

KABC170006212025



**IN THE COURT OF LXXXV ADDL. CITY CIVIL & SESSIONS  
JUDGE, AT BENGALURU (CCH-86) (Commercial Court)**

**THIS THE 2<sup>nd</sup> DAY OF JULY 2025**

**PRESENT:  
SRI.ARJUN. S. MALLUR. B.A.L.LL.B.,  
LXXXV ADDL. CITY CIVIL & SESSIONS JUDGE,  
BENGALURU.**

**Com.OS.No.214/2025**

**PLAINTIFFS:**

**1. Mrs. Vijaya Subramaniyan**

W/o Late Mr. T.R.Subramaniyan,  
Aged about 61 years,  
R/At No.1094, 12-A Main Road,  
ESI Hospital, HAL 2<sup>nd</sup> Stage  
Bengaluru-560 008.

**2. Mrs. Rajeswari Venkatesh**

W/o Mr. Venkatesh Vaidyanathan,  
D/o Late Mr. T. R. Subramaniyan,  
Aged about 61 years,  
R/At No.1094, 12-A Main Road ESI Hospital  
HAL 2nd Stage Bengaluru-560 008.

**3. Mr. K Balasubramaniyan**

R/At No.19, Flat No.103  
Mantri Residency Bannerghatta Road  
Bengaluru-560 076.

Plaintiff Nos. 1 to 3 are Rep By SPA Holder:  
Mr. Venkatesh Vaidyanatha

**(Represented By Sri. Anirudh Suresh, Advocate)**

**: Versus:**

**DEFENDANTS:**

**1. M/S Gaurav Housing Development Pvt Ltd**

Registered Office At No.3442,  
Service Road, RPC Layout,  
Vijayanagar  
Bangalore-560 040.

**2. Mr. Sanchit Gaurav**

Director Of M/S Gaurav Housing Development Pvt Ltd  
Holding 75% of shares in defendant No.1  
S/o Mr. Rajiv Raman Sinha,  
R/At No.1148, 13th Cross, 1st Stage  
Nagarbhavi Behind Siddayanga School  
Chandra Layout Bangalore-560 040.

Also At No.651/B Surya,  
19th Main Road, Ideal Home Township  
Bangalore-560 098.

**3. Mr. Rajiv Raman Sinha**

Director Of M/S Gaurav Housing Development Pvt Ltd.  
Holding 25% of shares in defendant No.1  
S/o Bishnu Deconarayan Sinha,  
R/at No. No.651/B Surya, 19th Main Road,  
Ideal Home Township  
Bangalore-560 098

**(Represented by Sri. Anupam Agarwal, Advocate for D2  
D1 is absent D3 is abated)**

**IA.NO.II**

**Applicant/Defendant No.2: Mr. Sanchit Gaurav**

(Represented by Sri. Anupam Agarwal, Advocate)

**V/s**

**Opponents/Plaintiffs: Mrs. Vijaya Subramaniyan and  
others**

(Represented By Sri. Anirudh Suresh, Advocate)

(i)	Provisions under which the application is filed	U/o.VII Rule 11 (d) of CPC
(ii)	Relief sought for	Seeking rejection of the plaint on the ground that the suit is prima facie barred by limitation.
(iii)	The date on which the	23.04.2025

	application is filed	
(iv)	Number of the application	I.A.No.II
(v)	The date on which the objections are filed by different opponents	04.06.2025
(vi)	The date on which the orders were passed on the said application	02.07.2025

### **ORDER ON IA.NO.II**

I.A.No.2 is filed by the defendant No.2 U/o.VII Rule 11(d) of CPC seeking rejection of the plaint on the ground that the suit is prima facie barred by limitation.

**2.** It is contended by the defendant No.2 that plaintiff has described the cause of action for the suit having arose on 27.06.2012 when the agreement of sale was executed and thereafter on 13.08.2012. The suit is filed for recovery of the advance amount paid under the agreement of the year 2012 and the suit being filed nearly 13 years later is hopelessly barred by limitation. It is submitted that as per article 27 of the Limitation Act which is with respect to a suit for compensation for breach of promise to do anything at a specified time is 3

years from the date of breach and the plaintiff was required to file the suit on or before 2015. It is further contended that article 62 of the Limitation Act which is with respect to refund of advance amount under contract the limitation would be 12 years and even applying article 62 the suit ought to have been filed on or before 27.06.2024 but the suit filed on 12.02.2025 is hopelessly barred by limitation. The defendant No.2 also has referred to judgment of the Apex Court in ***V.M. Salgaocar and Brothers vs. Board of Trustees of Port of Mormugao and another*** wherein it is observed that under Sec.3 of the Limitation Act it is the duty of the Court to dismiss any suit filed after the prescribed period of limitation irrespective whether plea of limitation has been set up as a defence or not. On these grounds defendant No.2 seeks for rejection of the plaint.

**3.** Objections are filed by the plaintiff contending that after execution of the agreement of sale dated 27.06.2012 there has been repeated communications sent by the defendant wherein he has promised for execution of the agreement and that the documents Nos.15 and 21

which are the acknowledgment and the email communications exchanged between the parties it has been made clear that the defendant has been representing to the plaintiff regarding construction of the project and therefore as and when the defendant sent a message regarding completion of the work it gave rise to recurring cause of action which can also be accessed from the documents at Sl.No.11, 13 to 15. It is further contended that the plea of limitation is a mixed question of law and fact and plaint cannot be rejected on the ground of limitation without providing an opportunity for the plaintiff to lead evidence. On these grounds the plaintiff has sought for rejection of the application with costs.

**4.** Heard the learned counsels appearing for the plaintiff and the defendant No.2. Perused the material on record.

**5.** The points for consideration are:-

- 1) Whether the defendant No.2 substantiates that the suit is hopelessly barred by limitation and plaint is liable to

be rejected under Order VII Rule 11(d) of CPC?

2) What order?

**6.** My answer on the above point is as under:

Point No.1: **In the Negative.**

Point No.2: As per final order for the following

### **REASONS**

**7. POINT NO.1**:- The plaintiff has filed this suit for recovery of a sum of Rs.90,00,000/- being the advance amount paid by plaintiff No.1 to 2 towards construction of a project along with interest from the date of payment till realization. The defendant No.2 has filed written statement raising several defences.

**8.** In the present application the defendant seeks rejection of the plaint on the ground of limitation. It is a settled position of law that limitation is a mixed question of law and facts. The suit is filed with respect to refund of

the earnest money that was paid by the plaintiffs to the defendants for construction of residential apartments in the schedule A property. It is the specific plea of the plaintiff that in-spite of repeatedly extending time for completion of the project the defendants never completed the construction and therefore the suit is file for recovery of the amount of Rs.90,00,000/- of which the plaintiff Nos.1 and 2 have paid Rs.55,00,000/- and plaintiff No.3 having paid Rs.35,00,000/-. The agreement did not stipulate when the construction is to be completed and when the possession is to be handed over.

**9.** To ascertain whether the suit of the plaintiff is within time or not it has to be borne out from the description of cause of action. According to the plaintiff the cause of action first arose on 27.06.2012 and 1308.2012 and thereafter it continued to recur in the years 2015, 2016, 2019, 2022 and 2023 when there were repeated email exchanges and whatsapp communications in which the defendant under took to complete the project and hand over possession to the plaintiff. The plaintiff also contends that cause of action arose on 21.05.2024 when the legal

notice was sent to the defendant and also on 01.06.2024 when the defendant issued a reply to the said notice. It is pertinent to mention that legal notice will never give raise to a cause of action. For the purpose of clarity it would be just and proper to reproduce the cause of action as described in the plaint at para 41 which is as under:

*Cause of Action: It is stated that in the instant suit there has been a continuous cause of action which arose first on 27.06.2012 and 13.08.2012, when the Agreement of sale was entered with the Defendants. Further the cause of action arose in the year 2015, 2016, 2019, 2022 and 2023, when the Defendant through E-mail, Calls and Whatsapp undertook to complete the project and handover the possession to the plaintiffs. Further the cause of action arose on 21.05.2024 when the plaintiffs sent the legal notice to the defendant. Further the cause of action arose on 01.06.2024, when the defendant issued untenable reply notice.*

**9.** The plaintiff has given a chronological details of the events and dates. The defendant has executed the agreement of sale on 27.06.2012 acknowledging the receipt of advance sale consideration. Thereafter on 01.09.2015 he has sent a mail acknowledging performance of the contract and also admitting the breach

in contract. There is another letter from the defendant with respect to the same dated 10.05.2016 there are series of whatsapp chats from 07.01.2019 to 24.07.2019 and again from 28.07.2022 to 22.06.2023. These communications exchanged between the parties would prima facie substantiates that the defendant all along expressed their intention to complete the project but for reasons best known has not done so. Therefore as and when the communications came to be exchanged the cause of action recurred to the plaintiff for the purpose of filing of the suit. Whether these conversations would amount to recurring cause of action or not has to be decided only after trial and therefore the proper stage for answering the point of limitation would be by framing an issue on the point of limitation and after completion of the evidence.

**10.** The learned counsel for the defendant No.2 in the course of his argument drew the attention of the Court to document No.13 produced by the plaintiff which is cheque dated 10.11.2016 issued by the defendant for Rs.55,00,000/-. Relying upon the said document the

learned counsel for defendant No.2 would vehemently submit that the plaintiff has not chosen to present the cheque for encashment and by issuing the cheque the defendant has demonstrated his inability to complete the project and therefore the cause of action for the suit arose on 10.11.2016 and the suit was required to file within three years on or before 09.11.2019. The said argument put forth by the learned counsel for defendant No.2 cannot be sustained. No doubt it is true that the plaintiff has not taken any action with respect to the cheque dated 10.11.2016. Nevertheless subsequently in the year 2019 there has been several whatsapp communications and messages which are produced at document No.14 wherein repeatedly the defendants have been assuring the plaintiff regarding completion of the residential complex. This is also evident in the whatsapp communications at document No.15 which is of the year 2022 and 2023. Therefore as rightly contended by the learned counsel for the plaintiff prima facie there is recurring cause of action and ultimately when the defendants did not comply with their assurances the present suit has been initiated.

**11.** The learned counsel for the plaintiff in support of his argument relied upon the judgment of the Hon'ble Apex Court reported in **2025 SCC OnLine SC 975 P Kumarakurubaran vs. P Narayanan and others** wherein the Hon'ble Apex Court at para No.12.1 of the judgment has observed as under:

*12.1:However, we are of the considered view that the issue as to whether the appellant had prior notice or reason to be aware of the transaction at an earlier point of time, or whether the plea regarding the date of knowledge is credible, are matters that necessarily require appreciation of evidence. At this preliminary stage, the averments made in the plaint must be taken at their face value and assumed to be true. Once the date of knowledge is specifically pleaded and forms the basis of the cause of action, the issue of limitation cannot be decided summarily. It becomes a mixed question of law and fact, which cannot be adjudicated at the threshold stage under Order VII Rule 11 CPC. Therefore, rejection of the plaint on the ground of limitation without permitting the parties to lead evidence, is legally unsustainable.*

**12.** The observations in the said decision applies to the prevailing facts and circumstances of case on hand. In the result for the aforesaid reasons I am of the considered

opinion that the plaint averments prima facie does disclose existence of a cause of action which is to be tested during the course of trial and therefore the application for rejection of the plaint for want of cause of action cannot be sustained and is liable to be rejected. Accordingly, I answer Point No.1 in the **Negative**.

**13. POINT NO.2:-** For the aforesaid reasons, I pass the following:

**ORDER**

I.A.No.2 filed by the defendant U/o.VII Rule 11 (d), R/w Sec.151 of CPC is **rejected**.

No order as to costs.

(Dictated to the Stenographer Grade-III, transcribed by her, corrected and then pronounced by me in open court on this the **2<sup>nd</sup> day of July, 2025**)

**(ARJUN. S. MALLUR)**  
**LXXXV Addl.City Civil & Sessions Judge,**  
**Bengaluru.**