to defendant no. 1 as consideration for construction. The plaintiff alleged that the first floor was subsequently transferred to defendant no. 3 at the instance of defendant no. 1 and that the consideration shown in the sale deed was based on circle rates, which were significantly lower than the prevailing market value. The plaintiff further maintained that defendant nos. 2 and 3 were fully aware of all acts and omissions of defendant no. 1 and acted in collusion with her to cheat the plaintiff. Throughout the replication, the plaintiff repeatedly emphasized that defendant nos. 2 and 3 had knowledge of the Collaboration Deed and actively participated in the alleged fraudulent scheme. Accordingly, the plaintiff prayed that the suit be decreed in favour of the plaintiff and against all the defendants.

Issues :-

15. From the pleadings of the parties and material on record, following issues were framed by Ld. Predecessor vide order dated 22.03.2018: -

Issue no. 1 Whether the plaintiff is entitled for the damages as prayed?

OPP

Issue no. 2 Whether the suit is not maintainable against defendant no 2 and 3 for want of privity of contract? OPDs

Issue no. 3 Whether the suit has been filed against defendant no 2 and 3 without cause of action? OPDs

Issue no. 4 Whether the plaintiff has not approached to the Court with the clean hand and suppressed the material fact? OPDs

Issue no. 5 Relief

Court Proceedings

16. In this case, defendant no.1 was proceeded exparte. Despite opportunity, plaintiff has not led any evidence, hence vide order dated 09.07.2019 PE was closed. Vide order dated 18.09.2019 application under Section 151 CPC was allowed for reopening the plaintiff evidence. Thereafter vide order dated 11.03.2024 opportunity for PE was again closed. Ld. Counsel for the defendant stated on 27.08.2024 that defendants do not want to lead DE in this matter. Hence, the matter was listed for final arguments.

Final arguments

17. I have heard Shri Ashish Kumar Pandey Ld. Counsel for plaintiff and Shri R.N. Vats, Ld. Counsel for defendant no. 2 and 3 and perused the record.

Court observation and findings

Issue No.1 Whether the plaintiff is entitled for the damages as prayed?

OPP

18. The onus to prove this issue was upon the plaintiff. The plaintiff has sought damages of Rs.18,00,000/- alleging breach of contractual obligations by defendant no.1, incomplete construction, financial losses incurred for making the premises habitable, and mental agony. However, it is a settled principle of civil law that the burden of proving a fact rests upon the party asserting it. Sections 104 to 106 BSA provide that the burden lies upon the person who asserts the existence of facts entitling him to legal relief.

19. In the present case, despite repeated opportunities and even after reopening of evidence, the plaintiff failed to step into the witness box. No affidavit in evidence was tendered. The plaintiff neither proved the alleged Collaboration Agreement dated 08.09.2012, nor the alleged Memorandum of Understanding dated 09.04.2013, nor the legal notice dated 12.04.2014, nor any bills, vouchers, estimates, photographs, contractor reports, bank statements, or any documentary proof to substantiate expenditure allegedly incurred or damages suffered.

20. Mere pleadings do not constitute evidence. Averments made in the plaint can be treated only as assertions unless proved through legally admissible evidence. The plaintiff was required to prove not only the breach of contract but also the actual loss suffered and the nexus between the alleged breach and claimed damages.

21. The plaintiff has also alleged fraud, collusion, coercion, and misrepresentation against defendant nos.2 and 3. However, allegations of fraud are required to be specifically pleaded and strictly proved. In absence of evidence, such allegations remain unsubstantiated.

22. The Hon'ble Supreme Court in the case of ***Vidhyadhar v. Manikrao AIR 1999 SC 1441*** held that where a party abstains from entering the witness box to state his own case on oath and does not offer himself for cross-examination, an adverse inference may be drawn against such party. Similarly, in ***Rangammal v. Kuppuswami AIR 2011 SC 2344***, it was held that the burden of proof lies upon the person who substantially asserts the affirmative of the issue and such burden never shifts unless discharged.

24. Merely because defendant no.1 was proceeded ex parte does not automatically entitle the plaintiff to a decree. Even in ex parte proceedings, the plaintiff must independently establish his case through cogent evidence. Reliance may be placed upon ***Ramesh Chand Ardawatiya v. Anil Panjwani AIR 2003 SC 2508*** wherein it was held that even in absence of defence, the plaintiff must prove entitlement to relief.

25. Since no evidence whatsoever has been led by the plaintiff, the Court has no material before it to assess breach of contract, quantify damages, or determine liability of any of the defendants. Accordingly, this issue is decided against the plaintiff and in favour of the defendants.

Issue No.2 Whether the suit is not maintainable against defendant no.2 and 3 for want of privity of contract? OPDs

26. The onus to prove this issue was upon defendant nos.2 and 3. defendant nos.2 and 3 have contended that they were not parties to the Collaboration Agreement dated 08.09.2012 and therefore no liability can arise against them. However, no evidence has been led by either side. Although defendant nos.2 and 3 have not adduced evidence to affirmatively establish their defence, it remains undisputed from the pleadings that the Collaboration Agreement relied upon by the plaintiff is stated to have been executed between the plaintiff and defendant no.1.

27. Be that as it may, in view of the failure of the plaintiff to prove any entitlement to damages or establish liability against defendant nos.2 and 3, adjudication of this issue becomes largely academic and does not materially affect the final outcome of the suit. Accordingly, this issue is decided against the plaintiff and in favour of defendant nos.2 and 3.

Issue No.3 Whether the suit has been filed against defendant no.2 and 3 without cause of action? OPDs

28. The onus to prove this issue was upon defendant nos.2 and 3. A cause of action means every fact which would be necessary for the plaintiff to prove in order to obtain a decree. In the present case, though the plaint discloses allegations against defendant nos.2 and 3 alleging collusion and fraudulent participation, the plaintiff failed to substantiate the same through evidence. Since the plaintiff failed to prove any actionable wrong or liability attributable to defendant nos.2 and 3, no enforceable cause of action ultimately survives against them. This issue is accordingly decided in favour of defendant nos.2 and 3 and against the plaintiff.

Issue No.4 Whether the plaintiff has not approached the Court with clean hands and suppressed material facts? OPDs

29. The burden to prove this issue was upon defendant nos.2 and 3. No evidence has been led by defendant nos.2 and 3 to establish deliberate concealment or suppression of material facts by the plaintiff. Mere allegations in the written statement, unsupported by evidence, cannot be accepted as proved. Accordingly, this issue is decided against defendant nos.2 and 3 and in favour of the plaintiff.

Relief

30. In view of the findings on Issue Nos.1 to 3, the plaintiff has failed to prove his case by way of admissible evidence. The plaintiff has failed to establish breach of contract, financial loss, expenditure incurred, fraud, collusion, or entitlement to damages. Consequently, the suit of the

plaintiff stands dismissed. In the facts and circumstances of the case, parties are left to bear their own costs. Decree sheet be prepared accordingly.

File be consigned to Record Room.

**Announced in open Court
on 04th Day of June 2026**

**(Susheel Bala Dagar)
District Judge-08, West
Tis Hazari Courts, Delhi.**

(This judgment contains 13 pages.)