

KABC170006212025



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

THIS THE 18th 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 2nd 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 Absent)
(D3 Abated)**

IA.NO.I

Applicant/Plaintiffs: Mrs. Vijaya Subramaniyan and others

(Represented By Sri. Anirudh Suresh, Advocate)

V/s

Opponents/Defendant No.2: Mr. Sanchit Gaurav

(Represented by Sri. Anupam Agarwal, Advocate)

(i)	Provisions under which the application is filed	U/o.XXXIX, Rule 1 and 2 of, R/w Sec.151 CPC
(ii)	Relief sought for	Temporary injunction
(iii)	The date on which the application is filed	12.02.2025
(iv)	Number of the application	I.A.No.I
(v)	The date on which the objections are filed by	

	different opponents	
(vi)	The date on which the orders were passed on the said application	18.07.2025

ORDERS ON IA.NO.1

I.A.No.1 is filed by the plaintiff U/o.XXXIX, Rule 1 and 2 of R/w Sec.151 CPC for a temporary injunction restraining the defendants or any persons claiming under them from creating or encumbering in any manner the suit schedule property till disposal of the suit.

2. It is contended by the plaintiff that the defendant No.1 had entered into a JDA with one Mr. S V Suresh the owner of Schedule A property for construction of a multi-storied residential apartment in the schedule A property. Subsequently the said owner of the schedule A property executed a GPA in favour of the defendants on 11.04.2012. Thereafter the husband of plaintiff No.1 and father of plaintiff No.2 deceased T.R. Subramaniyan entered into a unregistered agreement of sale with the defendants dated 27.06.2012 for purchase of a 2 bedroom apartment constructed in the schedule A property which is described as a schedule B property for a total

consideration of Rs.60,00,000/-. Likewise the plaintiff No.3 also entered into a unregistered agreement of sale dated 13.08.2012 for purchase of another two bedroom apartment in the schedule A property which is described as schedule C property to the plaint for value consideration of Rs.60,00,000/-. The deceased T.R. Subramaniyan has paid an advance consideration of Rs.55,00,000/- and similarly plaintiff No.3 paid a advance sale consideration of Rs.35,00,000/- to the defendants with respect to which the defendant has issued the receipts and acknowledged the payments. It is contended that even after making the major sum as an advance sale consideration the defendant never commenced the construction of the apartment complex and kept postponing and delaying the completion of the project and to the repeated emails and correspondences the defendant kept on intimating the plaintiffs that they would construct the property and complete the project within reasonable time. On 10.05.2016 the defendant No.2 sent a letter to the deceased T.R. Subramaniyan stating that on account of huge financial problems they were unable to complete the project and they would commence the construction during mid May 2016 and complete the

project by 8 months and also undertook to pay monthly rental income of Rs.20,000/- towards rentals of the flats commencing from May 2016. The defendants also issued a post dated cheque dated 10.11.2016 for a sum of Rs.55,00,000/-. Subsequently the defendants orally requested deceased T.R. Subramaniyan not to present the cheque for encashment. Meanwhile Mr.T.R. Subramaniyan died 30.05.2016 on account of which the cheque came to be not presented for encashment. It is submitted that whenever the plaintiff called upon the defendants to either complete the project or return their advance amount the defendants kept sending messages on whatsapp that they would commence the construction soon and would keep the plaintiffs updated. As recently on 18.03.2023 the defendants sent a whatsapp messages that they would be commencing the construction during first week of April 2023 and keep the plaintiffs updated. In spite of it the defendants never completed the project on time as agreed and the plaintiff issued a legal notice dated 21.05.2024 calling upon the defendants to execute the sale deeds in favour of the plaintiffs by accepting the balance sale consideration. To the said notice the defendants sent an untenable reply dated 01.06.2024

contending that advance sale consideration has been forfeited on account of non cooperation by the plaintiffs in completion of the project. It is contended that the defendants after having received major portion of sale consideration have not completed the project and also not returned the advance sale consideration and are now attempting to alienate the schedule B and C property to other prospective buyers and if the defendants succeed in doing so the plaintiffs would loose their right to recover the amounts due to them and hence the plaintiffs have made out a prima-facie case and the balance of convenience lie in their favour and that the defendants if not restrained by an order of temporary injunction by creating any third party right over the schedule A to C properties the plaintiffs would be put to irreparable loss or injury and hence the application.

3. The defendant no.2 filed written statement and has filed a memo adopting the written statement as objections to I.A.No.1. At the time of arguments the learned counsel for the plaintiffs submitted that the written statement of the defendants has been filed after the lapse of 120 days which results in defendant forfeiting his right of written

statement and therefore when the written statement itself cannot be taken on record the same cannot also be treated as objections to the application. The defendant No.1 is the firm and defendant No.2 has been served with summons on 22.02.2025. Under the amended provisions of CPC as applicable to commercial suits the written statement has to be filed with an outer limit of 120 days from the date of service of summons. Initially it has to be filed within 30 days and thereafter within next 90 days upon the time extended by the Court. Computing from 22.02.2025 the defendants No.1 and 2 were required to file their written statement before the Court on or before 22.06.2025. The defendants have filed the written statement before the Court on 08.07.2025 by which date the mandatory period of 120 days had been lapsed and therefore the defendants have forfeited their right of written statement and hence the written statement filed by the defendant No.2 cannot be taken on record. In view of the memo filed by the defendant No.2 the written statement now can only be treated as statement of objections to I.A.No.1 and not as a statement of defence.

4. In the statement of objections the defendant No.2 contends that the present suit which is filed with respect to execution of agreement of sale dated 27.06.2012 and 13.08.2012 is hopelessly barred by time and the plaintiff by accepting the termination letter and the cheque dated 10.11.2016 has resulted in discharge of the liability of the defendants against the plaintiffs and therefore as the suit is hopelessly barred by time no relief much less the temporary injunctive relief as prayed can be granted and sought for rejecting the application.

5. Heard the learned counsels appearing for the plaintiffs and the counsel for defendant No.2. Perused the material on record.

6. The points for consideration are:-

- 1) Whether the plaintiffs have made out a prima-facie case for grant of temporary injunction?
- 2) Whether the balance of convenience lie in favour of the plaintiffs and plaintiffs would suffer irreparable loss or injury if temporary injunction is not granted?

3) What order?

7. My answer on the above point is as under:

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

Point No.2: **In the Affirmative.**

Point No.3: As per final order for the following

REASONS

8. **POINT Nos.1 and 2**:- These points being interlinked with each other they are take up together for answering.

The defendant no.2 whose written statement is treated as objections to I.A.No.1 only contends that the suit is filed with respect to a transaction which is of the year 2016 and 2018 and therefore the suit is hopelessly barred by limitation. There is no express denial of the averments made in the plaint and also documents filed by the plaintiff in support of the application. The defendant had filed I.A.No.2 under Order VII Rule 11 of CPC seeking rejection of the plaint as barred by limitation. This Court vide order dated 02.07.2025 has rejected the said

application holding that the point of limitation is a triable issue to be decided in the course of trial. As mentioned above apart from challenging the plaint averments on the point of limitation no specific reasons objections has been raised by the defendant No.2 to the averments made in the application.

9. The plaintiff in support of the averments made in the application has produced as many as 26 documents. Document No.1 is the SPA executed in favour of the authorized persons by the plaintiffs. Document No.2 is the death certificate of T. R. Subramaniyan. Document No.3 is the legal heirship certificate. Document No.4 is the master data of defendant No.1 company. Document Nos.5 and 6 are the agreement of sale dated 27.06.2012 and 13.08.2012 executed between defendant and Mr. T. R. Subramaniyan and plaintiff No.3. Document Nos. 7 to 10 are the receipts and bank statements endorsing payment of the advance sale consideration by Mr.T. R. Subramaniyan and plaintiff No.3 to the defendant. Document No.11 is the are the emails sent by the defendants to the SPA holder of the plaintiff wherein it is mentioned that the construction would commence by

September 2015 and possession would be handed over by March 2016. Admittedly the same is not done. Document No. 12 is the emails under which the plaintiffs have intimated the defendants regarding cancellation of the apartment and return of the advance money. Document Nos.13 and 13.1 is the letter issued by the defendant dated 10.05.2016 wherein further extension of time is sought to complete the project and the cheque for Rs.55,00,000/- is issued in favour of deceased T. R. Subramaniyan. Document Nos 14 and 15 are the printouts of the whatsapp communications exchanged between the SPA holder of the plaintiff and defendant regarding the followup on the project between 07.01.2019 to 24.07.2021. Document No.16 is the legal notice dated 21.05.2024 issued by plaintiff No.2 to the defendant. Document No.17 is the reply sent by the defendant to the said notice. Document Nos.18 and 19 are the legal notice dated 21.05.2024 and reply dated 01.06.2024 pertaining to plaintiff No.3. Document No.20 is the non-starter report in the PIM proceedings. Document No.21 is the email communications between the plaintiffs and the defendant and the advocate with respect to repayment of the amounts.

10. During the course of argument the learned counsel for the plaintiff would vehemently submit that the defendant in the reply notice has categorically admitted receipt of the amount but has baselessly contended that on account of interferences by the plaintiff and obstructions caused by the plaintiff the project could not be completed. There is a further assertion in the reply notice that the advance sale consideration made has been forfeited by defendant No.1. Per contra the learned counsel for defendant No.2 would submit that by giving the cheque for Rs.55,00,000/- and sending a letter of termination the defendant has completed its obligations under the sale agreement and therefore there was nothing left to be performed by the defendant and as the agreement has been duly terminated the suit itself is not maintainable and therefore injunctive relief cannot be granted.

11. The document Nos. 14 and 15 are the printouts of the whatsapp messages exchanged wherein repeatedly the defendant has been informing the plaintiff that they will start the work before so and so date and complete the project at the earliest. Had the defendant by issuing the cheque for Rs.55,00,000/- had pulled out of the project

there was no occasion for the defendant to reply saying that they would commence the work soon and complete the project. In the reply to the notice apart from acknowledging the receipt of the advance consideration it is being repeatedly said that the unwarranted action on part of Mr. T. R. Subramaniyan and plaintiff No.3 created an atmosphere of non confidence among laborers and that the project did not progress on account of continuous interference, harassment of laborers and verbal abuse of the site engineers. Had such being the circumstances there were no occasion for the defendant to reply in the whatsapp communications that they would commence the work at the earliest and complete the project and handover the possession. All the whatsapp conversations under document No.14 and 15 are prior to the reply notice given to Mr.T. R. Subramaniyan and plaintiff No.3. The conduct of the defendant only shows that after having appropriated the advance consideration of Rs.90,00,000/- instead of eagerly completing the project the defendant has been delaying over a long period of years. Whether the project could not be completed on account of alleged hindrances caused by the plaintiffs or not is a subject matter of trial.

12. The plaintiff during the course of arguments also produced a memo with printouts of the advertisement issued by defendant No.1 wherein there is an advertisement for sale of the apartments in the schedule property. This prima-facie indicates that the defendant has now started show casing the availability of apartments for sale even though being fully aware of sale agreement entered into with the plaintiffs. The defendant having defaulted in undertaking the project as agreed has become liable to refund the advance sale considerations. Whether the defendant was justified in forfeiting the amount will be subject matter of trial and pending disposal of the suit if defendant would proceed to advertise and sale the apartments plaintiff would suffer irreparable loss or injury and therefore apart from making out a prima-facie case balance of convenience also lie in favour of the plaintiffs and rather than the defendant it would be the plaintiffs who would face a greater comparative hardship. Hence I am of the considered opinion that the plaintiffs have made out a prima facie case for grant of temporary injunction, the balance of convenience also lie in favour of plaintiffs and it will be

plaintiffs who would suffer untold hardship and irreparable loss if the injunction is not granted.

13. The plaintiff is seeking an injunctive relief by way of temporary injunction with respect to the entire schedule A property which admittedly belongs to the owner by name S.V. Suresh. In so far as the plaintiffs are concerned they have entered into agreement of sale of purchase of two apartments as described in schedule B and C of the property which is a part of the apartments being constructed in schedule A property. Admittedly the plaintiffs are not the owners of the entire schedule A property. They are also not the owners of schedule B and C apartments as they are only an intending purchasers. Having now approached the Court for refund of advance sale consideration with interest to safeguard and secure the subject matter of the suit and if the defendant proceeds to alienate the schedule B and C property or create any third party rights over the said properties the very rights of the plaintiffs under the sale agreements would be stand defeated and therefore the plaintiff would be entitled for injunctive relief as only with respect to schedule B and C properties. The plaintiffs are seeking for

refund of advance sale consideration together with interest and for the purpose of pecuniary jurisdiction they have valued the suit at Rs.2,05,20,000/- and in the existing facts and circumstances of the case it would be just and proper to create a charge over the schedule B and C property to the extent of Rs.2,05,20,000/- in addition to granting the relief of temporary injunction. Hence, I answer Point Nos.1 and 2 in the **Affirmative.**

14. POINT NO.3:- For the aforesaid reasons, I pass the following:

ORDER

I.A.No.1 filed by the plaintiff U/o.XXXIX Rules 1 and 2, R/w Sec.151 of CPC is **allowed.**

The defendants No.1 and 2 their officers, agents, servants and subordinates are hereby restrained by an order of temporary injunction from alienating or creating any encumbrance or rights over the schedule B and C properties formed in schedule A property till disposal of the suit.

Further a charge is created over the schedule B and C properties for the value of Rs.2,05,20,000/-.

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Office is directed to intimate the concerned revenue authority with regard to creation of charge on the schedule B and C properties.

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 **18th day of July, 2025**)

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