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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(COMM) 578/2020**

ANIL SHARMA

..... Plaintiff

Through: Mr. A.S. Chandhiok and Mr. Darpan
Wadhwa, Senior Advocates with
Mr. Sidharth Tyagi, Advocate.

versus

ATUL GUPTA & ORS.

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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08.03.2021

[VIA VIDEO CONFERENCING]

CS (COMM) 578/2020

1. Defendant Nos. 5, 6, 7, 9, 15, 20, 22 and 23 have not been served.
2. Issue fresh summons to the said Defendants upon filing of the process fee by all permissible modes, returnable before the Joint Registrar, on 10th May, 2021.

I.A. 12698/2020 (under Order 39 Rule 1 and 2)

3. Mr. A.S. Chandhiok, learned Senior Counsel for the Plaintiff submits that urgent interim relief is being sought against Defendant Nos. 1 to 4 and since they have been served, the Court may consider passing appropriate orders.



4. The case of the Plaintiff as set out in the plaint and in the brief note of submissions handed over, during the course of the hearing is as follows: The Greater Noida Industrial Development Authority (hereinafter referred to as “GNIDA”) floated a Tender/Scheme for allotment of residential plots for large group housing/ builders with plot size admeasuring above 50,000 sq. mtrs. or above. The Plaintiff and his brother Defendant No. 21 founded and promoted Defendant No. 5 Company. They also set up a Consortium of 5 business entities lead by the Defendant No. 5. The Plaintiff asserts that he got allotted, vide Allotment Letter dt. 18th August, 2010, the Plot No. GH-12A (land admeasuring 68,166 sq. mtrs. land on leasehold basis) at Sector-1, Greater Noida, U.P. from the Defendant No. 25. Defendant No. 5 had got 37,491 sq. mtrs. land as its 55% share in the said Consortium, for the said residential project.

5. The members of the Consortium *inter-se* executed a Memorandum of Agreement (‘MoA’) delineating, *inter-alia*, their roles, rights, entitlements, responsibilities and the shareholding in the Consortium for development of the aforementioned plot. Under the said MoA, Defendant No. 5, through the Plaintiff and Defendant No. 21, upon allotment of said group housing plot, arranged and deposited a sum of Rs. 12,34,95,409/- (including Application Money, paid at the time of application) with the Defendant No. 24 i.e., GNIDA.

6. It is further contended that for the development of the said project, Defendant Nos. 1 to 4 through their company, Real Gains Infrastructure Pvt. Ltd. (now struck off as per ROC record), had agreed to grant an unsecured



loan of Rs. 10 crores, but they willfully failed and neglected to pay the said amount. Ultimately, they fraudulently took control of Defendant No. 5 company as well as the said 37,491 sq. mtrs. land, without paying any sale consideration thereof to anyone. However, Real Gains Infrastructure Pvt. Ltd. inter-alia paid Rs. 5 crores, as an unsecured loan of Rs. 4.50 crores to the Defendant No. 5 Company and Rs. 50 lakhs to the Plaintiff and Defendant No. 21. To secure the said loan, the Plaintiff and Defendant No. 21 were forced to deposit their original share certificates for 50,000 equity shares of Defendant No. 5 Company. Further, Defendant Nos. 1 to 4 and Real Gains Infrastructure Pvt. Ltd. also got signed an agreement between the Plaintiff and Defendant No. 21 on one part and Real Gains Infrastructure Pvt. Ltd. on the other part.

7. Thereafter, since the said loan transaction failed, the Plaintiff and his brother/ Defendant No. 21 refunded Rs. 50 lakhs to Real Gains Infrastructure Pvt. Ltd. along with interest amounting to Rs. 4,37,500/- vide cheques drawn upon Citizen Cooperative Bank Ltd. However, till date, the Defendant Nos. 1 to 4 and/or Real Gains Infrastructure Pvt. Ltd. have not returned the said original share certificates of 50,000 equity shares (being entire paid-up capital at the relevant time) of the Defendant No. 5 Company to Plaintiff and Defendant No. 21.

8. It is further contended that the Defendant Nos. 1 to 4 and their said Company namely Real Gains Infrastructure Pvt. Ltd. defrauded the Plaintiff and his brother/Defendant No. 21 and took over the Defendant No. 5 Company by forging the signatures of the Plaintiff and others. In this



manner, the aforesaid land ad-measuring 37,491 sq. mtrs. land (standing in the name of Defendant No. 5) was also taken over by Defendant Nos. 1 to 4.

9. It is lastly submitted that that Defendant Nos. 1 to 4 also floated a company called Earth Gracia Pvt Ltd. wherein the Defendant Nos. 1 to 4 are Directors. They started booking flats for sale, to be built by Defendant No. 5 and collected more than Rs. 82 crores from desirous flat buyers and this money has been usurped and siphoned into the accounts of various other companies. Thereafter, when those flat buyers complained to the police, look-out notices were issued. Later Defendant Nos. 1 to 4 were arrested and are now in jail.

10. This suit is primarily against the Defendant Nos. 1 to 4 who are in Tihar Jail, Delhi. They have been served but have chosen not appeared before this Court. Mr. Chandhiok submits that the said Defendants have not only cheated the Plaintiff, but more than 2000 persons across the country and therefore the assets of the Defendant No.5 should be protected. The Plaintiffs have made out a *prima facie* case in his favour and in case no *ex-parte* ad-interim injunction is granted the Plaintiff will suffer an irreparable loss. The balance of convenience also lies in favour of the Plaintiff and against the said Defendants. Accordingly, till the next date of hearing, it is directed that any transaction by anyone of the Defendant Nos. 1 to 5, in relation to any of their assets, including but not limited to the shareholding of Defendant No. 5, shall be with prior leave of this Court.

11. Compliance of Order 39 Rule 3 CPC be done within 10 days from today.



12. List before the Court on 4th August, 2021.

MARCH 8, 2021

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SANJEEV NARULA, J