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**IN THE COURT OF PRINCIPAL DISTRICT JUDGE AND
COMMERCIAL COURT, AT BELAGAVI**

DATED THIS THE 11th DAY OF AUGUST 2026

PRESENT: SHRI MANJUNATH NAYAK
B.A.L. LL.B
Prl. District & Sessions Judge
Belagavi.

COM.O.S.No.121/2024

PLAINTIFF : Miss. Manasi D/o Vinod Gaikwad,
Age: 25 years, Occ: Business,
R/o Plot No.81, Gulmohar Marg,
Vinayak Nagar, Belagavi-591108.

(By Sir R.S. Mathapati, Advocate)

Vs.

DEFENDANTS: 1. Jai Kisan Wholesale Vegetable
 Merchants' Association,
 R.S. No.697/2, NH-4 Road,
 Belagavi-590016
 Represented by its President.

 2. Jai Kisan Wholesale Vegetable
 Merchants' Association,
 R.S. No.697/2, NH-4 Road,
 Belagavi-590016
 Represented by its Secretary.

(By Sri M.A. Deshpande, Advocate)

1.	Date of institution of the suit	23.09.2024						
2.	Nature of the suit	Recovery of money						
3.	Date of commencement of recording of evidence	17.09.2025						
4.	Date of closing of evidence	06.01.2026						
5.	Date on which judgment was pronounced	11.08.2026						
6.	Duration	<table> <tr> <td>Year/s</td><td>Months</td><td>Day/s</td></tr> <tr> <td>01</td><td>10</td><td>18</td></tr> </table>	Year/s	Months	Day/s	01	10	18
Year/s	Months	Day/s						
01	10	18						

J U D G M E N T

This suit is filed by the plaintiff claiming decree for recovery of Rs.28,10,000/- from the defendants-association with interest at the rate of 18% p.a.

2. Case of the plaintiff, as made out in the plaint, is as follows:

The defendants-Association is a registered association and the plaintiff is the member of the said association. Two commercial shops bearing No.FF-19 and FF-20 totally measuring 400 sq. fts. in Block-B was allotted to the plaintiff. As per the demand made by the defendants-Association, the plaintiff paid a sum of Rs.20,00,000/- to the defendants on 27.01.2022. The defendants-

Association issued a receipt for having received the amount of Rs.20,00,000/- from the plaintiff on 02.02.2022 and also issued provisional allotment cum possession letter in favour of plaintiff on 07.04.2022. However, physical possession of the shops was not handed over to the plaintiff. As per the allotment letter dated 07.04.2022, the defendant-association was to execute the sale deed in favour of the plaintiff within six months. The plaintiff has arranged for payment of the funds. The plaintiff has requested the defendants-Association to execute sale deed or to refund the money vide letter dated 15.10.2022. The defendants-Association agreed to refund the amount and requested the plaintiff to surrender the vacant possession of the premises. The plaintiff addressed another letter to the defendants-Association by stating that the physical possession of the shops were not handed over to her. In spite of issuing the said letter, defendants-Association failed to repay the amount. The defendants-Association is liable to pay interest at the rate of 18% from 02.02.2022 to 02.05.2024 to the tune of Rs.8,10,000/-. The plaintiff approached District Legal Services Authority ('DLSA' for short), Belagavi for pre-institution mediation. The defendants-Association has failed to appear before

the DLSA, Belagavi. Therefore, the plaintiff constrained to file the present suit. On all these grounds, plaintiff claimed a decree for recovery of Rs.28,10,000/- from the defendants-Association with interest at the rate of 18% p.a.

3. In response to the summons, defendants-Association appeared before this Court through their counsel and filed the written statement and admitted the transaction between them and receipt of Rs.20,00,000/- from the plaintiff and denied other plaintiff averments. According to the defendants-Association, the plaintiff was the member of their association and they allotted two commercial shops No.FF-19 and FF-20 to her and handed over the possession to the plaintiff. The plaintiff has violated the terms and conditions of the agreement executed between them. The plaintiff has not used the premises for the purpose for which it was allotted. The plaintiff intended to sublease the same to third parties. The plaintiff has to carry on her vegetable business and she was not doing the same in the premises handed over to her by the defendants-Association. The suit is bad for non joinder of necessary parties. On all these grounds, the defendants-Association prayed for dismissal of the suit with costs.

4. On the basis of the pleadings, the following issues are framed:

1. **Whether the plaintiff proves that she is not put in physical possession of the concerned shops by the defendant association in terms of the provisional allotment cum possession letter issued in her favour on 07.04.2022?**
2. **Whether the defendants prove that the plaintiff violated the terms and conditions of the agreement executed between the plaintiff and the defendants in respect of suit property?**
3. **Whether the plaintiff proves that she is entitled to refund of Rs.20,00,000/- and the interest at 18% p.a. from 02.02.2022 till 02.05.2024 amounting to Rs.8,10,000/- as claimed?**
4. **Whether the defendants prove that the suit is bad for non-joinder of necessary parties?**
5. **Whether the plaintiff is entitled to current and future interest at 18% p.a. on the suit claim from 02.05.2025 till realization?**
6. **Whether the plaintiff is entitled to the reliefs as prayed for in the suit?**
7. **What order and decree?**

5. To prove the above issues and to substantiate their case, plaintiff examined her P.A.Holder as PW1 and got marked

Ex.P1 to 12 documents. On the other hand, defendants-Association examined its secretary as DW1, by examining him in chief. But, DW.1 was not offered for cross-examination.

6. I have heard the arguments of both the parties.

7. My answer for the above Issues are in the following, because of my below discussed reasons:

Issue No.1: **IN THE AFFIRMATIVE**

Issue No.2: **IN THE NEGATIVE**

Issue No.3: **IN THE AFFIRMATIVE**

Issue No.4: **IN THE NEGATIVE**

Issue No.5: **PARTLY IN THE AFFIRMATIVE**

Issue No.6: **PARTLY IN THE AFFIRMATIVE**

Issue No.7: **AS PER THE FINAL ORDER**

REASONS

8. **Issue No.1 and 2:** To avoid repetition of my discussion on facts, I have taken these issues together for determination. The Special Power of Attorney holder of plaintiff, who was examined before this Court as PW1, has reiterated the plaint averments in his examination in chief affidavit and deposed

that the defendants-Association is a registered association and the plaintiff is the member of the same. PW1 further deposed that the defendants-Association has allotted two commercial shops bearing No.FF-19 and FF-20 to the plaintiff and the plaintiff paid a sum of Rs.20,00,000/- to the defendants-Association on 27.01.2022. PW1 further deposed that the defendants-Association has to execute the sale deed within six months and they failed to do so. PW1 further deposed that the plaintiff issued letters calling upon the defendants-Association to repay the amount with interest. PW1 further deposed that the defendants-Association has agreed to refund the amount provided the plaintiff hand over the possession of the shop premises to them. PW1 further deposed that the defendants-Association has not handed over the possession to the plaintiff.

9. The plaintiff has produced Special Power of Attorney executed by her in favour of PW1 as per Ex.P1. Receipt for payment of advance amount dated 02.02.2022 is marked as per Ex.P2. The provisional allotment cum possession certificate is marked as per Ex.P3. Copy of letter dated 24.11.2022 is marked as per Ex.P4.

Notice issued by the plaintiff to the defendants-Association is marked as per Ex.P5. Postal receipt for having sent the said notice by registered post is marked as per Ex.P6. Ex.P7 is the postal acknowledgment evidencing the service of legal notice personally upon the defendants-Association. Ex.P8 is the order sheet relating to the pre-institution mediation proceedings held before the DLSA, Belagavi. Non starter certificate issued by DLSA, Belagavi is marked as per Ex.P9.

10. The defendants-Association has not let any oral and documentary evidence on their behalf initially. Even though defendants subsequently made an attempt to lead evidence by examining one witness as DW.1, he was only examined in chief and not offered for cross-examination. Accordingly, examination-in-chief of DW.1 was expunged.

11. There is no dispute about transaction between the plaintiff and the defendants-Association, whereby the defendants-Association have allotted two shops bearing No.FF-19 and FF-20, totally measuring 400 sq. fts. to this plaintiff for running agricultural/horticultural produces business. It is also undisputed

fact that towards the sale consideration, defendants-Association has received an amount of Rs.20,00,000/- from the plaintiff. The plaintiff produced the receipt dated 02.02.2022 issued by the defendants-Association as per Ex.P2. There is no dispute about the said receipt and the defendants-Association receiving the amount of Rs.20,00,000/- from the plaintiff.

12. However, there is dispute between the parties regarding handing over the possession of those two premises to the plaintiff. The plaintiff claims that the physical possession was not handed over to her and the defendants agreed to execute sale deed within six months from the date of allotment order and hand over the possession to her. On the other hand, it is the case of the defendants that along with Ex.P2 allotment order, they have handed over the physical possession of two premises to the plaintiff. According to the defendants, it is the plaintiff, who failed to perform her part and violated the terms of the allotment. The defendants further contended that they are ready to refund the amount of Rs.20,00,000/- to the plaintiff, provided the plaintiff hand over the physical possession of the two shop premises to them. The plaintiff contended that the defendants-Association has

not handed over the possession and not executed the sale deed, due to which, she has issued legal notice. According to the plaintiff, when the physical possession was not handed over to her, question of she handing over the possession back to the defendants-Association will not arise.

13. The main dispute in this case revolve about question regarding handing over physical possession of two premises, at the time when the plaintiff paid the amount of Rs.20,00,000/- to the defendants-Association. It is a peculiar case where the plaintiff claims that the defendants have not handed over possession, whereas, the defendants claim that they have handed over the possession of the premises to the plaintiff. Normally in the civil suits we come across instance where party claims to be in possession and other party denies the same. It is the case wherein a party claims not in possession, where as other party claims that the other party is in possession.

14. Ex.P3 is the provisional allotment cum possession certificate dated 07.04.2022 issued by the defendants-Association to the plaintiff. As per the said provisional allotment cum

possession certificate, defendants-Association provisionally allotted shops bearing No.FF-19 and 20 to the plaintiff. It is specifically stated in 1st page of Ex.P3 that the defendants have delivered the vacant and physical possession of the said premises to the allottee and she has to use and enjoy the same. Now it is necessary to reproduce the recitals in Page-2 of Ex.P3, which runs like this:

“The Shop No.FF-19 & FF-20 measuring 200 Sq fts each i.e., both together 400 Sq Fts on the First Floor located in building Plot No.14 situated in property Sy.No.696/1 of Jai Kisan Wholesale vegetable merchants Association Belagavi is allotted to Ms. Manasi Vinod Gaikwad for the Sale Consideration of Rs.20,00,000/- (Rupees Twenty Lakhs Only). The said Prospective purchaser Ms. Manasi Vinod Gaikwad has paid entire consideration of Rs.20,00,000/- (Rupees Twenty Lakhs Only) and the registered Sale deed of said shops will be executed by delivering its possession within 6 months from the date of this allotment letter.”

15. Even though in the first page of Ex.P3, it is stated that the physical possession of the premises was delivered, in the above recitals in the second page of Ex.P.3, it is specifically stated

that the plaintiff paid entire consideration of Rs.20,00,000/- and registered sale deed of the shops will be executed by delivering the possession within 6 months from the date of this allotment order. So, there is contradictory and inconsistent recitals in Ex.P3 regarding delivery of possession. The first page says that the physical possession has been delivered, whereas, second page of Ex.P3 says that registered sale deed will be executed by delivering possession within 6 months.

16. When there is contradictory recital in Ex.P3 regarding delivery of possession and the plaintiffs say that physical possession was not delivered to her, the burden shifts upon the defendants to show that actual and physical possession of the premises were delivered to the plaintiff, along with the allotment order. The defendants failed to produce any evidence before this Court to show that the physical possession of the shop premises were actually delivered to the plaintiff while issuing the allotment order.

17. It is pertinent to note here that in spite of giving opportunities, the defendants have not come forward to enter into

the witness box to lead evidence on their behalf. Even though PW1 was cross examined on behalf of the defendants, they have not let in any evidence. Even though defendants have made an attempt to lead evidence by examining DW1 at later stage, DW1 was not offered for cross-examination. Therefore, even examination in chief of DW1 was expunged and there by there is no oral and documentary evidence on behalf of the defendants. The defendants, by failing to lead evidence on their behalf, have failed to substantiate their defence and also failed to disprove the claim of the plaintiff. In fact, by not entering into the witness box, the defendants have not given opportunity to the plaintiff to cross examine them and to substantiate the plaintiff's contentions. The valuable right of the plaintiff to cross-examine the defendants have been taken away by the defendants by not entering into the witness box. According to me, an adverse inference has to be drawn against the defendants for their non entering into the witness box. Hence, this Court has to accept the plaintiff's version in this regard to hold that the actual and physical possession was not delivered to the plaintiff along with provisional allotment order.

18. Before institution of this suit, few months after allotment order, the plaintiff issued a letter dated 15.10.2022 requesting the defendants-Association to refund the amount. For the said letter, the defendants have replied as per Ex.P4 by stating that if the plaintiff surrender the possession of the premises, they will ready to refund the amount. After receipt of the said letter, the plaintiff issued a notice as per Ex.P5 on 28.11.2022 and again she has reiterated that the possession was not delivered to her. Said notice was served upon the defendants as evident from Ex.P7. However, defendants-Association have not given any reply for the same.

19. When the plaintiff approached the DLSA for pre-institution mediation, the defendants-Association have not responded for the same. The defendants tried to impress upon the Court that the plaintiff got appointment in Karnataka Bank. Therefore, she could not start and continue her intending business in the shop premises allotted to her. Of course, plaintiff got job in Karnataka Bank. The appointment order as per Ex.P10 shows that she got the job on 08.07.2025, whereas, these proceedings were taken place during 2022. In fact, Ex.P12 goes to show that the

plaintiff has obtained a license from the Department of Agricultural Marketing during 2018 for operating as trader in APMC Yard.

20. According to the defendants-Association, the plaintiff has violated the terms of the allotment order by not commencing business in the allotted premises. It is also alleged by the defendants-Association that the plaintiff has tried to sublet the premises to other parties. The question of plaintiff commencing business in the premises or she subletting the premises to others will arise, if actual and physical possession was delivered to her. When the allotment order says that the physical possession will be delivered after execution of the sale deed within 6 months from the date of allotment order, the question of plaintiff subletting the same or commencing her business in the premises will not arise. Hence, there is no substance in the contention of the defendants-Association that plaintiff has violated the terms of allotment order.

21. It is submitted during the course of argument that the defendants-Association is unable to execute the sale deed in favour of any allottee, because of some internal dispute between them and also because of the dispute relating to the property,

which is now pending before the Hon'ble High Court of Karnataka and also because of the dispute relating to the defendants-Association. So, it is the defendants, who are at fault, as they unable to execute the registered sale deed in favour of the plaintiff and other allottee. Having failed to execute sale deed within 6 months as per the allotment order, now the defendants-Association cannot blame that the plaintiff is a guilty of violating the terms and conditions of the allotment order. Considering all these aspects, I have not found any substance in the contentions of the defendants. Accordingly, I answer issue No.1 **in the Affirmative** and issue No.2 **in the Negative**.

22. **Issue No.3:** This issue is relating to the plaintiff's entitlement to claim interest at the rate of 18% p.a. from the date of she making payment of Rs.20,00,000/- to the defendants' association. Even though the defendants-Association contended that they were ready to pay amount, till this day, they have not made any repayment. This will demonstrate that their readiness to repay the amount is only to avoid the decree and interest. Since from 02.02.2022, an amount of Rs.20,00,000/- has been kept by the

defendants with them. The defendants-Association is not ready even to execute the sale deed in favour of the plaintiff. The defendants-Association is also not ready to refund amount immediately, even though letter and notices were issued to them by the plaintiff. The defendants cannot contend that they will repay the amount, only if possession was handed over to them, because the physical possession was not at all handed over to the plaintiff at the time of payment of the amount and issuance of allotment order. Therefore, the plaintiff is entitled for refund of the amount with interest. Accordingly, I answer the issue No.3 **in the Affirmative.**

23. **Issue No.4:** This issue is about the defendants' plea that suit is bad for non joinder of necessary parties. A bald allegation was made in the written statement by stating that the suit is bad for non joinder of necessary parties without disclosing as to who are the necessary party to this suit, who has not been made as party. Therefore, the suit cannot be said as bad for non joinder of necessary parties. Accordingly, this issue is answered **in the Negative.**

24. **Issue No.5 and 6:** These issues are relating to the plaintiff's entitlement to claim the relief to recover the suit amount with interest. The plaintiff prayed for awarding future interest at the rate of 18% p.a. Awarding future interest is always judicial discretion of this Court. Awarding the future interest at the rate of 18% will be exorbitant. Considering the facts and circumstances of the case and nature of transaction, I feel it is just and proper to award future interest at the rate of 12% p.a. Accordingly, I answer both these issues **partly in the Affirmative.**

25. **Issue No.7:** In view of my findings on the above issues, suit filed by the plaintiff is deserves to be decreed with costs. Accordingly, I proceed to pass the following:

ORDER

The suit filed by the plaintiff is decreed with costs.

The defendants-Association is hereby directed to repay a sum of Rs.28,10,000/- to the plaintiff.

The plaintiff is entitled to recover the said amount from the defendants' association with interest at the rate of 12%

**p.a. from the date of suit till the recovery of
the decretal amount.**

Draw decree accordingly.

(Dictated to the Stenographer Grade-III, after transcription, computerized and print out taken by her, corrected, signed and then pronounced by me in the Open Court on this 11th day of August 2026)

**(Manjunath Nayak),
Prl. District & Sessions Judge,
Belagavi.**

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ANNEXURE

Witnesses examined on behalf of the plaintiff:

PW1 Mr. Vinod Ramchandra Gaikwad

Witnesses examined on behalf of the defendants:

DW1 Karimsab Kasabtsab Bagwan

Documents got exhibited on behalf of plaintiff:

Ex.P1 Special power of attorney
Ex.P2 Receipt for advance payment dated 02.02.2022
Ex.P3 Provisional allotment cum possession certificate
Ex.P4 Notice dated 24.11.2022
Ex.P5 Notice issued by plaintiff to the defendant
Ex.P6 Postal receipt
Ex.P7 Postal acknowledgment

- Ex.P8 Certified copy of order sheet
 PIMS Application No.113/2024
- Ex.P9 Non-starter certificate
- Ex.P10 Appointment letter dated 08.07.2025
- Ex.P11 Certificate under Section 63 of BSA
- Ex.P12 Trade license

Documents got exhibited on behalf of defendants:

Nil

**(Manjunath Nayak),
Prl. District & Sessions Judge,
Belagavi.**