



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 08TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 265 OF 2024

BETWEEN:

M/S WHITEFIELD SHELTERS PVT LTD
A PRIVATE LIMITED COMPANY
REGISTERED UNDER
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT
PLOT NO. 775/A1
ROAD NO.45
JUBILEE HILLS
HYDERABAD - 500 033
REPRESENTED BY ITS
EXECUTIVE DIRECTOR
AND AUTHORIZED SIGNATORY
SRI R. SRINIVAS REDDY

...APPELLANT

(BY SRI JAYAKUMAR S PATIL, SENIOR ADVOCATE A/W
SRI VISWANATHA SETTY V., ADVOCATE)

AND:

1. SRI N. NAGARAJA
AGED ABOUT 72 YEARS
S/O SRI NAGAPPA
2. SMT. M. SHANTHAKUMAR @ SHANTHAMMA
AGED ABOUT 65 YEARS
W/O N. NAGARAJA



BOTH ARE RESIDING AT
'MANJUNATH NILAYA'
NO.69, GARUDACHARPALYA
MAHADEVAPURA POST
BANGALORE - 560 048

3. SRI G.M. SHAMANNA
AGED ABOUT 55 YEARS
S/O MUNIYAPPA
R/AT KAGGADASAPURA VILLAGE
KRISHNARAJAPURA HOBLI
BENGALURU EAST TALUK
REP. BY HIS ATTORNEY
SRI N. NAGARAJA

...RESPONDENTS

(BY SRI ASHOK HARANAHALLI, SENIOR ADVOCATE A/W
SRI CHANDRASHEKAR L., ADVOCATE FOR R-1;
SRI S.N. ASWATHANARAYAN, SENIOR ADVOCATE A/W
SRI SRINIVASAN T., ADVOCATE FOR C/R-2 & R-3)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13
(1-A) OF THE COMMERCIAL COURTS ACT, 2015 PRAYING TO SET
ASIDE JUDGMENT AND ORDER DATED 19.03.2024, PASSED IN
COM. OS No. 46/2022, PASSED BY THE HON'BLE XI ADDITIONAL
DISTRICT AND SESSIONS JUDGE, (DEDICATED COMMERCIAL
COURT) BANGALORE RURAL DISTRICT, BANGALORE
(ANNEXURE-A) & ETC.

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND
RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT
THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. JUSTICE C.M. POONACHA)

The present appeal is filed under Section 13(1-A) of the Commercial Courts Act, 2015 **[CC Act]** by the plaintiff impugning the judgment and decree dated 19.03.2024 passed in Commercial O.S.No.46/2022 **[impugned judgment]** by the Court of the XI Additional District and Sessions Judge, (Dedicated Commercial Court), Bangalore Rural District, Bangalore District, **[Commercial Court]**. Vide the impugned judgment, the suit for specific performance filed by the appellant seeking to specifically perform the Memorandum of Understanding dated 27.09.2004 **[MOU]** has been dismissed.

2. It is pertinent to note here that the suit was filed for specific performance of the MOU and to direct the defendants to execute the Joint Development Agreement **[JDA]** before the Court of the Civil Judge (Senior Division), Bangalore Rural District, Bangalore and was numbered as O.S.No.2121/2007. Subsequently, the suit was transferred to the Commercial Court and re-numbered as Com.O.S.No.46 of 2022.

3. During the pendency of the above appeal, the appellant has filed, *inter alia*, I.A.No. 1/2026 under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 **[CPC]** on 06.04.2026 after the final hearing of the appeal had commenced seeking to amend the plaint whereunder, apart from various averments that were sought to be incorporated in the plaint, the plaintiff has also sought for the relief of refund of the security deposit amount of ₹2,00,00,000 (Rupees Two Crore) together with interest at 24% per annum amounting to ₹9,84,00,000/- (Rupees Nine Crore Eighty-four Lakh), thereby claiming a total sum of ₹11,84,00,000/- (Rupees Eleven Crore Eighty-four Lakh) as also claiming a sum of ₹106,00,00,000/- (Rupees One Hundred and Six Crores) as compensation.

BRIEF FACTS:

4. It is the case of the appellant **[developer]** that the respondents are the owners of land measuring a total extent of 31 acres 11 guntas¹ at Kannamangala Village, Bidarahalli Hobli **[suit properties]**.

¹ 2 acres in Survey No.128, 2 acres 12 guntas in Survey No.129, 2 acres in Survey No. 130/1, 1 acre 4 guntas in Survey No.130/2, 1 acre 2 guntas in Survey No.130/3, 2 acres 39 guntas in Survey No.139, 2 acres 33 guntas in

5. It is a further case of the developer that the respondents **[owners]** approached the developer, which is a company registered under the Indian Companies Act, 1956 **[Companies Act]** for the purpose of carrying on the business of land development and construction activities to develop the suit properties by way of a joint venture. The parties had agreed that the owners would be entitled to 22% of the built-up area as well as the corresponding undivided right, title and interest in the land in the suit properties, while the developer would be entitled to 78% of the built-up area and undivided share. Accordingly, the MOU was entered into between the parties on 27.09.2004. That the parties had also entered into a General Power of Attorney dated 09.04.2005 **[GPA]**, whereunder, the owners authorised the developer to represent them for the purpose of applying for conversion of the suit property, as also for the purpose of securing the necessary permissions for executing the project as contemplated under the MOU.

Survey No.140/1, 1 acre 3 guntas in Survey No.140/2, 3 acres 9 guntas in Survey No.141/1, 1 acre 2 guntas in Survey No.157/1, 5 acres 2 guntas in Survey No.158, 20 guntas in Survey No.160/2, 2 acres 2 guntas in Survey No.157/2, 1 acre 13 guntas in Survey No.141/2A, 1 acre 2 guntas in Survey No. 141/2B, 1 acre 20 guntas in Survey No.142/1, 20 guntas in Survey No.160/2; Respondent Nos.1 and 2 are the absolute owners of 2 acres 2 guntas in Survey No.157/2; and Respondent No.3 is the absolute owner of 01 acre 13 guntas in Survey No.141/2A, 01acre 02 guntas in Survey No.141/2B and 01 acre 20 guntas in Survey No.142/1.

5.1 It is the case of the developer that it paid the owners a refundable security deposit of ₹2,00,00,000/- (Rupees Two Crores). That the developer, consequent to the MOU, has taken various steps in furtherance of implementing the project for the purpose of developing the suit property in terms of the MOU, *inter alia*, applying for conversion of the suit property, applying for plan sanction, corresponding with various statutory authorities, etc. However the order of conversion was granted only for 18½ acres of the suit property and the application for conversion was rejected in respect of the remaining 12½ acres of the suit property on the ground that the said portion was reserved as 'Park Zone' in the Comprehensive Development Plan **[CDP]**, 1995. That when the said rejection of the conversion was brought to the notice of the owners, it was represented by the owners that they would ensure that the said portion of the schedule property would be deleted from the 'Park Zone' in the new CDP, which was to be prepared for the year 2005. However, consequent to the efforts of the developer, the said portion of the schedule property was deleted from the 'Park Zone' in the new CDP, which was introduced in July-2007. That, the developer also put up a compound wall over the entire suit property and installed a gate; constructed a watchman shed as also a shed for storing materials. The developer also dug

eight borewells as well as obtained a soil testing certificate for construction of multi-storied buildings. Hence, the developer was in permissive possession of the property for the purpose of development.

5.2 It is a further case of the developer that when the developer was installing a gate so as to have access to the suit properties from the Hoskote - Whitefield main road, the petroleum authorities objected to the same on the ground that they had installed a petroleum pipeline underneath the said land and, therefore, the developer could not have any exclusive right to put up any gate or form any road. That the gate was sought to be put up in an extent of 20 guntas of land in Survey No.160/2, which was demarcated in the plan for formation of an approach road to the entire layout comprising the suit properties.

5.3 That the developer had engaged architects and engineers from Singapore for preparing the plan and had also made correspondence with L&T for supplying concrete for construction. That the entire cost of the project, which was to contain all modern facilities and amenities, was estimated at ₹350 crores. That the developer incurred a sum of ₹60 lakhs for getting

draft plan of the layout of the project prepared; ₹36 lakhs towards obtaining conversion order; and ₹30 lakhs towards inaugural function; thus spent a total sum of ₹5,00,00,000/- (Rupees Five Crores) apart from the security deposit amount of ₹2,00,00,000 (Rupees Two Crores) paid to the owners. That the developer had organised a grand inaugural function on 13.04.2004, along with the owners in the suit property, attended by many dignitaries.

5.4 The petroleum authorities having objected to putting up of the gate and formation of the road, the owners were approached and apprised of the said situation. Accordingly, as per the understanding between the parties, the owners represented that, in order to avoid any complications, they would acquire the neighbouring land belonging to the family of one Sri. Poornachandra Rao, which is situated in the southern portion of Item No.14 of the suit properties, where the road and gate were proposed to be formed and installed, so as to enable the developer to form the road on the land so acquired. That the developer was also issued a notice by the concerned authorities under Sections 8, 9 and 15 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 **[Pipeline Act]**. That despite various efforts made by the developer and the owners with the

concerned authorities for the formation of road, the same did not yield any result. That the developer believed the assurance made by the owners that they would acquire alternate land from the family of Sri. Poornachandra Rao. However, in the absence of the same, the developer could not construct the approach road and it was difficult for the developer to commence the project within the time stipulated under the MOU. Hence, the parties mutually decided to extend the time stipulated under the MOU.

5.5 That the developer was always ready and willing to perform its obligations under the MOU and commence the project work. That when the developer approached the owners for the purpose of signing certain papers, they refused to do so. Hence, the developer wrote a letter dated 02.08.2007 requesting them to sign the necessary papers. However, one of the owners sent a reply dated 21.08.2007, making allegations against the developer. The developer claimed to have invested more than ₹7,00,00,000/- (Rupees Seven Crores) in the project. That the non-implementation of the project was due to various factors, including the failure of the owners to procure the alternate land for the purpose of forming the road. Hence, the developer filed the suit seeking specific performance of the MOU.

6. In the written statement, though the owners admitted the execution of the MOU, they disputed the fact that the developer was financially sound and possessed the expertise and skill required for developing the suit lands. It was specifically contended that the developer had misrepresented and induced the owners into entering into the MOU for the development of the suit properties. That the owners intended to develop the suit properties by constructing residential apartments themselves. However, since they were preoccupied and inexperienced in developing the properties, having regard to the representations made on behalf of the developer, they were induced into entering into the MOU.

6.1. Various clauses of the MOU were referred to in the written statement for the purpose of contending that the developer was aware of the fact that a portion of the suit properties was declared as a 'Park Zone' in the CDP. That the developer had undertaken to secure the necessary permissions for change of land use as well as other requisite permissions including those from the Petroleum Ministry of the Central Government. That the developer, in order to cover up the delay and latches on its part, suppressed material facts, namely that the developer had not cooperated with the owners for the commencement of the project.

6.2. It was specifically contended by the owners that the GPA dated 09.04.2005 was cancelled by them by Cancellation Deed dated 30.04.2007, consequent to which, a notice dated 21.09.2007 has been issued to the developer. Hence, it is contended that the owners had suffered huge losses and great inconvenience by virtue of entering into the MOU with the developer. Hence, the defendants sought for dismissal of the suit.

6.3. The defendant had also contended that the developer, who was stated to have been registered under the Companies Act, had been removed by the Registrar of Companies from the list of Companies. Hence, it was contended on behalf of the owners that the suit filed by the developer was not maintainable.

7. Consequent to the pleadings of the parties, the Commercial Court framed the following issues and additional issues.

“ISSUES

- 1) Whether the plaintiff proves that the defendants entered into an agreement for construction of Apartment buildings in joint venture?

2) Whether the plaintiff further proves that defendants agreed to receive 224 of constructed building and executed M.O.U on 27.09.2004 by Rs. 2 Crores on different dates?

3) Whether the plaintiff proves that he is ever ready and willing to perform his part of contract?

4) Whether the defendants prove that the plaintiff failed to put up construction within stipulated time, as such the defendants are entitle to forfeit 75% of Rs. 2 Crores?

5) Whether the defendants prove that suit is barred for non-joinder of necessary parties?

6) Whether the defendants prove that the court fee paid on the plaint is insufficient?

7) Whether the plaintiff is entitle for the relief of specific performance as sought for ?

8) What order or decree?

ADDITIONAL ISSUES DT. 11.10.2022

1) Whether the suit filed by the plaintiff is barred by law of limitation?

2) Whether the suit filed by the plaintiff is maintainable in the present form?

ADDITIONAL ISSUES DT. 12.03.2024

1) Whether the plaintiff proves that the defendants are trying to alienate the suit schedule properties and entering into

JDA with the third parties and also trying to alter the nature of the suit schedule properties as contended in para No. 24 of the plaint?

2) Whether the plaintiff is entitled for the relief of permanent injunction as prayed for in this suit?"

8. One of the directors of the developer examined himself as PW.1. PW.1 to PW.27 were marked in evidence. One of the owners was examined as DW.1 and Exs.D1 to Ex.D14 were marked in evidence.

IMPUGNED JUDGMENT

9. The Commercial Court noticed that the execution of the MOU (Ex. P13) was admitted between the parties. However, it was held that the developer did not produce any material to demonstrate that as on the date of the MOU, it had the financial status to meet the expenses of ₹350 crores to execute the project in terms of the MOU. Hence, the Commercial Court held that the developer had failed to establish that it was ready and willing to perform its part of the contract.

9.1. While considering issue No.4, as to whether the owners were entitled to forfeit 75% of the security deposit amount

of ₹2 crores. The Commercial Court, upon appreciating the terms of the MOU, more particularly clauses 8.1, 8.2 and 8.3 of the MOU, held that the owners are entitled to forfeit 75% of the security deposit amount.

9.2. The Commercial Court noticing the contention raised by the owners that the developer was removed from the list of companies by the Registrar of Companies, upon noticing Section 248(5) of the Companies Act, as also noticing a copy of the notice dated 22.03.2019 issued by the Registrar of Companies, Hyderabad (Ex. D4), held that the developer had not placed any material on record to demonstrate that any action has been taken by it challenging the said notice dated 22.03.2019.

9.3. With regard to the contention of the developer that the owners had agreed to acquire the neighbouring property belonging to one Sri. Poornachandra Rao, it was held that the developer cannot compel the owners to acquire the neighbouring property. Further, the Commercial Court noticed that having regard to the suit property not, having a proper approach road, to enable construction of the project, it is impossible for the project to be constructed in the suit properties in terms of the MOU. Accordingly,

noticing Section 14 of the Specific Relief Act, 1963 **[S.R Act]**, the Commercial Court held that the MOU is not enforceable and hence, the developer was not entitled for specific performance of the said MOU. Accordingly, the suit of the plaintiff was dismissed with costs.

CONTENTIONS:

10. It is the contention on behalf of the appellant-developer that vide the MOU all the terms that were required to be agreed to between the parties for the purpose of jointly developing the suit properties and putting up constructions of residential apartment, complexes, having been agreed, the said MOU was specifically enforceable. Further, it was contended that the appellant - developer had the requisite resources to generate the funds required for the purpose of completing the project in terms of the MOU. A detailed reference was made to the various acts done by the appellant - developer with respect to the suit properties, including getting the suit properties converted, constructing a compound wall and gate, preparing the requisite plans for putting up the constructions by hiring architects from Singapore, etc. It was also emphasised that the developer had incurred expenses of more than ₹5,00,00,000/- (Rupees Five Crores) for implementing the

terms and conditions as contemplated under the MOU. It was further sought to be emphasised that the reason for the hurdles in the implementation of the MOU was having regard to the fact that a portion of the suit properties was located in the 'Park Zone' in the CDP; as also having regard to the objections raised of a gas pipeline being located below the approach road to the suit property. It is the contention on behalf of the developer that the said aspects were obligations which the owners were required to fulfil/comply with and that the project had not been delayed on account of any laxity/deficit on the part of the developer.

10.1. In support of I.A.No.1/2026 filed for amendment, it is the contention of the appellant that having regard to Section 22 of the S.R. Act, the plaintiff is entitled to seek for refund of the earnest money at any stage of the proceedings by amending the plaint. Hence, it is contended that refund of the security deposit amount not having been sought at the time of filing of the suit, the application for amendment filed by the appellant is required to be allowed and if for any reason the relief of specific performance of the MOU is not granted by this Court, refund of the security deposit amount is required to be ordered together with corresponding interest as sought for in the application.

11. Per contra, the owners justifying the impugned order contend that the developer, on one pretext or the other, having regard to its inability in implementing the project in terms of the MOU, was prolonging the same and the Commercial Court was justified in dismissing the suit filed by the developer.

11.1 The various aspects with regard to the developer company having been ordered to be struck off from the Registrar of Companies were specifically adverted to and hence, it was contended that the appellant is not entitled to maintain the above appeal since the appellant-company ceased to be an entity under law.

11.2 With regard to the application for amendment, it was submitted that the said application having been filed after commencement of hearing of the above appeal, and as an afterthought, the same is to be rejected.

12. Detailed submissions have been advanced by learned Senior Counsel representing the developer and the owners. Various material on record have been pointed out and citations have been relied upon.

REASONING AND CONCLUSION:

13. Having regard to the contentions put forth by the learned counsels the following questions arise for consideration:

- i) Whether I.A.No.1/2026 filed for amendment is to be allowed?
- ii) Whether the impugned judgment passed by the Commercial Court is erroneous and liable to be interfered with?

REG. QUESTION No.(i):

14. I.A.No.1/2026 is filed under Order VI Rule 17 of the CPC for amendment of the plaint. The said application was filed on 06.04.2026 after the hearing of the appeal had commenced. Vide the said application, the developer sought to incorporate paragraph Nos.25(a) to 25(p) in the plaint. Amendments are sought to claim the refundable security deposit of ₹2,00,00,000/- (Rupees Two Crores) with interest at 24% per annum amounting to ₹9,84,00,000/- (Rupees Nine Crore Eighty Four Lakh), i.e., a cumulative sum of ₹11,84,00,000/- (Rupees Eleven Crore Eighty Four Lakh) as well as a sum of ₹106,00,00,000/- (Rupees One Hundred and Six Crores) as compensation. The relief of refund of

security deposit is sought having regard to Section 22(2) of the S.R. Act, and compensation is sought in terms of Section 21 of the S.R. Act. The owners have filed objections to the said application.

15. It is the contention of the developer that, since the relief of refund of security deposit was not sought at the time of filing of the plaint, it is entitled to seek for amendment at any stage of the proceedings having regard to the proviso to sub-section (2) of Section 22 of the S.R. Act.

16. In this context, it is pertinent to note Order VI Rule 17 of the CPC, which reads as under:

“17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

17. Section 22 of the S.R. Act reads as under:

“22. Power to grant relief for possession, partition, refund of earnest money, etc.— (1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for—

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

(3) The power of the court to grant relief under clause (b) of sub-section (1) shall be without prejudice to its powers to award compensation under section 21.”

18. A plain reading of the proviso to Rule 17 of Order VI of the CPC stipulates that an application for amendment is to be made prior to the commencement of trial. However, the proviso to

sub-section (2) of Section 22 stipulates that the plaintiff should be allowed to amend the plaint, at any stage of the proceedings for, *inter alia*, refund of earnest money or deposit paid, in case, the claim for specific performance is refused.

19. Compensation is claimed having regard to Section 21 of the S.R. Act. The same reads as under:

“21. Power to award compensation in certain cases.—

(1) In a suit for specific performance of a contract, the plaintiff may also claim compensation for its breach, either in addition to, or in substitution of, such performance.

(2) If, in any such suit, the court decides that specific performance ought not to be granted, but that there is a contract between the parties which has been broken by the defendant, and that the plaintiff is entitled to compensation for that breach, it shall award him such compensation accordingly.

(3) If, in any such suit, the court decides that specific performance ought to be granted, but that it is not sufficient to satisfy the justice of the case, and that some compensation for breach of the contract should also be made to the plaintiff, it shall award him such compensation accordingly.

(4) In determining the amount of any compensation awarded under this section, the court shall be guided by the

principles specified in section 73 of the Indian Contract Act, 1872 (9 of 1872).

(5) No compensation shall be awarded under this section unless the plaintiff has claimed such compensation in his plaint:

Provided that where the plaintiff has not claimed any such compensation in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just, for including a claim for such compensation.

Explanation.—The circumstance that the contract has become incapable of specific performance does not preclude the court from exercising the jurisdiction conferred by this section.”

20. Section 21 stipulates the power to award compensation in certain cases. Sub-section (1) entitles the plaintiffs to claim compensation “in addition to specific performance”². Sub-section (2) stipulates that if specific performance ought not to be granted but the contract has been broken by the defendant, compensation can be awarded to the plaintiff for breach of the contract. Sub-section (3) enables the Court to award compensation for breach of the contract in addition to specific performance, if specific performance “not sufficient to satisfy the justice of the

² The words “in addition to” was substituted in place of the words “either in addition to, or in substitution of” vide Act 18 of 2018, w.e.f. from 01.10.2018.

case”. Sub-section (5) mandates that no compensation is to be awarded unless the same is claimed by the plaintiff in the plaint. However, the proviso to sub-section (5) mandates that the Court shall, at any stage of the proceedings, allow the plaintiff to amend the plaint, claiming for such compensation.

21. It is to be noticed that in the proposed amendments as detailed in the application, interest is claimed at 24% p.a., on the ground that the transaction is a commercial one. Compensation is claimed by stating that the developer has spent various amounts of money for developing the suit properties consequent to the execution of the MOU. Various details have been averred for the first time as to the anticipated profit that the developer would make if the project would have fructified. There is no material on record in justification of either the interest claimed or the anticipated profit.

22. At this juncture, it is pertinent to notice the judgment of the Supreme Court in the case of **Life Insurance Corporation of India v. Sanjeev Builders Private Limited and another**³ wherein the fact situation was that, a suit was filed seeking specific performance of an agreement and in the alternative damages were sought. During the pendency of the suit, an application for

³ (2022) 16 SCC 1

amendment was made seeking enhancement of the award of damages. The application for amendment was allowed by the learned Single Judge of the High Court keeping the issue of limitation open, which order was affirmed by the Division Bench. Considering the said factual matrix, the Supreme Court considering Section 21(5) and 22 (2) of the S.R.Act held as under:

“59. Section 22 has a non-obstante provision which overrides the CPC. A plaintiff who claims specific performance of a contract for the transfer of immovable property, may in an appropriate case ask for possession, partition and separate possession of the property, in addition to specific performance. The plaintiff may also claim any other relief including the refund of earnest money or deposit paid, in case the claim for specific performance is refused. Corresponding to the provisions of sub-section (5) of Section 21, sub-section (2) of Section 22 stipulates that such relief cannot be granted by the court unless it has been specifically claimed. However, the proviso requires that the court shall at any stage of the proceedings allow the plaintiff to amend the plaint to claim such relief where it has not been originally claimed on such terms which may appear just.

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63. ***In Jagdish Singh v. Natthu Singh***⁴, this Court had the occasion to deal with the provisions of Section 21 of the Act 1963. While analysing the aforesaid provisions, this Court laid down that if the amendment relates to the relief of compensation in lieu of or in addition to specific performance where the plaintiff has not abandoned his relief of specific performance the court should allow the amendment at any stage of the proceedings since that is a claim for compensation falling under Section 21 of the Act 1963 and the amendment is

⁴ (1992) 1 SCC 647

one under the proviso to sub-section (5) of Section 21. This Court, however, issued a note of caution by laying down that different and less liberal standards would apply if what is sought by the amendment is conversion of a suit for specific performance into one for damages for breach of contract, in which case Section 73 of the Indian Contract Act, 1872 would get invoked, and then the said amendment would be under the discipline of Order VI Rule 17 of the CPC. This Court further held that when the plaintiff by his option had made specific performance impossible then Section 21 does not entitle him to seek damages. It is also held that in Indian Law when the contract, for no fault of the plaintiff, becomes impossible of performance Section 21 enables award of compensation in lieu and substitution of specific performance.

64. The legal position, therefore, in respect of scope and ambit of Section 21 of the Act 1963 is clear and made so more by the ratio of the aforesaid decision of this Court.

65. The plaintiffs in the original plaint claimed for compensation in addition to a decree for specific performance of the agreement to sell. Therefore, strictly speaking the provisions of Section 21 of the Act 1963 are not attracted to the facts of the present case. The intention of the plaintiffs in seeking for amendment of the plaint appears to be to get an enhanced amount of compensation than what was originally claimed in the original plaint which was restricted only to Rs.1,01,00,000/-. The aforesaid intention becomes apparent when the averments made in the application praying for amendment are looked into inasmuch as, the plaintiffs have stated that in view of the fact that in last 30 years there had been a tremendous escalation of the value of the suit property which has an adverse effect on the quantum of damages, compensation, relief sought for the breach of contract by the appellant/defendant. According to the plaintiffs the raising of the amount of compensation to Rs.400,01,00,000/- from Rs.1,01,00,000/- as claimed in the original plaint has been necessitated in view of undue delay in the prosecution of the suit which was not earlier foreseen, which in turn has caused more damage to the plaintiffs through the years and therefore, they have sought to raise the amount of compensation to the present value as stated above from Rs.1,01,00,000/-.

66. However, the argument of the learned counsel appearing for the appellant in regard to the two provisos referred to above, is quite curious. The argument is that the power of the court to permit the plaintiff to amend the

plaint in a suit filed for the specific performance of contract flows from Sections 21 and 22 respectively of the Act, 1963 & the proviso to the sub-section (5) of Section 21 of the Act 1963 may entitle the plaintiff to amend the plaint, provided the plaintiff has inadvertently or otherwise omitted to pray for compensation. The argument proceeds on the footing that in the present case, as the plaintiff specifically prayed for compensation in the plaint, later if he seeks to amend that part of the relief, the sub-section (5) of Section 21 of the Act 1963 would be an embargo for the court to do so. We do not find any merit in this argument of the learned counsel appearing for the appellant.

67. The two provisos referred to above, deal with the question of permitting the plaintiff to amend his plaint. It is not, as if, in the absence of these two provisos, it is not permissible in law for the plaintiff to carry out an amendment in his pleading by introducing a relief for enhanced compensation. Rule 17 of Order VI of the CPC does confer power on a Court to allow a party to alter or amend his pleading in such manner and on such terms as may be just. This rule does not stop at that, but it further says that all such amendments should be made as may be necessary for the purpose of determining the real question in controversy between the parties. It is pertinent to note that this provision which empowers the court in its discretion to permit a party to amend his pleadings, was already on the statute book, when the Specific Relief Act, 1963 was enacted. It can, therefore, be presumed that when the latter legislation was on the anvil, the Parliament was aware of this power of the court to permit amendment of pleadings. Therefore, it cannot be successfully urged that a suit for specific performance falling under the provisions of the Act, 1963 would not be governed by the provisions of the CPC. It is, therefore, clear that to such a suit the provisions contained in Order VI Rule 17 of the CPC would apply and a plaintiff who has earlier failed to incorporate the reliefs for compensation or who has incorporated the reliefs for compensation but seeks amendment in the same, could seek the permission of the court to introduce these reliefs by way of amendment.

68. It is important to note that sub-section (5) of Section 21 of the Act 1963 was originally introduced to resolve the confusion over whether the court had the power to grant compensation in a claim for specific performance in absence of any pleading to that effect under the provisions of the Act

1963. Prior to the enactment of the Act 1963 the Law Commission in its 9th Law Commission Report while referring to the diverse opinions expressed by the High Courts recommended that in no case should compensation be decreed unless it is claimed by a proper pleading.”

(emphasis supplied)

22.1 The Supreme Court in the case of **Life Insurance Corporation of India**¹ while affirming the judgment of the Single Judge and Division Bench, allowing the amendment, summed up its conclusions as under:

“71. Our final conclusions may be summed up thus:

71.1. Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview. The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negated.

71.2. All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

71.3. The prayer for amendment is to be allowed

71.3.1. if the amendment is required for effective and proper adjudication of the controversy between the parties, and

71.3.2. to avoid multiplicity of proceedings, provided

(a) the amendment does not result in injustice to the other side,

(b) by the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side and

(c) the amendment does not raise a time barred claim, resulting in divesting of the other side of a valuable accrued right (in certain situations).

71.4. A prayer for amendment is generally required to be allowed unless

71.4.1. By the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

71.4.2. The amendment changes the nature of the suit,

71.4.3. The prayer for amendment is malafide, or

71.4.4. By the amendment, the other side loses a valid defence.

71.5. In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

71.6. Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

71.7. Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

71.8. Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

71.9. Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision.

71.10. Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated

on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

71.11. Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed. Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed. (See Vijay Gupta v. Gagninder Kr. Gandhi & Others⁵.)

23. Having regard to the settled position of law as noticed above, more particularly, having regard to the proviso to sub-section 5 of Section 21 as well as the proviso to sub-section 2 of Section 22, which specifically mandates that the amendment is to be allowed at any stage of the proceedings, the application for amendment merits consideration and the developer is to be permitted to claim the amounts as sought for.

REG. QUESTION No.(ii):

24. The execution of the MOU (Ex.P.13) is admitted between the parties as also the execution of the GPA dated 09.04.2005 (Ex.P.1). It is pertinent to note that the GPA dated

⁵ 2022 SCC OnLine Del 1897

09.04.2005 (Ex.P.1) was executed, more than six months after the execution of the MOU dated 27.09.2004 (Ex.P.13). Vide the said GPA, the owners have permitted the developer to represent them before statutory authorities, local bodies, etc., for the purpose of applying for change of land use, conversion, approval of layout plans, building plans, water and sanitary and electrical connections, applying for no objection certificate **[NOC]** from various authorities, etc.

WHETHER THE TERMS OF THE JDA WERE AGREED
BETWEEN THE PARTIES:

25. Under the terms of the MOU, the parties had agreed to enter into a JDA at a subsequent stage. The relevant clauses 2.5, 5.1 and 5.2 of the said MOU pertaining to the execution of the JDA is as under:

“2.5 The parties agree that the contemplated project will be carried on and completed in strict compliance of legal requirements and in terms of detailed specifications and sanctioned plan, separately agreed between them, which details shall be enshrined in the Joint Development Agreement, which shall be entered into between them at a future date.

x x x x x

5.1 The Second Party shall develop the Schedule Lands into a full fledged exclusive township project of residential

apartments with all infrastructure, like roads, drains, water lines with overhead tank, sewerage lines, septic tank and electricity connections as per the detailed specifications agreed between the parties which shall be enshrined in the Joint Development Agreement to be entered into between them;

5.2 The Second Party shall construct in the Schedule Lands one or more blocks of residential apartment buildings as per the sanctioned plan with internal and external services, amenities, facilities, including compound walls, lobbies, roads, staircases and passages, car parking, etc., The construction shall be in accordance with the specifications that may be mutually agreed upon between the parties at the time of entering into a proper Joint Development Agreement;”

26. Clause 2.5 of the MOU specifically stipulates that the detailed specifications of the construction shall be enshrined in the JDA, which was to be executed at a subsequent date. Although in clause 5.1 of the MOU, it is stated that the construction was to be made “as per the detailed specifications agreed between the parties, which shall be enshrined in the joint development agreement”, at clause 5.2 it is stated that “the construction shall be in accordance with the specifications that may be mutually agreed between the parties at the time of entering into a proper joint development agreement”. The specifications as to the nature and quality of construction have not been stipulated in the MOU. Apart from the said clauses 2.5, 5.1 and 5.2, there is no other material on

record setting out the details/specifications of the development contemplated.

27. In view of the aforementioned, it is clear that the specifications as to the nature of development had not been agreed between the parties.

WHETHER THE MOU IS SPECIFICALLY ENFORCEABLE:

28. It is the contention of the owners that under the MOU, the parties having agreed to execute a JDA and the specifications as to the nature, quality and details of the contract not having been agreed upon the said MOU is not specifically enforceable. Reliance is placed on Section 14(3)(c)⁶ of the S.R. Act in support of the contention. Sub-section 3(c) of Section 14 of the S.R. Act prior to its amendment reads as under:

“14. Contracts not specifically enforceable.—

The following contracts cannot be specifically enforced, namely:—

(1)

(2)

(3) Notwithstanding anything contained in clause (a) or clause (c) or clause (d) of sub-section (1), the court may enforce specific performance in the following cases:—

⁶ Section 14 substituted by the S.R. Act of 2018 w.e.f.01.10.2018.

(a)

(b)

(c) where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land:

Provided that the following conditions are fulfilled, namely:—

(i) the building or other work is described in the contract in terms sufficiently precise to enable the court to determine the exact nature of the building or work;

(ii) the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and

(iii) the defendant has, in pursuance of the contract, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed.”

29. The present suit having been filed on 21.09.2007, i.e., prior to the amendment, the provision as it stood prior to its amendment is considered.

30. The Supreme Court in the case of **Sushil Kumar Agrawal v. Meenakshi Sadhu**⁷ while noticing Section 14(3)(c) of the S.R. Act held as under:

⁷ (2019) 2 SCC 241

“24. Various High Courts have interpreted the requirements under Section 14(3)(c) of the Act and opined on the maintainability of a suit by the developer for specific performance against the owner of the property for a breach in the conditions of the development agreement. A common thread that runs through the analysis in decided cases is the following:

24.1. The courts do not normally order specific performance of a contract to build or repair. But this rule is subject to important exceptions, and a decree for specific performance of a contract to build will be made only upon meeting the requirements under law;

24.2. The discretion to grant specific performance is not arbitrary or capricious but judicious; it is to be exercised on settled principles; the conduct of the plaintiff, such as delay, acquiescence, breach or some other circumstances outside the contract, may render it inequitable to enforce it;

24.3. In order to determine the exact nature of the agreement signed between the parties, the intent of the parties has to be construed by reading the agreement as a whole in order to determine whether it is an agreement simpliciter for construction or an agreement that also creates an interest for the builder in the property. Where under a development agreement, the developer has an interest in land, it would be difficult to hold that such an agreement is not capable of being specifically enforced; and

24.4. A decree for specific performance of a contract to build will be made if the following conditions are fulfilled:

24.4.1. the work of construction should be described in the contract in a sufficiently precise manner in order for the court to determine the exact nature of the building or work;

24.4.2. the plaintiff must have a substantial interest in the performance of the contract and the interest should be of such a nature that compensation in money for non-performance of the contract is not an adequate relief; and

24.4.3. the defendant should have, by virtue of the agreement, obtained possession of the whole or any

part of the land on which the building is to be constructed or other work is to be executed.

25. The issue before this Court is whether Section 14(3)(c)(iii) is a bar to a suit by a developer for specific performance of a development agreement between himself and the owner of the property. The condition under Section 14(3)(c)(iii) is that the defendant has, by virtue of the agreement, obtained possession of the whole or any part of the land on which the building is to be constructed or other work is to be executed. If the rule of literal interpretation is adopted to interpret Section 14(3)(c)(iii), it would lead to a situation where a suit for specific performance can only be instituted at the behest of the owner against a developer, denying the benefit of the provision to the developer despite an interest in the property having been created. This anomaly is created by the use of the words “the defendant has, by virtue of the agreement, obtained possession of the whole or any part of the land” in Section 14(3)(c)(iii). Under a development agreement, an interest in the property may have been created in favour of the developer. If the developer is the plaintiff and the suit is against the owner, strictly applied, clause (iii) would require that the defendant should have obtained possession under the agreement. In such a case if the developer files a suit for specific performance against the owner, and the owner is in possession of the land by virtue of a lawful title, the defendant (i.e. the owner) cannot be said to have obtained possession of the land by way of the agreement. This would lead to an anomalous situation where the condition in Section 14(3)(c)(iii) would not be fulfilled in the case of a suit by a developer. Application of the literal rule of interpretation to Section 14(3)(c)(iii), would lead to an absurdity and would be inconsistent with the intent of the Act.”

26.

27. By giving a purposive interpretation to Section 14(3)(c)(iii), the anomaly and absurdity created by the third condition will have no applicability in a situation where the developer who has an interest in the property, brings a suit for specific performance against the owner. The developer will have to satisfy the two conditions laid

out in sub clause (i) and (ii) of Section 14(3)(c), for the suit for specific performance to be maintainable against the owner. This will ensure that both owners and developers can avail of the remedy of specific performance under the Act. A suit for specific performance filed by the developer would then be maintainable. Whether specific performance should in the facts of a case be granted is a separate matter, bearing on the discretion of the court.

28.

29. The condition under Section 14(3)(c)(i) is that the building or other work described in the contract is sufficiently precise to enable the court to determine the exact nature of the building or work. To examine the question as to whether the scope of the building or work described in the agreement is sufficiently defined, the Court needs to determine the exact nature of the work by referring to the relevant clauses of the agreement. Clause 8 of the agreement provides that the building shall be constructed in accordance with approved plans and built with “first class materials” with wooden doors, mosaic floor, basin and lavatories, tap water arrangement, masonry work, electric points, finished distemper and bath room fittings of glazed tiles up to 6” height and lift, “etc.” Further, at clause 13 of the agreement, the parties have agreed that the contractor would construct a building at the premises consisting of “residential apartments of various sizes and denomination” in the said building complex in accordance with plans sanctioned by the Calcutta Municipal Corporation and the owner shall convey the proportionate share in the land to the respective buyers. Clause 22 of the agreement states that if for any reason after the plan is sanctioned or “for any act or omission on the part of the owner” the building cannot be constructed; the owner shall refund to the contractor Rs.4,00,000/- in addition to all costs, charges and expenses incurred by the contractor. At clause 20 of the agreement, the parties have agreed that the apartments of the owner shall be constructed and be made in “similar condition” as that of the contractor with water connection, sewerage, electric wiring except “special fittings”.

30. Use of such vague terms in the agreement such as “first class materials”, “residential apartment of various sizes and denomination”, “etc.”, “similar condition”, and “special fittings”, while discussing the scope of work clearly shows that the exact extent of work to be carried out by the developer and the obligations of the parties, have not been clearly brought out. Parties have not clearly defined, inter alia, the nature of material to be used, the requirements of quality, structure of the building, sizes of the flats and obligations of the owner after the plan is sanctioned. Further, clause 9 of the agreement states that the owner shall pay the contractor costs, expenses along with agreed remuneration only after completion of the building on receiving the possession. However, the exact amount of remuneration payable by the owner to the contractor is not to be found in the agreement. The agreement between the parties is vague. The court cannot determine the exact nature of the building or work. The first condition in Section 14(3)(c)(i) is not fulfilled.

31. Another condition under Section 14(3)(c)(ii) is that the plaintiff has a substantial interest in the performance of the contract and the interest is of such a nature that compensation in money for non-performance of the contract is not an adequate relief. The intent of the section is to make a distinction between cases where a breach of an agreement can be remedied by means of compensation in terms of money and those cases where no other remedy other than specific performance will afford adequate relief. Therefore, before granting the remedy of specific performance, we need to analyse the extent of the alleged harm or injury suffered by the developer and whether compensation in money will suffice in order to make good the losses incurred due to the alleged breach of the agreement by the owner. From the facts of the case, it is clear that the case of the developer is that he incurred an expenditure of ₹ 18,41,000/- towards clearing outstanding dues, security deposit and development, incidental and miscellaneous expenses. The alleged losses/damages incurred by the Plaintiff can be quantified. The plaintiff can be provided recompense for the losses allegedly incurred by payment of adequate compensation in the form of money. The developer has failed to satisfy the conditions under sub-clause (i) and (ii) of Section

14(3)(c) of the Act. In such a case, specific performance cannot be granted.

(emphasis supplied)

31. In view of the legal position as noticed above, it is also to be considered as to whether the developer was put in possession of the property in order to consider as to whether the stipulations as contemplated under Section 14(3) have been satisfied.

32. In the facts of the present case, the developer has not been put in possession of the property. In this context, it is relevant to notice clause 2.3 of the MOU, which reads as under:

“2.3 It is hereby agreed between the parties, that nothing herein contained shall be construed as delivery of possession in part performance of any Agreement of Sale, under Section 53-A of the Transfer of Property Act and/or such other law for the time being in force;”

33. It is clear from the same that the requirement of the developer carrying on any works in the suit properties cannot be construed as the developer being in possession of the suit properties. There is no clause in the GPA (Ex.P1), wherein, it is

stated that possession of the properties has been handed over by the owners to the developer.

34. Further, it is pertinent to note that admittedly the developer has not commenced construction within four months as was required to be done under the MOU. It is the case of the developer that he has carried out survey works and put up a compound wall in the suit property. Although, at paragraph No.23 of the plaint, it is averred that the developer and the owners are in joint possession of the suit property, having regard to the specific stipulation contained in Clause 2.3 of the MOU, in the absence of any further agreements executed between the parties (apart from the GPA-Ex.P1 and the MOU-Ex.P13), the developer has failed in demonstrating that they are in possession of the suit properties.

35. In the absence of the specification of the development having been agreed in the MOU and in the absence of the developer having been put in possession of the property, it is clear that the MOU is not specifically enforceable.

REG. READINESS AND WILLINGNESS OF THE DEVELOPER:

36. As already noticed above, vide the said MOU, it was agreed that the developer shall be entitled to 78% share in the suit properties together with the super built-up area and the owners shall be entitled to 22% of the suit properties together with super built-up area. Obligations of the developer included obtaining a change of land use, sanction for conversion and permissions, apart from putting up construction of the residential apartments. At this juncture, it is relevant to notice clause 5.5 of the MOU which reads as under:

“5.5 The First Party declare that the Schedule Lands are in C-Zone and the declared user of the schedule lands as per the Comprehensive Development Plan, is for "residential" use, except Sy. Nos. 141, 142 and 158, the declared user of which is specified as "park". The Second Party shall obtain necessary change of land use from the competent authority, and if need be, to obtain sanction of conversion of the Schedule Lands for enabling construction of residential apartment complexes therein, at the cost of the Second Party;”

37. It is clear from the said clause 5.5, that the developer was aware that a portion of the property was located in the 'Park Zone' in the CDP. It was the responsibility of the developer to obtain the necessary change of land use from the competent authority together with obtaining sanction for conversion of the suit property. With regard to the time for completion of the project, it is

relevant to notice Clause 8 to 8.3 of the MOU, which reads as under:

“8. DELIVERY

8.1 The Second Party shall commence the construction work within one month from the date of receipt of the consent/permission/sanction of plans and within 10 days of issue of work order, whichever is earlier, in terms of this MOU, but not however, later than 4 months from the date of this MOU. The First Party shall sign a letter evidencing commencement of construction. However, the Second Party shall be entitled to carry on the civil works pertaining to such development, by way of taking out surveys, fencing/putting up compound wall, leveling the land, closing the ditches and every way preparing the land for commencement of construction, by laying the roads, drains, pathways, culverts, bridges, etc., as may be required, within one month from the date of taking possession of the Schedule Lands;

8.2 The Second Party hereby agree to deliver possession of the First Party's constructed area to the First Party, immediately within 30 days of the date of completion of every such blocks and subject to the condition that the entire 22% share of apartments of the First Party shall be delivered to the First Party within 36 (thirty six) months from the date of commencement of construction, however, due to unavoidable circumstances, if there is a delay after the 36 (thirty six) months a further period of 12 (twelve) months as grace period is agreed upon for completion of the construction of the First Party's share. However, the Second Party shall not incur any liability for any delay in delivery of the possession of First Party's constructed area, by reason of conditions force majeure. In any of the aforesaid events, which are beyond the reasonable control of the Second Party, the Second Party shall be entitled to corresponding extension of time, for delivery of the First Party's constructed area, the time shall also stand reasonably extended in the event of delay in obtaining permission/consent/clearance for occupying the building and/or including power/water/ sanitary connections;

8.3 The Second Party has agreed that if they have not completed the construction of the First Party's share within the agreed period as per Clause 8.2, then the First Party shall forfeit 75% (seventy five percent) of the advance amount paid by the Second Party;"

38. It is clear from a plain reading of clause 8.1 that the developer was required to commence construction within one month from the date of receipt of permission/sanction plans and within 10 days of issuing work order, whichever is earlier "but not later than 4 months from the date of the MOU". The owners were required to sign a letter evidencing commencement of construction. The developer was required to carry out civil works by carrying out surveys, putting up a compound wall, levelling of the land for commencement of construction, laying roads, drains, pathways, culverts, bridges etc., within one month from taking possession of the lands. Clause 8.2 pertains to the dates on which the constructed area would be handed over by the developer to the owners.

39. In the present case, admittedly, although the construction was required to commence within four months from the MOU, only vide letter dated 02.08.2007 (Ex.D2) written by the developer were the owners intimated that the developer was

intending to file the application for conversion. The same was responded by the owners vide letter dated 21.08.2007 (Ex.D3) whereunder the owners stated the MOU was abandoned. Thereafter, the suit was filed on 21.09.2007.

40. The vehement contention put forth on behalf of the developer that the portion of the scheduled property was located in the 'Park Zone' and hence the same created an impediment for the developer to commence construction within the time stipulated will not aid the case of the developer having regard to the fact that the developer was aware as on date of the MOU that portion of the suit property was situated in the 'Park Zone'. The developer had specifically undertaken the obligation of obtaining the necessary permissions for change of land use of the suit property to the 'Residential Zone'.

41. Reliance was placed by the developer on clause 9.1 of the MOU. The said clause 9.1 reads as under:

"INDEMNITY:

9.1 The First Party hereby confirms that their title to the Schedule Lands are good, marketable and subsisting and that none else has any right, title, interest or share in the Schedule Lands and that the Schedule Lands are not subject to any encumbrance,

attachment, court or taxation or acquisition proceedings or charges of any kind and that residential apartment buildings can be constructed on the Schedule Lands. The First Party shall keep the Second Party fully indemnified and harmless, against any loss or liability, cost or claim, action or proceedings that may arise or accrue against the Second Party on account of any defect in or want of title on the part of the First Party or on account of any delay caused at the instance of the First Party;”

42. It is sought to be contended that the project got delayed due to the gas pipeline that was located in the approach road. That, the owners had specifically stated (vide the said clause 9.1) that no part of the suit property was subject to any attachment or acquisition proceedings or charges of any kind. Hence, it was contended that the objection by the concerned statutory authorities for construction of the approach road as a gas pipeline was situated under the said proposed approach road was a responsibility for which the owners had to get clearance.

43. In this context, reliance is placed by the developer on various provisions of the Pipeline Act. Sub-section (1) of Section 3 of the Petroleum Act stipulates that the Central Government or State Government or a Corporation may acquire the right of user in any land for laying of pipelines after issuing a notification. Section 5 contemplates hearing of objections. Thereafter, a notification under

sub-section (1) of Section 6 is to be issued. Section 7 stipulates that the Central Government or State Government or Corporation has a right to lay pipelines, where the right of user of the land is vested with the Government. The proviso to sub-section (1) of Section 7 also stipulates that the areas where pipelines shall not be laid. Section 9 stipulates the restrictions regarding the use of land, which has been notified under sub-section (1) of Section 6.

44. It is pertinent to note that the developer has not produced either the notification that has been issued under sub-section (1) of Section 6 of the Pipeline Act or any other document to demonstrate that the land abutting the suit property has been notified under the provisions of the said Pipeline Act. Apart from certain correspondences, where reference to pipelines have been made, no other material has been produced by the developer to demonstrate that there was any restriction in the use of land having regard to the provisions of the Pipeline Act.

45. Although elaborate submissions have been made on behalf of the appellant with regard to the alleged understanding between the parties to procure the land belonging to one Sri. Poornachandra Rao, which is abutting the suit property, apart

from certain questions that have been put forth in the cross-examination of PW.1 and DW.1, no documentary material has been produced by the developer to demonstrate that there was an understanding between the parties to acquire the land abutting the suit properties. The owners had consistently denied that there was any such understanding between the parties to acquire the abutting land. Hence, the developer has miserably failed in demonstrating its contention regarding the proposed acquisition of the abutting land.

46. It is the specific case of the developer as averred in the plaint that an extent of 18½ acres of the suit property was converted to residential use and 12½ acres was not converted, since the same was under the 'Park Zone'. However, the owners had specifically denied the said averment. The developer has not produced any conversion order to prove its case that a portion of the suit property has been converted as averred. On the contrary, the defendants have produced a conversion order dated 30.10.2008 (Ex.D.14) to demonstrate that the suit properties have been converted subsequently.

47. A perusal of the material on record indicates that the developer had not corresponded with the owners with regard to the progress made pursuant to execution of the MOU. The only letter available on record written by the developer to the owners is the letter dated 02.08.2007 (Ex.D2), which was nearly 3 years after the execution of the MOU. Vide the said letter, apart from the developer stating regarding the alleged attempt to acquire the abutting land, the developer had intimated the owners that it intends to apply for conversion, since in the Master Plan for Bangalore, 2021, a portion of the suit property, which was declared as 'Park Zone' has, in the subsequent Master Plan, been declared as 'Residential Zone'. In response, the owners, by their reply dated 21.08.2007 (Ex.D3), have categorically refused to proceed further in the understanding with the developer. It was stated in the said reply that the GPA dated 09.04.2005 was already cancelled and the MOU dated 27.09.2004 stood abandoned and repudiated. In the said reply, the owners had specifically denied regarding any agreement with the developer to acquire property abutting the suit property belonging to Sri. Poornachandra Rao. The owners have specifically denied that no one by name Sri. Poornachandra Rao holds any land abutting the suit property.

48. The owners had also specifically stated that the offices of the developer company both at Bangalore and Hyderabad have been closed and that the developer company was not functioning. It is necessary to note that in the written statement itself the owners had specifically stated that immediately after execution of the MOU, there were differences and disputes between the directors of the developer company and that the owners were not able to contact the directors of the developer. It was specifically averred that the developer has abandoned the MOU and that there was a dispute pending amongst the directors of the developer before the Company Law Board [CLB], Additional Principal Bench, Chennai, in Company Petition No.77/2004. The owners had also produced a copy of the notice dated 22.03.2019 (Ex.D4) issued by the Ministry of Corporate Affairs to the developer, whereunder, pursuant to sub-section (5) of Section 248 of the Companies Act, 2013, the name of the developer has been struck off from the Register of Companies and the said company is dissolved.

49. At the time of hearing of the present appeal, the learned counsel for the appellant has filed a memo along with a copy of the order dated 08.01.2025 passed in

C.A.No.14/252/HDB/2024 by the National Company Law Tribunal [NCLT] [**Rajareddy Kolon vs Whitefield Shelters Private Limited**]. The said proceedings were initiated under Section 252(3) of the Companies Act, 2013, to restore the name of the developer company in the Register of Companies. A perusal of the said order indicates that consequent to the developer defaulting in filing the financial statements and annual returns for more than 2 years, the notice for striking off the name of the company was issued. The said order also indicates that a promoter of the developer had filed Company Petition No.77/2004 before the CLB and vide order dated 16.10.2015, the CLB had directed the developer and other directors to transfer 26.25%, i.e., 1,55,000 shares, which order was the subject matter of challenge in Company Appeal No.2/2016 before the High Court of Hyderabad, which is pending. That the developer had filed copies of the balance sheets for the defaulting periods in the said proceedings, as also stated regarding the pendency of the present suit before the Commercial Court. It is also forthcoming that the total assets of the company have been declared as ₹3,82,66,854/- and the total liabilities as ₹3,98,03,334/- . It is clear that the liabilities of the developer are more than the assets.

50. The owners have seriously disputed the capacity of the developer in implementing the project.

51. It is relevant to notice Section 16(c) of the S.R. Act, which reads as under:

16. Personal bars to relief. – Specific performance of a contract cannot be enforced in favour of a person –

(a)

(b) ...

(c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

Explanation.—For the purposes of clause (c),—

(i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court;

(ii) the plaintiff 4 [must prove] performance of, or readiness and willingness to perform, the contract according to its true construction.

52. In the case of **U. N. Krishna Murty (dead) by LRs v. A. N. Krishna Murthy**⁸ while considering Section 16(c) of the S.R. Act, the Supreme Court held as under:

“24. Section 16 (c) of the Specific Relief Act, 1963 bars the relief of specific performance of a contract in favour of a person, who fails to aver and prove his readiness and willingness to perform his part of contract. In view of Explanation (i) to clause (c) of Section 16, it may not be essential for the plaintiff to actually tender money to the defendant or to deposit money in Court, except when so directed by the Court, to prove readiness and willingness to perform the essential terms of a contract, which involves payment of money. However, explanation (ii) says the plaintiff must aver performance or readiness and willingness to perform the contract according to its true construction.

25. To aver and prove readiness and willingness to perform an obligation to pay money, in terms of a contract, the plaintiff would have to make specific statements in the plaint and adduce evidence to show availability of funds to make payment in terms of the contract in time. In other words, the plaintiff would have to plead that the plaintiff had sufficient funds or was in a position to raise funds in time to discharge his obligation under the contract. If the plaintiff does not have sufficient funds with him to discharge his obligations in terms of a contract, which requires payment of money, the plaintiff would have to specifically plead how the funds would be available to him. To cite an example, the plaintiff may aver and prove, by adducing evidence, an arrangement with a financier for disbursement of adequate funds for timely compliance with the terms and conditions of a contract involving payment of money.

(emphasis supplied)

⁸ AIR 2022 SC 3361

53. It is also pertinent to note that the Supreme Court, while interpreting Section 16(c) of the S.R. Act has drawn a distinction between readiness to perform the contract and willingness to perform the same. In the case of **His Holiness Acharya Swami Ganesh Dassji v. Sita Ram Thapar**⁹, the Supreme Court appreciating that the said distinction held as under:

“2. There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform his part of the contract, the conduct has to be properly scrutinised. There is no documentary proof that the plaintiff had ever funds to pay the balance of consideration. Assuming that he had the funds, he has to prove his willingness to perform his part of the contract. According to the terms of the agreement, the plaintiff was to supply the draft sale deed to the defendant within 7 days of the execution of the agreement, i.e., by 27-2-1975. The draft sale deed was not returned after being duly approved by the petitioner. The factum of readiness and willingness to perform plaintiff's part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract. The facts of this case would amply demonstrate that the petitioner/plaintiff was not ready nor had the capacity to perform his part of the contract as he had no financial capacity to pay the consideration in cash as contracted and intended to bid for the time

⁹ (1996) 4 SCC 526

which disentitles him as time is of the essence of the contract.”

(emphasis supplied)

54. Further, it is a settled proposition of law that the plaintiff was required to prove the aspect of readiness and willingness right from the date of agreement till the date of passing of the decree. In this context, it is relevant to notice the judgment of the Supreme Court in the case of **I. S. Sikandar v. K. Subramani**¹⁰ wherein it has been held as under:

“45. ... Further, the plaintiff is required to prove the fact that right from the date of execution of the Agreement of Sale till the date of passing the decree he must prove that he is ready and has always been willing to perform his part of the contract as per the agreement. ...

46. ...

47. Further, there is nothing on record to show that the plaintiff could have made arrangement for payment of the balance consideration amount to them. But, on the other hand the trial court has recorded the finding of fact to the effect that the correspondence between the parties and other circumstances would establish the fact that the plaintiff had no money for payment of balance sale consideration ...”

(emphasis supplied)

¹⁰ (2013) 15 SCC 27

55. The developer, while asserting that it was always ready and willing to complete the sale transaction, has produced a letter dated 13.08.2005 (Ex.P19) written to it by the Dewan Housing Finance Corporation Ltd. **[DHFCL]**, whereunder, responding to the application dated 11.08.2005 of the developer, the DHFCL had granted "In Principle Sanction" of project loan of ₹50,00,00,000/- (Rupees Fifty Crores) for payment of mobilisation advance of ₹36,00,00,000/- (Rupees Thirty Six Crores) to M/s. Larsen & Turbo Ltd., the structural contractors. The said 'In Principle Sanction' was having regard to the request made by the developer for financial assistance for implementing the project in the suit property in terms of the MOU. The said 'In Principle Sanction' was subject to various terms and conditions that have been enumerated in the said letter. Apart from the said letter - Ex.P19, the developer has not produced any other documentary material on record to demonstrate its financial ability to implement the project. It is forthcoming from the record that the project that was sought to be implemented in terms of the MOU in the suit properties was of a total cost of ₹350 crores. Hence, the said letter – Ex.P19, which grants 'In Principle Sanction' approval for only a sum of ₹36,00,00,000/- (Rupees Thirty Six Crores), will not aid the

case of the developer in demonstrating its readiness and willingness.

56. In support of its contention that he was ready and willing to perform the obligations as contemplated under the MOU, the developer has relied upon certain correspondences (Exs.P17, P20, P22 to 25). The said letters have been written by various entities expressing their interest to book apartments proposed to be constructed in the suit properties. The said letters are in response to the letter of the developer intimating them regarding the project sought to be implemented in terms of the MOU. The said letters do not in any manner demonstrate the financial capability of the developer to implement the project in terms of the MOU.

57. The Commercial Court while considering the aspect of readiness and willingness, held as under:

“125. Further, on perusal of the evidence of PW1, it shows that in the Cross-examination, the PW1 has clearly admitted at page No. 53 (para No. 28) that he has not produced any documents before this court to show that on the date of entering into MOU, the plaintiff company is having financial status to meet out the expenses of Rs.350 Crores to execute the project as per Ex.P13 by constructing multi storied residential apartment in the suit schedule properties.

126. Further, on perusal of the evidence of PW1, it shows that in page No.55 (para No.31), the PW1 has clearly admitted that at present also the plaintiff company is not having any extent of amount in its custody to implement the project as per the contents of MOU by constructing a multi storied residential apartment in the suit schedule properties.

127. Considering the above facts and circumstances of the case and for the above reasons, I am of the opinion that the oral version of the plaintiff is not supported with corroborative evidence and documents and also the plaintiff has failed to prove that he was/is always ready and willing to perform its part of contract as contended in the plaint.

128. Further, the plaintiff has also failed to prove the financial status of the plaintiff company to meet out the cost of the construction of project work undertaken in the suit schedule properties, as the PW1 himself admitted in his Cross-examination that at the time of entering into MOU between it and the defendants for construction of multi-storied residential buildings and complex in the suit schedule properties, the plaintiff company was not having any financial status. Considering the above facts and circumstances of the case and for the above reasons, I am of the opinion that the plaintiff has failed to prove his contention that he was always ready and willing to perform his part of contract as contended in the plaint by producing cogent and corroborative evidence and documents in respect of the said fact.

129. Further, on perusal of the evidence of PW1, it shows that PW1 has clearly admitted in his Cross-examination at page No. 52, (para No. 26) that as per the clauses mentioned in the MOU, till today he has not sent any notice or request letter to the defendants requesting them to handover the possession of the suit schedule properties to him to execute the project work by constructing the multi-storied buildings in the suit schedule properties. Considering the facts and circumstance of the case, I am of the opinion that the contention of the plaintiff is that he was always ready and willing to perform

his part of obligation as contended in the plaint is not supported with proper documents and as such the oral version of the plaintiff is not acceptable one.

130. Considering the above facts and for the above reasons, I am of the opinion that when the plaintiff has failed to prove his readiness and willingness to perform his part of obligation as contended in the plaint by adducing proper evidence and also by producing supportive documents, then he is not entitle for the relief of specific performance of contract as prayed in this suit.”

58. As noticed above, Clause 8.1 of the MOU specifically stipulates that the developer is required to commence construction within one month from the date of receipt of the permissions, which shall not be later than four months from the date of the MOU. Admittedly, the developer has not commenced construction as per the terms clause 8.1 of the MOU.

59. Further, it is relevant to note that despite the Clause 5.5 of the MOU specifically stipulating that the developer was to obtain change of land use as well as conversion of lands, to enable construction of the residential apartment complex in the context of the owners specifically stipulating that a portion of the suit properties have been notified to be in the 'Park Zone' in the CDP, as noticed above, it is only vide the letter dated 02.08.2007 (Ex.D2) that the developer has called upon the owners to confirm the GPA

to enable the developer to apply for conversion of the lands. It is clear from the same that the developer has not even made an application for conversion for nearly three years consequent to the MOU.

60. As already noticed above, although the developer has contended that 18½ of the suit property have been converted for residential use and 12½ acres of the suit property have not been converted, since the same is in the 'Park Zone' in the CDP, no documents have been produced to demonstrate that 18½ acres of the suit property have been converted.

61. The developer has also not placed any documentary evidence on record (except the letter dated 02.08.2007 – Ex.D2) to demonstrate that it had intimated the owners of its readiness and willingness to comply with the terms and conditions of the MOU.

62. It is clear from the aforementioned that the developer was not ready and willing to perform the terms of the MOU.

REG CLAIM OF THE DEVELOPER FOR REFUND OF SECURITY
DEPOSIT:

63. With regard to the claim for refund of the security deposit amount and interest as well as the claim for compensation it is pertinent to note that vide clause 8.3 of the MOU, if the developer has not completed construction of the owners share within the agreed period, as per Clause 8.2 of the MOU, the owner is entitled to forfeit 75% of the advance amount paid by the developer. Clause 8.2 stipulates that the developer is required to deliver possession of the owner's constructed area within 30 days of the completion of each block. In the present case, the developer not having even commenced construction in terms of Clause 8.1 of the MOU, it is clear that the developer has defaulted in handing over the constructed area as stipulated under Clause 8.2 of the MOU.

64. The Commercial Court has recorded a finding while answering Issue No.4 that the owner is entitled to forfeit 75% of the advance amount since the developer has not commenced the construction. The said finding of the Commercial Court is just and proper.

65. Hence, the developer is entitled to a refund of (25% of ₹2,00,00,000/-) ₹50,00,000/- (Rupees Fifty Lakhs).

66. With regard to interest, although in the application for amendment, interest is claimed at 24%, since the transaction between the parties is a commercial one, keeping in mind the factual matrix, it is just and proper that interest be awarded at 12% per annum from the date of the application for amendment (i.e., from 06.04.2026 up to the date of payment).

REG. THE CLAIM OF THE DEVELOPER TOWARDS COMPENSATION:

67. With regard to the claim for compensation, the developer has claimed a sum of ₹106,00,00,000/- (Rupees Hundred and Six Crores). The said claim is premised as to the profit, the developer would have earned and the development been completed in terms of the MOU. The claim for compensation is made having regard to Section 21 of the S.R. Act. In terms of sub-section (2) of Section 21 of the S.R. Act, a plaintiff is entitled to compensation, if the Court decides that specific performance ought not to be granted and the contract has been broken by the defendant. Under sub-section (3) of Section 21, even in the event specific performance is granted, if the Court is satisfied that “if the

relief for specific performance is not sufficient to satisfy the justice of the case”, compensation could be awarded.

68. In the facts of the present case, the developer has failed to demonstrate that the owners have committed breach of terms of the MOU. Under the said circumstances, the question of the developer, being entitled to compensation as claimed, does not arise.

69. The claim of the developer for refund of security deposit and compensation has been considered consequent to allowing the application for amendment. Although, vide the application for amendment, the plaintiff has been permitted to amend the plaint, the material already on record i.e., MOU (Ex.P13) is sufficient to consider the claim of the developer for refund of security deposit. With regard to the claim for compensation, although the developer has been permitted to make the claim, having regard to the clear stipulations contained in Section 21(2) and (3) of S.R Act as noticed above, the developer having failed to demonstrate that the owners have committed breach of the terms of the MOU, it is not entitled to compensation as noticed above. The evidence regarding the allegation of breach

of the MOU has already been considered by the Commercial Court as well as in the present appeal and it is been concurrently held that it is the developer who has committed breach of the terms of the MOU. Although, the developer was permitted to make his claim for compensation, in the absence of developer demonstrating that the owners had committed breach of the terms of MOU, the question of awarding compensation in terms of Section 21 of the S.R. Act does not arise.

70. Having regard to the aforementioned discussion, Question No.(i) is answered in the affirmative and Question No.(ii) is answered partly in the affirmative.

71. Hence the following:

ORDER

- (i) I.A.No.1/2026 is allowed.
- (ii) The appeal is partly allowed with proportionate costs.
- (iii) The impugned judgment and decree is modified only to the extent of holding that the respondents-defendants shall pay the appellant-plaintiff a sum of ₹50,00,000/-

(Rupees Fifty Lakh) together the interest at 12% per annum from 06.04.2006 up to the date of payment.

(iv) Modified decree to be drawn accordingly.

**SD/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**SD/-
(C.M. POONACHA)
JUDGE**

RKM/PMP/YAN