

		<u>DD</u>	<u>MM</u>	<u>YY</u>
Received On	:	06	05	2014
Registered On	:	06	05	2014
Decided On	:	30	12	2022
Duration	:	24	07	08

**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE
AHMEDABAD [RURAL], AT. MIRZAPUR.**

SPECIAL CIVIL SUIT NO.288 OF 2014

Exh.30

Plaintiff:	Hiteshkumar R. Jain, Age:Major, Occup:Business, R/o 8, Shahikutir, Dafnala, Shahibaug, Ahmedabad.
-------------------	---

Versus

Defendants:	1. Shukan Corporation Private Limited Registered under Companies Act, 1956, Registered Office at:14, 4 th Floor, Shukan Mall, Nr. Rajasthan Hospital, Shahibaug, Ahmedabad.
	2. Dhirenbhai Prahladbhai Patel (Director of defendant No.1-company) Age:Major, Occup:Business, R/o B/6, Milap Apartment, Opp. Ranakpur Society, Shahibaug, Ahmedabad

Subject:	Suit for Specific performance of Contract, declaration and Permanent Injunction valued at Rs.22,00,600/-.
-----------------	--

=====

APPEARANCES:-

Learned Advocate Mr. N.V. Trivedi for the Plaintiff.

None for the defendants.

=====

:- JUDGMENT :-

[1.0] The brief facts of the present suit is as follows:

[1.1] As per the plaint, it is the say of the plaintiff that defendants launched/floated a residential project namely 'Shukan Smile City' on land bearing Collected Survey No.220P1 (Survey No.220/1, admeasuring 26061 sq.mtrs., Survey No.224/2, admeasuring 38050 sq.mtrs & Survey No.228, admeasuring 1214 sq.mtrs.), admeasuring 65325sq.mtrs Paiki 28830.66sq.mtrs. included in T.P Scheme No.66/A and sub plot No.2 situated at Mouje Ranip, Taluka City, District-Ahmedabad and in the said scheme, defendant No.1-company decided to sell Flat No.D/3-503 at 4th Floor, admeasuring 185 sq. yards (super built-up area) alongwith right, interest and possession (hereinafter referred to as 'suit property') to the plaintiff at the sale consideration of Rs.22,00,000/- (Rupees Twenty Two Lakh only). Thereafter, the defendants issued allotment letter without possession in favour of the plaintiff on 01.03.2014 and as the plaintiff had paid full consideration of the suit property to the defendants and hence, the defendants have also issued No Due Certificate letter in favour of the plaintiff on 01.03.2014. It is further contended that on 01.03.2014, defendants have also issued possession letter in favour of the plaintiff and handed over the vacant and physical possession of the suit property to the plaintiff and since then the plaintiff became lawful possessor of the suit property and there is

no right, interest or possession of any other person in the suit property and the plaintiff has the right and title in the suit property and accordingly, the defendants are legally bound to execute registered sale-deed in favour of the plaintiff but till date the same is pending. It is further contended that defendants have represented before the plaintiff that there is no litigation pending against the suit property and the suit property is unencumbered and title of the suit property is clear.

[1.2] It is further contended that plaintiff was ready to pay additional charges of the suit property like Charge of Ahmedabad Municipal Corporation, Legal charges (Stamp Duty, Registration Fees, etc.), Maintenance Deposit, Service Tax, etc. to the defendants, however, the defendants have not executed the sale-deed in favour of the plaintiff. It is further contended that recently the plaintiff came to know that the defendants are proceeding to sell, transfer, mortgage or encumbrance the suit property to third party hence, if the same is to be done, the plaintiff would loss his legal right, interest in the suit property.

[1.3] It is further contended that if the defendants or their authorized persons mortgage, transfer or assign the suit property to any third party, plaintiff would suffer irreparable loss and injury as well as plaintiff would suffer huge financial loss. It is further contended that balance of convenience also lies in favour of the plaintiff. Therefore, the plaintiff is constrained to approach this Hon'ble Court by way of filing the present suit for specific performance of contract.

[1.4] It is further contended that cause of action arose when the defendants issued allotment letter without possession on 01.03.2014 and on 01.03.2014, defendant have issued No Due Certificate in favour of the plaintiff regarding the suit property and when the defendants have not executed the registered sale-deed as well as when the plaintiff came to know that the defendants are proceeding to mortgage, sell, transfer or assign the suit property to any third party. Therefore, being aggrieved and dissatisfied with such act of the defendants, plaintiff has filed the present suit with following prayers.

- (a) This Hon'ble Court may kindly be pleased to pass a decree against the defendants, directing the defendants, their directors, authorized persons, to execute an unencumbered and clear titled registered sale-deed of suit property on the basis of allotment without possession letter dated 01.03.2014 and No Due Certificate letter dated 01.03.2014 and possession letter in favour of the plaintiff and if the defendants fail to execute the sale-deed in favour of the plaintiff, this Hon'ble Court may kindly be pleased to appoint Court-Commissioner and may be pleased to order execution of sale-deed in favour of the plaintiff through Court-Commissioner.
- (b) That this Hon'ble Court may further pleased to grant permanent injunction against the defendant restraining its servants, agents, representatives, etc. from selling,

mortgaging, transferring or possession of the suit property in favour of any third party and further not creating any kind of encumbrance or alienating the suit property in any way, in the interest of justice.

- (c) This Hon'ble Court may further be pleased to pass a decree for the cost of this suit in favour of the plaintiff and against the defendants.
- (d) Any other and further relief that this Hon'ble Court may deem fit, proper and just, may kindly be granted in the interest of justice.

[2.0] The summons/notice for appearance has been issued upon the defendants, which was duly served upon the defendants but defendants did not remain present personally or through their advocate before the court to defend the suit. Therefore, their right to file written statement/reply against the suit has been closed.

[3.0] On the basis of pleadings on record following issues were framed at Exh.17:

:ISSUES:

1. Whether plaintiff proves that he and defendants came into contract?
2. Whether the plaintiff proves that he has paid consideration amount and he has performed his part of the contract?
3. Whether plaintiff proves that defendants are not ready and willing to perform their part of the contract and not willing to execute sale deed?

4. Whether plaintiff proves that performance of the contract to execute the sale deed is possible?
5. Whether the plaintiffs are entitled to get as prayed for?
6. What order and decree?

[4.0] The answers to the above issues is as under :

1. Issue No. 1 - Affirmative.
2. Issue No. 2 - Affirmative.
3. Issue No. 3 - Affirmative.
4. Issue No. 4 - Affirmative.
5. Issue No. 5 - Affirmative, as per final Order.
6. Issue No. 6- As per final Order.

[5.0] In support of his case, plaintiff has produced following oral as well as documentary evidence.

[I] Oral evidence submitted on behalf of the plaintiff:

Sr. No.	Particulars	Exh.
1	Affidavit in lieu of examination-in-chief of plaintiff.	20

[ii] Documentary evidence submitted on behalf of the plaintiff:

Sr. No.	Particulars	Exh.
1.	Allotment letter without possession issued by the defendants.	21
2.	No Due certificate issued by the defendants.	22
3.	Possession Letter issued by the defendants.	23
4.	Closing pursis.	26

[6.0] The defendants herein this case have not produced any oral as well as documentary evidence, hence, their right to produce evidence in the present suit has been closed.

[7.0] Ld. Advocate Mr. N.V. Trivedi for the plaintiff has orally argued the matter in consonance with plaint and further prayed to grant a decree in favour of the plaintiff and against the defendants. Further, in support of his arguments, he has relied upon the following judgments.

1. **Sailendra Chandra Dasgupta and Ors. Vs. Spritex Machines and Ors., MANU/WB/1069/2022.**
2. **S. V. Narayanaswamy Vs. Savithramma, MANU/KA/3784/2013.**
3. **Alka Bose Vs. Parmatma Devi and Ors., MANU/SC/8475/2008.**
4. **Bhadreshkumar Bipinchandra Sheth Vs. Rajnikant Manubhai Patel, C/FA/254/2020 dated 20.07.2021.**
5. **Ashok Kumar Sharma Vs. State of Rajasthan & Ors., S.B. Civil Writ Petition No.12519/2012 and 15 Others dated 11.10.2012, Rajasthan High Court.**

[8.0] Nobody has appeared on behalf of the defendants, therefore, their right to argue the present matter has been closed.

:R E A S O N S:

[9.0] **Issue No.1& 2 :**

As the Issue Nos.1 & 2 are inter-connected therefore, for the sake of convenience and brevity they are discussed together.

[9.1] So far as the Issue No.1 & 2 are concerned, the plaintiff has produced his examination-in-chief by way of written affidavit as per Order 18, Rule 4 of CPC vide Exh.20 wherein, he has

specifically stated all the facts which are mentioned in the plaint as discussed above and fully supported the version of the plaint. Further, in his chief-examination, he has referred the documents vide Exh.21 to 23 and proved the contents of the same. Also, in view of the testimony of the plaintiff, if we examine the documents produced by the plaintiff, from the document vide Exh.21 i.e. allotment letter without possession issued by the defendants, it is clear that the plaintiff has been allotted the suit property by the defendant – corporation with usual terms & conditions decided at the time of booking. Also, on perusal of the document vide Exh.22 i.e. ‘No Due Certificate’ issued by the defendants, it is clear that the cost of the suit property was paid by the plaintiff and it was decided that AEC-AMC-Legal, Maintenance Deposit, Service Tax, Document Charge, etc. will be paid by the plaintiff (Member) before possession. Further, on perusal of document vide Exh.23 i.e. possession letter issued by the defendants, it is clear that the defendant had given the vacant and peaceful possession of the suit property to the plaintiff. Therefore, the averments of the plaint as well as version of the testimony of the plaintiff are fully corroborated by the documentary evidence on record. Further, this oral as well as documentary evidence are not challenged by the defendants and even they have not appeared and entered into the witness box to state their case. Therefore, considering the ratio laid down in the case of **“Vidhyadhar vs. Mankikrao and another”** reported in AIR 1999 SC 1441 an inference can also be drawn against the defendants. Therefore, considering the oral as well as documentary evidence as discussed above, it is proved that suit property i.e. Flat No.D/3-

503 at 5th Floor, admeasuring 185 sq. yards (super built-up area) under the scheme namely 'Shukan Smile City' has been allotted to the plaintiff against the sale consideration of Rs.22 lakhs, which the plaintiff has fully paid. Therefore, from the evidence on record the plaintiff is succeeded to prove the facts that he and defendant came into the contract with regard to suit property and he has paid consideration amount and has performed his part of the contract. Hence, I answer the Issue No.1 & 2 in the affirmative.

[10.0] **Issue No.3 :**

[10.1] To appreciate the evidence with regard to issue No.3 and on the question of readiness and willingness to perform the contract by the plaintiff as well as the defendants, it is apt to refer the judgment of the Hon'ble the Apex Court in the case of **Syed Dastagir Vs. T.R. Gopalakrishna Setty reported in (1999) 6 SCC 337** wherein, the Hon'ble Supreme Court has held that, *“to test whether plaintiff has performed his obligations, one has to see the pith and substance of a plea and, to gather true spirit behind a plea it should be read as a whole. The language in Section 16(c) does not require any specific phraseology but only that the plaintiff must aver that he has performed or has always been and is willing to perform his part of the contract. So the compliance of “readiness and willingness” has to be in spirit and substance and not in letter and form”*. Also, Hon'ble Apex Court in the case of **Ramesh Chandra v. Chuni Lal, AIR 1971 SC 1238**, it is held that *“readiness and willingness cannot be treated as a strait-jacket formula. This have to be determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned”*.

[10.2] Keeping in mind the above settled principles if we appreciate the evidence and rival contentions with regard to issue No.3 and on the question of readiness and willingness to perform the contract by the plaintiff as well as the defendants as required under Section 16(c) of the Specific Relief Act, in this regard, the plaintiffs in their plaint as well as in his deposition vide Exh.20 categorically stated that by virtue of the documents vide Exh.21 to 23, the plaintiff has the right and title in the suit property and further, it is stated that plaintiff was ready to pay additional charges of the suit property like Charge of Ahmedabad Municipal Corporation, Legal charges (Stamp Duty, Registration Fees, etc.), Maintenance Deposit, Service Tax, etc. and accordingly, the defendants are legally bound to execute registered sale-deed in favour of the plaintiff but the defendants have not executed the same till date. It is further stated by the plaintiff that he has already paid total consideration to the defendants and in this regard, defendants-corporation have also issued 'No Due Certificate'. It is further stated by the plaintiff that despite repeated requests and reminder by the plaintiff to the defendants to execute sale-deed in his favour, the defendants have failed to execute sale-deed in favour of the plaintiff and under the facts & circumstances, the plaintiff have absolute and legal right over the suit property and he is entitled to get execution of the sale-deed of the suit property from the defendants. Further, as discussed above, these oral evidence of the plaintiff are not challenged by the defendants by way of filing written statement or by way of cross-examination of the plaintiff.

[10.3] Therefore, herein this case, it is clear from the records that as per the understanding the plaintiff has already paid total consideration of the suit property but the defendants have not executed the sale-deed and failed to perform their part of contract by way of showing their willingness to execute sale-deed for the suit property. Therefore, considering the aforesaid facts & circumstances and purport of Section 16 (c), it is clear that plaintiff has always ready and willing to perform his part of contract however, the defendants have not ready and willing to perform their part of contract. Hence, I answer the Issue No.3 in the affirmative.

[11.0] **Issue No.4, 5 & 6 :**

As the Issue Nos.4, 5 & 6 are inter-connected therefore, for the sake of convenience and brevity they are discussed together.

[11.1] So far as Issue No.4 & 5 are concerned, if we consider the prayer of the plaintiff in his plaint at Para 9, the plaintiff has seek the relief to pass a decree against the defendants, directing the defendants to execute sale-deed in his favour of the suit property on the basis of allotment letter vide Exh.21, No Due Certificate vide Exh.22 and possession letter vide Exh.23. Therefore, herein this case whether the plaintiff is entitled to get such decree on the basis of that documents? On this aspects, it is apt to refer the judgment of Hon'ble Rajasthan High Court in case of "Ashok Kumar Sharma Vs. State of Rajasthan & Ors." (supra). In that judgment, the Hon'ble High Court while considering the question that whether the allotment letter can be construed as concluded

contract or not? And on the basis of the same, whether a decree of specific performance can be granted? Pleaded to held as under:

“8. Section 4 of the Contract Act, 1872 (hereinafter ‘the Contract Act’) provides that the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made, and that the communication of an acceptance is complete as against the proposer when it comes to the knowledge of the proposer. Section 8 of the Contract Act provides that performance of the conditions of a proposal or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal is an acceptance of the proposal. Section 8 of the Contract Act thus provides that performance of the conditions of a proposal or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal is an acceptance of the proposal.

9. In the instant case the letter dated 5-3-2008 issued by the UIT on the face of it constituted a proposal. As against the proposal the petitioners deposited the required amount. Under Section 8 of the Contract Act this tantamounted to acceptance of the proposal of the promisee. Therefore a concluded contract came into existence. In my considered view a concluded contract having thus come into force, it was binding on the UIT unless there were allegations of fraud or misrepresentation as against the petitioner, based whereupon requisite declaration from a competent court of law could have been sought. No such fraud or misrepresentation has been alleged against the petitioners. No suit for cancellation of a duly formed contract has been filed. The Hon'ble Division Bench of the Delhi High Court in Govt. of NCT of Delhi vs. Bhushan kumar (LPA No.141 and 168/2006 and WP (C) No.2040/2007 decided on 18-3-2008), held that allotment having been made specifically mentioning the area and property number allotted to

the applicant and consideration having been paid by the applicant a concluded contract came into existence between the parties.”

[11.2] Therefore, considering the above dictum of the Hon’ble High Court, if we appreciate the evidence on record, herein this case, it is clear that as per the understanding between the parties, the defendants have executed the allotment letter vide Exh.21 and No Due Certificate vide Exh.22 and possession letter Exh.23 in favour of the plaintiff with regard to suit property. Further, it reveals from the said allotment letter vide Exh.21 and No Due Certificate vide Exh.22 that such allotment having been made specifically mentioning the area and property number allotted to the plaintiff and consideration having been paid by the plaintiff. Therefore, it is clear from the records that a concluded contract with regard to suit property came into existence between the parties by way of allotment letter vide Exh.21. Further, herein this case, it is also clear from the records that such allotment letter was not canceled and the amount paid against the consideration was not refunded to the plaintiff by the defendants and no proceedings were taken by the defendants before any competent Court seeking invalidation of the said concluded contract. Further, herein this case, the plaintiff has not been alleged to be guilty of any fraud or misrepresentation and are thus entitled to the benefits of such concluded contract and the defendants cannot be allowed to perpetuate its arbitrary inaction of not executing the sale-deed in favour of the plaintiff. Therefore, considering the above facts & circumstances of this case and considering the ratio laid down in the above referred judgments by the plaintiff that “even an oral

agreement to sell is valid and even a decree for specific performance can be granted on the basis of oral contract” and considering a fundamental principle for an orderly society which has been enunciated by the Hon’ble Supreme Court that sanctity of a contract cannot allowed to be lost to unilateral action that would promote breaches of contract, it is held that the performance of the contract to execute the sale-deed is possible herein this case and the plaintiff is entitled for relief of execution of sale-deed of the suit property in his favour and also entitled to consequential relief of permanent injunction against the defendants. Hence, in view of aforesaid discussion, I answer the Issue Nos.4 & 5 in affirmative and following final order is passed below Issue No.6 in the interest of justice;

:O R D E R:

- 1) The suit of the plaintiff is hereby allowed.
- 2) It is hereby directed that the defendants No.1-**Shukan Corporation Private Limited** and its director i.e. defendant No.2-**Dhirenbhai Prahladbhai Patel** shall execute the registered sale deed of the suit property as per the terms of the allotment letter vide Exh.21, No Due Certificate vide Exh.22 and possession letter vide Exh.23 in favour of the plaintiff on or before 28.02.2023 at the cost of the plaintiff and the plaintiff is hereby directed to be get ready with the expenses for registration of the sale deed on or before 28.02.2023 by informing the defendants for its registration.

- 3) The defendants, their servants, agents, representative, etc., are hereby restrained by way of permanent injunction from selling, mortgaging, licensing, transferring or leasing the suit property in favour of third party and further not creating any kind of encumbrance or alienating the suit property in any way.
- 4) It is further ordered that the defendants shall pay the costs of the suit to the plaintiffs and bear its own cost of the suit.
- 5) Decree be drawn accordingly.

Signed and pronounced in the open Court today i.e., on 30th day of December, 2022.

Date :30.12.2022.
Place:Ahmedabad.

[MAHENDRASINH B. RATHORE]
Principal Senior Civil Judge,
Ahmedabad (Rural) at Mirzapur,
(Judge Code No. GJ00827).