

) Suit No. 47/2004 (H.C.S.No.2530/99) vs Upasna Dohil on 30 May, 2008

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IN THE COURT OF DR.SUDHIR KUMAR JAIN : ADDITIONAL DISTRICT JUDGE :DELHI

1) Suit No. 47/2004 (H.C.S.No.2530/99)

M/s.Nahar International Ltd.
having its Registered Office
at 'Focal Point' Ludhiana,
and local office at 1107, Ashoka Estate,
24,Barakhamba Road, New Delhi
and earlier known as
M/s.Punjab Con-Cast Steels Ltd.

... Plaintiff

Versus

1. Upasna Dohil,
D/o Hardev Dohil,
R/o E-39, New Delhi South
Extension, Part I,
New Delhi.
2. M/s.H.Dohil Construction Co.(P) Ltd.,
204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019

2) Suit No. 48/2004 (H.C.S.No.2528/99)

M/s.Nahar International Ltd.
having its Registered Office
at 'Focal Point' Ludhiana,
and local office at 1107, Ashoka Estate,
24,Barakhamba Road, New Delhi
and earlier known as
M/s.Punjab Con-Cast Steels Ltd.

... Plaintiff

Versus

1. Manav Sohal,
S/o Rakesh Sohal,
R/o M.C.A.1461, Adampur,
Distt.Jalandhar.
2. M/s.H.Dohil Construction Co.(P) Ltd.,
204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019

... Defendants

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3) Suit No. 125/2004 (H.C.S.No.2524/99)

M/s.Nahar Industrial Enterprises Ltd.
having its Registered Office
at 'Focal Point' Ludhiana,
and local office at 1107, Ashoka Estate,
24,Barakhamba Road, New Delhi
earlier known as Oswal Fats & Oils Ltd. ... Plaintiff

Versus

1. Saroj Jetik,
W/o S.K.Jetik,
R/o K-17/13, DLF Qutab Enclave,
Phase-II,
Gurgaon.
2. M/s.H.Dohil Construction Co.(P) Ltd.,
204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019 ... Defendants

4) Suit No. 126/2004 (H.C.S.No.2523/99)

M/s.Nahar Industrial Enterprises Ltd.
having its Registered Office
at 'Focal Point' Ludhiana,
and local office at 1107, Ashoka Estate,
24,Barakhamba Road, New Delhi
earlier known as Oswal Fats & Oils Ltd. Plaintiff

Versus

1. Hardev Dohil,
S/o late Dr.C.S.Dohil,
R/o E-39, New Delhi South
Extension, Part I,
New Delhi.
2. M/s.H.Dohil Construction Co.(P) Ltd.,
204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019. ... Defendants

5) Suit No. 127/2004 (H.C.S.No.2522/99)

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M/s.Nahar International Ltd.
having its Registered Office
at 'Focal Point' Ludhiana,
and local office at 1107, Ashoka Estate,
24,Barakhamba Road, New Delhi
and earlier known as

M/s.Punjab Con-Cast Steels Ltd.

... Plaintiff

Versus

1. Maninder Kaur,
D/o Tara Singh,
R/o 2/33, Sarvopriya Vihar,
New Delhi.
2. M/s.H.Dohil Construction Co.(P) Ltd.,
204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019

... Defendants

6) Suit No. 128/2004 (H.C.S.No.2521/99)

M/s.Nahar International Ltd.
having its Registered Office
at 'Focal Point' Ludhiana,
and local office at 1107, Ashoka Estate,
24, Barakhamba Road, New Delhi
and earlier known as
M/s.Punjab Con-Cast Steels Ltd.

... Plaintiff

Versus

1. Rakesh Sohal,
S/o Prem Krishan,
R/o E-39, New Delhi South Extension,
Part I, New Delhi.
2. M/s.H.Dohil Construction Co.(P) Ltd.,
204, Dohil Chambers,'
46, Nehru Place,
New Delhi-110019

... Defendants

7) Suit No. 129/2004 (H.C.S.No.2516/99)

4

M/s.Nahar Exports Ltd.
having its Registered Office
at 376, Industrial Area A, Ludhiana,
and local office at 105, Ashoka Estate,
24,Barakhamba Road,
New Delhi.

... Plaintiff

Versus

1. Kanta Sohal,
W/o Rakesh Sohal,
R/o E-38, South Extension,
Part-I, New Delhi.
2. M/s.H.Dohil Construction Co.(P) Ltd.,
204, Dohil Chambers,'

46, Nehru Place,
New Delhi-110019

... Defendants

8) Suit No. 130/2004 (H.C.S.No.2517/99)

M/s.Nahar Exports Ltd.
having its Registered Office
at 376, Industrial Area A, Ludhiana,
and local office at 105, Ashoka Estate,
24,Barakhamba Road,
New Delhi.

... Plaintiff

Versus

1. Hardeep Kaur,
D/o Pirar Singh,
R/o K-17/13, DLF Qutab Enclave,
Phase-II, Gurgaon.
2. M/s.H.Dohil Construction Co.(P) Ltd.,
204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019

... Defendants

9) Suit No. 131/2004 (H.C.S.No.2519/99)

M/s.Nahar Industrial Enterprises Ltd.
having its Registered Office
at 'Focal Point' Ludhiana,

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and local office at 1107, Ashoka Estate,
24,Barakhamba Road, New Delhi
earlier known as Oswal Fats & Oils Ltd.

... Plaintiff

Versus

1. Deepak Kumar,
S/o Shakti Kumar,
R/o C-1/28, Model Town,
Delhi-110009.
2. M/s.H.Dohil Construction Co.(P) Ltd.,
204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019

... Defendants

10) Suit No. 132/2004 (H.C.S.No.2514/99)

M/s.Nahar Exports Ltd.

having its Registered Office

at 376, Industrial Area A, Ludhiana,

and local office at 105, Ashoka Estate,

24,Barakhamba Road,

New Delhi.

... Plaintiff

Versus

1. Angela Dohil,

D/o Hardev Dohil,

R/o E-39, South Extension,

Part-I,

New Delhi.

2. M/s.H.Dohil Construction Co.(P) Ltd.,

204, Dohil Chambers,

46, Nehru Place,

New Delhi-110019

... Defendants

11) Suit No. 133/2004 (H.C.S.No.2513/99)

M/s.Nahar Exports Ltd.

having its Registered Office

at 376, Industrial Area A, Ludhiana,

and local office at 105, Ashoka Estate,

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24,Barakhamba Road,

New Delhi.

... Plaintiff

Versus

1.Jasbir Kaur,

W/o Piara Singh,

R/o 2/33, Sarvopriya Vihar,

New Delhi.

2. M/s.H.Dohil Construction Co.(P) Ltd.,

204, Dohil Chambers,

46, Nehru Place,

New Delhi-110019

... Defendants

12) Suit No. 134/2004 (H.C.S.No.2515/99)

M/s.Nahar Exports Ltd.

having its Registered Office

at 376, Industrial Area A, Ludhiana,

and local office at 105, Ashoka Estate,

24,Barakhamba Road,

New Delhi.

... Plaintiff

Versus

1. Pradeep Kumar,
S/o Piara Singh,
R/o C-1/28, Model Town,
Delhi-110009.

2. M/s.H.Dohil Construction Co.(P) Ltd.,
204, Dohil Chambers,'
46, Nehru Place,
New Delhi-110019

... Defendants

13) Suit No. 135/2004 (H.C.S.No.2520/99)

M/s.Nahar International Ltd.
having its Registered Office
at 'Focal Point' Ludhiana,
and local office at 1107, Ashoka Estate,

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24, Barakhamba Road, New Delhi
earlier known as
M/s.Punjab Con-Cast Steels Ltd.

... Plaintiff

Versus

1. Veena Sohal,
W/o Late A.S.Sohal,
R/o Bhullarai,
Phagwara,
Jalandhar.

2. M/s.H.Dohil Construction Co.(P) Ltd.,
204, Dohil Chambers,'
46, Nehru Place,
New Delhi-110019

... Defendants

14) Suit No. 136/2004 (H.C.S.No.2518/99)

M/s.Nahar Exports Ltd.
having its Registered Office
at 376, Industrial Area A, Ludhiana,
and local office at 105, Ashoka Estate,
24,Barakhamba Road,
New Delhi.

... Plaintiff

Versus

1. Piara Singh,
S/o Late Amar Singh,
R/o C-1/28, Model Town,
Delhi-110009.
2. M/s.H.Dohil Construction Co.(P) Ltd.,
204, Dohil Chambers,'
46, Nehru Place,
New Delhi-110019. ... Defendants

15) Suit No.201/2004 (H.C.S.No.2529/99)

M/s.Nahar International Ltd.,
having its Registered Office
at 'Focal Point', Ludhiana,
and local office at 1107, Ashoka Estate,
24,Barakhamba Road,

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New Delhi.
and earlier known as
M/s. Punjab Con-Cast Steel Ltd. ... Plaintiff

Versus

- 1.Ranjan Dohil,
S/o Sh. Hardev Dohil,
R/o E-39, South Extension, Part I,
New Delhi.
2. M/s.H.Dohil Construction Co.(P) Ltd.,
204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019. ... Defendants

16) Suit No. 202/2004 (H.C.S.No.2511/99)

M/s.Nahar Exports Ltd.
having its Registered Office
at 376, Industrial Area A, Ludhiana
and local office at 105, Ashoka Estate,
24,Barakhamba Road,
New Delhi.

... Plaintiff

Versus

1. Shakti Kumar Jetik,
S/o Ram Prakash,
R/o K-17/13, DLF Qutab Enclave,
Phase-II, Gurgaon.
2. M/s.H.Dohil Construction Co.(P) Ltd.,
204, Dohil Chambers,
46, Nehru Place,

New Delhi-110019 ... Defendants
17) Suit No. 203/2004 (H.C.S.No.2512/99)

M/s.Nahar Exports Ltd.
having its Registered Office
at 376, Industrial Area A, Ludhiana,
and local office at 105, Ashoka Estate,
24,Barakhamba Road,
New Delhi.

... Plaintiff

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Versus

1. Mamta Sohal,
D/o Rakesh Sohal,
R/o Bhullarai,
Phagwara,
Distt.Jalandhar
2. M/s.H.Dohil Construction Co.(P) Ltd.,
204, Dohil Chambers, '
46, Nehru Place,
New Delhi-110019

... Defendants

18) Suit No. 204/2004 (H.C.S.No.2525/99)

M/s.Nahar Industrial Enterprises Ltd.
having its Registered Office
at 'Focal Point' Ludhiana,
and local office at 1107, Ashoka Estate,
24,Barakhamba Road, New Delhi
earlier known as Oswal Fats & Oils Ltd.

... Plaintiff

Versus

1. Harbhajan Kaur,
W/o Manpreet Singh,
R/o 2/33, Sarvopriya Vihar,
New Delhi.
2. M/s.H.Dohil Construction Co.(P) Ltd.,
204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019

... Defendants

19) Suit No. 205/2004 (H.C.S.No.2526/99)

M/s.Nahar International Ltd.
having its Registered Office
at 'Focal Point' Ludhiana,

and local office at 1107, Ashoka Estate,
25, Barakhamba Road, New Delhi
and earlier known as
M/s. Punjab Con-Cast Steels Ltd. ... Plaintiff

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Versus

1. Manpreet Singh,
S/o Tara Singh,
R/o 2/33, Sarvopriya Vihar,
New Delhi.
2. M/s. H. Dohil Construction Co. (P) Ltd.,
204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019 ... Defendants

20) Suit No. 206/2004 (H.C.S.No.2527/99)

New Delhi-110019
M/s. Nahar International Ltd.
having its Registered Office
at 'Focal Point' Ludhiana,
and local office at 1107, Ashoka Estate,
26, Barakhamba Road, New Delhi
and earlier known as
M/s. Punjab Con-Cast Steels Ltd. ... Plaintiff

Versus

1. Harbans Kaur,
D/o Tara Singh,
R/o 2/33, Sarvopriya Vihar,
New Delhi.
2. M/s. H. Dohil Construction Co. (P) Ltd.,
204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019. ... Defendants

21) Suit No. 207/2004 (H.C.S.No.2510/99)

M/s. Nahar Exports Ltd.
having its Registered Office
at 376, Industrial Area A, Ludhiana,
and local office at 105, Ashoka Estate,
24, Barakhamba Road,
New Delhi. ... Plaintiff

Versus

1. Rajan Sohal,

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S/o late A.S.Sohal,
R/o M.C.A. 1461,
Adampur,
Distt.Jalandhar.
2. M/s.H.Dohil Construction Co.(P) Ltd.,
204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019

... Defendants

22) Suit No. 208/2004 (H.C.S.No.2509/99)

M/s.Nahar Exports Ltd.
having its Registered Office
at 376, Industrial Area A, Ludhiana,
and local office at 105, Ashoka Estate,
24,Barakhamba Road,
New Delhi.

... Plaintiff

Versus

1. Prem Raksha Dohil,
W/o Hardev Dohil,
R/o E-39, South Extension,
Part-I, New Delhi.
2. M/s.H.Dohil Construction Co.(P) Ltd.,
204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019

... Defendants

Date of Institution of all suits : 24.12.1999
Date of Decision : 30.05.2007

APPEARANCES

FOR THE PLAINTIFFS : SH. SIMRAN MEHTA , ADVOCATE
FOR THE DEFENDANTS : SH. RAJESH MANCHANDA, ADVOCATE

SUITS FOR SPECIFIC PERFORMANCE FOR SALE OF PROPERTY AND IN
ALTERNATIVE FOR DAMAGES AND OTHER RELIEFS

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JUDGMENT

This judgment shall decide twenty two suits filed by three plaintiffs M/s.Nahar International Ltd.(previously known as M/s.Punjab Con- Cast Steels Ltd.), M/s. M/s.Nahar Industrial Enterprises Ltd.(previously known as Oswal Fats & Oils Ltd.) and M/s.Nahar Exports Ltd. against the defendants for specific performance and in alternative for award of damages. In all suits common

facts and law are involved. All the suits were consolidated vide order dated 15.03.2004 and suit bearing no. 201/2004 (H.C.Suit No.2529/99) was treated as the main suit.

2. Briefly stated the relevant facts of the case as pleaded by the plaintiffs are that the plaintiffs are limited companies incorporated under the Companies Act, 1956; the plaintiff M/s.Nahar International Ltd. was earlier known as M/s.Punjab Con-Cast Steels Ltd., the plaintiff M/s. M/s.Nahar Industrial Enterprises Ltd.was earlier known as Oswal Fats & Oils Ltd.; the defendants no.1in all the suits (hereinafter referred to as 'defendants no.1') are the owners of office spaces in commercial building known as "Prem Dohil Sadan", 11, Rajendra Place, New Delhi-110008 as detailed herein below vide letter of allotment dated 07.06.1984 issued by the defendant no.2; Suit Suit No. Plaintiff/ Defendant Details of office Sale No. Purchaser no.1/Vendor spaces situated consideration at 3rd Floor

1. 47/2004 M/s.Nahar Upasna Dohil Hall No.3, 300 Rs.6,60,000/-

		International Ltd.		sq.ft.Super Area
2.	48/2004	M/s.Nahar International Ltd.	Manav Sohal	Hall No.3, 300 Rs.6,60,000/- sq.ft.Super Area
3.	127/2004	M/s.Nahar International Ltd.	Maninder Kaur	Hall No.3, 300 Rs.6,60,000/- sq.ft.Super Area
4.	128/2004	M/s.Nahar International Ltd.	Rakesh Sohal	Hall No.3, 300 Rs.6,60,000/- sq.ft.Super Area
5.	135/2004	M/s.Nahar International Ltd.	Veena Sohal	Hall No.3, 300 Rs.6,60,000/- sq.ft.Super Area
6.	201/2004	M/s.Nahar International Ltd.	Ranjan Dohil	Hall No.3, 300 Rs.6,60,000/- sq.ft.Super Area
7.	205/2004	M/s.Nahar International Ltd.	Manpreet Singh	Hall No.3, 301 Rs.6,62,200/- sq.ft.Super Area
8.	206/2004	M/s.Nahar International Ltd.	Harbans Kaur	Hall No.3, 300 Rs.6,60,000/- sq.ft. Super Area

Suit No.	Suit No.	Plaintiff/ Purchaser	Defendant no.1/Vendor	Details of office Sale spaces situated consideration at 3rd Floor
1.	125/2004	M/s.Nahar Industrial Enterprises Ltd.	Saroj Jetik	Hall No.1, 303 sq. Rs.6,66,600/- ft. Super Area

Suit No.	Suit No.	Plaintiff/ Purchaser	Defendant	Details of office Sale
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No.	Purchaser	no.1/Vendor	spaces situated consideration at 3rd Floor
2.	126/04 M/s.Nahar Industrial Enterprises Ltd.	Hardev Dohil	Hall No.1, 302 Rs.6,64,400/- sq.ft.Super Area
3.	131/2004 M/s.Nahar Industrial Enterprises Ltd.	Deepak Kumar	Hall No.1, 302 Rs.6,64,400/- sq.ft.Super Area
4.	204/2004 M/s.Nahar Industrial Enterprises Ltd.	Harbhajan Kaur	Hall No.1, 302 Rs.6,64,400/- sq.ft.Super Area

Serial No.	Suit No.	Plaintiff/Purchaser	Defendant no.1/Vendor	Details of Sale office spaces consideration situated at 3rd Floor
1.	202/2004	M/s.Nahar Exports Ltd.	Shakti Kumar Jetik	Hall No.2, 292 Rs.6,42,400/- sq.ft.Super Area
2.	129/2004	M/s.Nahar Exports Ltd.	Kanta Sohal	Hall No.2, 292 Rs.6,42,400/- sq.ft.Super Area
3.	130/2004	M/s.Nahar Exports Ltd.	Hardeep Kaur	Hall No.2, 292 Rs.6,42,400/- sq.ft.Super Area
4.	132/2004	M/s.Nahar Exports Ltd.	Angela Dohil	Hall No.2, 292 Rs.6,42,400/- sq.ft.Super Area

Serial No.	Suit No.	Plaintiff/Purchaser	Defendant no.1/Vendor	Details of Sale office spaces consideration situated at 3rd Floor
5.	133/2004	M/s.Nahar Exports Ltd.	Jasbir Kaur	Hall No.2, 292 Rs.6,42,400/- sq.ft.Super Area
6.	134/2004	M/s.Nahar Exports Ltd.	Pradeep Kumar	Hall No.2, 292 Rs.6,42,400/- sq.ft.Super Area
7.	136/04	M/s.Nahar Exports Ltd.	Piara Singh	Hall No.2, 300 Rs.6,60,000/- sq.ft.Super Area
8.	203/2004	M/s.Nahar Exports Ltd.	Mamta Sohal	Hall No.2, 292 Rs.6,42,400/- sq. ft. Super Area
9.	207/2004	M/s.Nahar	Rajan Sohal	Hall No.2, 292 Rs.6,42,400/-

	Exports Ltd.	sq. ft. Super Area
10.	208/2004 M/s.Nahar Exports Ltd. Dohil	Prem Raksha Hall No.2, 292 Rs.6,42,400/- sq. ft. Super Area

The defendants no.1 have made the payment of entire sale consideration in respect of office spaces to the defendant no.2 and as such competent to sell the office spaces; the defendant no.2, a private limited company incorporated under the Companies Act, 1956 is owned, controlled and managed by Sh. Dohil, the Managing Director; the defendant no.2 was allotted a plot bearing no.11 at Rajendra Place, New Delhi by the Delhi Development Authority for construction of a multistoreyed building; the defendant no.2 has constructed a commercial building known as "Prem Dohil Sadan" on the said plot of land and has sold undivided share in different halls i.e. office spaces to the defendants no.1; Agreements to Sell dated 27.04.1994 were executed between the plaintiffs and defendants no.1 for the sale of office spaces as detailed herein above which were also signed by the defendant no.2 as confirming party; the defendant no.2 in the Agreement to Sell dated 27.04.1994 had admitted the receipt of entire sale consideration from defendants no.1; the defendants no.1 i.e. the seller of different office spaces in are either friend, relation or associate of defendants no.1 and sold their undivided space/portions in the building for the purpose of resale to various parties like the plaintiffs with the knowledge and consent of defendant no.2; the plaintiffs came into contact with the defendant no.2 i.e. the builder of the building in question and the defendant no.2 has confirmed the availability of office spaces in the said building; the plaintiffs have paid a sum of Rs.1,00,000/- to the defendants no.1 as earnest money for each office space; the Agreement to Sell dated 27.04.1994 contains obligations and counter obligations on all the parties; the defendant no.2 in the month of March, 1995 informed the plaintiffs that due to some unforeseen circumstances there has been delay in completing of various formalities and transformers (sub-station) has yet to be installed and accordingly the Memorandum of Understanding dated 24.03.1995 was executed between the plaintiffs and the defendant no.2 whereby the defendant no.2 agreed and confirmed to the mode of payment vide Agreement to Sell dated 27.04.1994 and also agreed not to claim maintenance charges unless and until he complied with other requirements in the Memorandum of Understanding dated 24.04.1995; the defendants defaulted in the performance of their part of obligations; the plaintiffs have approached the defendants for delivery of the possession in terms of Memorandum of Understanding but not handed over to the plaintiffs on one pretext or the other; the defendants vide letters dated 14.04.1998 called upon the plaintiffs to make balance payment with interest which were replied by the plaintiffs by stating that the plaintiffs are ready to make the balance payment to the defendants no.1 strictly as per the Agreement to Sell dated 27.04.1994; the defendant no.2 also sent another letter dated 23.04.1998; the defendant no.2 sent final notice dated 22.06.1999 calling upon the plaintiffs to make balance payment with 18% interest up to 30.06.1999 which were replied by the plaintiffs vide letters dated 30.06.1999 whereby the plaintiffs have drawn the attention of the defendant no.2 to various clauses of the Agreement to Sell dated 27.04.1994; the defendant no.2 sent further letters dated 06.07.1999, 27.07.1999 which were responded by the plaintiffs on 17.08.1999; defendant no.2 sent another letter dated 23.08.1999 to the plaintiffs which

were replied vide replies dated 28.08.1999; letter dated 10.09.1999 sent by the defendant no.2 was replied on 23.09.1999; the plaintiffs are willing and ready to perform their part of obligations. The plaintiffs filed the suits for the specific performance and in alternative for the award of damages of an amount being the difference in price of office spaces on the date of Agreement to Sell and the market price of the office spaces on the date of judgment.

3. The defendants have filed the written statement in all suits and contested the suits on similar grounds. The defendants have stated that the suits are barred by limitation; the earnest money paid by the plaintiffs had been forfeited in terms of Agreement to Sell dated 27.04.1994 due to non-payment of balance sale consideration; the suits are liable to be dismissed u/O VII Rule 11 CPC; the defendant no.2 has allotted the office spaces in question to the defendants no.1 vide allotment letter dated 07.06.1984; the allotment letter dated 07.06.1984 is an integral part of the Agreement to sell dated 27.04.1994 which has to be looked into on the basis of clauses 8,10,12,13 and 14 of the allotment letter dated 07.06.1984 issued by the defendant no.2 to the defendants no.1; the defendants no.1 have only right to transfer and sell the right which the defendants no.1 have purchased from the defendant no.2; the defendants no.1 were also required to pay the expenses incurred by the defendant no.2 on the installation of A/C Plant and fall-ceiling to the defendant no.2; there was no privity of contract between the plaintiffs and defendants no.1 as the defendants no.1 have entered into an Agreement to Sell with M/s. Punjab Con-cost Steel Ltd. and Oswal Fats & Oils Ltd.; the suits are not properly valued as per the valuation of the suit and the plaintiffs have not affixed the proper court fee on the plaints. The defendants have controverted other allegations of the plaintiffs.

4 The plaintiffs have filed the replication.

5 The following issues were framed vide order dated 15.03.2004:--

1. Whether the present suit has been signed, verified and instituted by a duly authorized and competent person ? OPP
2. Whether the present suit is barred by limitation ?

OPD

3. Whether there is no privity of contract between the plaintiffs and defendants no.1 as alleged in para 7 of the preliminary objections of WS and if so what its effect ? OPD
4. Whether this suit has been properly valued for the purposes of court fee and jurisdiction as alleged in para 8 of the preliminary objections of WS? OPD
5. Whether the defendants could legally forfeit the earnest money paid by the plaintiffs pursuant to an Agreement to Sell dated 27.04.94? OPD

6. Whether the allotment letter dated 07.06.84 in respect to suit building in favour of defendants no.1 is an integral part of Agreement to Sell dated 27.04.94 between the parties to the present suit and if so what its effect? OPD

7. Who is guilty of breach of the terms of Agreement to Sell dated 27.04.94 and what its effect on the rights and liabilities of the parties in the present suit ? OP Parties.

8. Whether the plaintiffs was ready and willing to perform its part of the contract in terms of Agreement to Sell dated 27.04.94 before filing of the present appeal? OPP

9. Whether the plaintiffs is entitled to the relief of specific performance in respect of suit property as prayed in para (a) of the plaint? OPP

10. In case issue no.9 is decided in negative, what was the market value of the suit premises at the time of filing of the present suit and whether the plaintiffs is entitled to get difference in the price of the suit premises given in the Agreement to Sell dated 27.04.94 and what its market price on the date of filing of this suit?

11. Relief.

6 The plaintiffs have examined Sh.Amar Nath who tendered his affidavit which is Ex.P1 and Vijay Gupta as PW2 who tendered his affidavit which is Ex.P2. The PW1 has referred documents in affidavit ExP1 which are ExPW.1/A to Ex.PW1/W. The PW1 during cross examination also referred documents which are ExPW1/DX1 to ExPW1/DX12. The PW2 has referred documents which are ExPW2/A1 to ExPW2/A3, ExPW2/B to ExPW2/L. The defendants have examined Hardev Dohil, Managing Director of defendant no.2 as DW1 who tendered his affidavit as Ex.D1. The DW1 has referred documents which are ExDW1/A to ExDW1/Z and ExPW1/DX1 to ExPW1/DX12.

7 Sh.Simran Mehta, Advocate, counsel for the plaintiffs and Sh.Rajesh Manchanda, Advocate for the defendants heard. Written arguments/submissions placed on record also considered. Record perused. My issuewise findings are as under.

Whether the present suit has been signed, verified and instituted by a duly authorized and competent person ? OPP There are three sets of plaintiffs i.e.M/s. Nahar International Ltd., M/s.Nahar Exports and M/s.Nahar Industrial Enterprises Ltd. In suits filed by the plaintiff M/s.Nahar International Ltd., it is stated the plaintiff is a limited company incorporated under the Companies Act, 1956 and was earlier known as M/s.Punjab Con-Cast Steels Ltd.; the suits are signed, verified and instituted by Sh.Vijay Gupta who is one of the Directors of M/s.Nahar Exports Ltd., one of the group companies of the plaintiffs; and Sh.Vijay Gupta is well conversant with the facts of the case and authorised by the Board of Directors vide resolution dated 31.07.1999 to sign, verify and institute the plaints and also to do all other acts as may be necessary for due prosecution of the suits. 9 In the suits filed by the plaintiff, M/s.Nahar Industrial Enterprises Ltd., it is stated that the plaintiff is a company incorporated under the Companies Act and was earlier known as Oswal Fats and Oils Ltd. which was later changed to M/s.Nahar Industrial Enterprises Ltd.; the

plaints are signed, verified and instituted by Sh.Vijay Gupta, who is one of the Directors of M/s.Nahar Exports, one of the group companies of the plaintiffs; and the Sh.Vijay Gupta is well conversant with the facts of the case and has been authorized by the Board of Directors of the plaintiff vide resolution dated 31.07.1999 to sign, verify and institute the complaints and to do all other acts as may be necessary for due prosecution of the suits.

10 In the suits filed on behalf of M/s.Nahar Exports Ltd., it is stated that the plaintiff is a limited company incorporated under the Companies Act, 1956 and the complaints are signed, verified and instituted by Sh.Vijay Gupta, one of the Directors of the plaintiffs who is duly authorized and empowered by resolution dated 09.08.1999 passed by the Board of Directors of the plaintiff to sign, verify and institute the suits and he is well conversant with the facts of the case.

11 All the suits on behalf of three plaintiffs have been filed by Sh.Vijay Gupta, who is one of the Directors of M/s.Nahar Exports Ltd. i.e.one of the group companies of the plaintiffs. Sh.Vijay Gupta was authorized by the Board of Directors vide resolutions dated 31.07.1999 to sign, verify and institute the suits on behalf of plaintiffs M/s.Nahar Industrial Enterprises Ltd. and M/s.Nahar International Ltd. Sh.Vijay Gupta was also authorized vide resolution dated 09.08.1999 to sign, verify and institute the suits on behalf of M/s.Nahar Exports Ltd.

The defendants in written statements stated that the suits are liable to be dismissed as the same are not signed, filed and verified by the appropriate and competent person.

12 The plaintiffs to prove that the suits are signed, verified and filed by duly authorized person examined Sh.Vijay Gupta as PW2 who tendered his affidavit Ex.P2. Sh.Vijay Gupta as PW2 deposed that he is the General Manager of Oswal Woollen Mills Ltd. of Nahar Group; he was Director in Nahar Exports, another company of the Nahar Group and was authorized to sign and institute the legal proceedings against various vendors with whom the plaintiffs had entered into Agreements to Sell dated 27.04.1994 in respect of commercial spaces situated on the third floor of the building known as Prem Dohil Sadan; he was authorized to implead M/s.H.Dohil Construction Company (Pvt.) Ltd. i.e.the defendant no.2 who had signed the Agreements to Sell dated 27.04.1994 as a confirming party; he is authorized to sign, verify all the pleadings, affidavits, make statements, give evidence etc. as may be required for the due prosecution of the suits instituted by the plaintiffs and is aware of the facts of the case. The PW2 also proved the two resolutions dated 31.07.1999 and one resolution dated 09.08.1999 passed by the Board of Directors of the plaintiffs in his favour as Ex.PW2/A1 to Ex.PW2/A3. 13 The resolution dated 31.07.1999 Ex.PW2/A1 perused. The Board of Directors of the plaintiff, M/s.Nahar International Ltd.has authorized Sh.Vijay Gupta, who is one of the Director of the Group Company Nahar Exports Ltd. to sign and institute legal proceedings against various vendors i.e.the defendants no.1 in respect of commercial space in the building in question in pursuance of Agreements to Sell dated 27.04.1994.

The perusal of resolution dated 09.08.1999 Ex.PW2/A2 reflects that Sh.Vijay Gupta was authorized by the Board of Directors of the plaintiff M/s.Nahar Exports Ltd.vide resolution dated 09.08.1999 ExPW2/A2 to institute or defend legal proceedings for and on behalf of the plaintiff and also to verify, sign, affirm and present pleadings, petitions, affidavits, statements etc. The perusal of

resolution dated 09.08.1999 Ex.PW2/A3 reflects that Sh.Vijay Gupta was authorized by the Board of Directors of the plaintiff M/s.Nahar Industrial Enterprises Ltd. to sign and institute the legal proceedings against various vendors i.e.the defendants no.1 in respect of the commercial space in the building in question in pursuance of Agreements to Sell dated 27.04.1994.

14. Sh.Simran Mehta , counsel for the plaintiffs have argued that vide resolutions Ex.PW2/A1 to Ex.PW2/A3 Sh.Vijay Gupta was authorized by the plaintiffs to sign, verify and institute the legal proceedings against various vendors i.e.the defendants no.1 in respect of the commercial spaces/office spaces in the building in question in pursuance of Agreement to Sell dated 27.04.1994. Sh. Rajesh Manchanda, Advocate, Counsel for the defendants has relied upon Birla DLW Ltd. V M/s.Prem Engineering Works, 77(1999) DLT 171 (DB).

15 Order VI Rule 14 of the Code of Civil Procedure, 1908 provided that every pleading shall be signed by the party and its pleader, if any. The proviso clause provides that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf. Order XXIX Rule 1 of the Code of Civil Procedure, 1908 deals with the subscription and verification of pleadings in a suit by or against corporations. It provides that in suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case. The combined reading of both the provisions reflects the preposition of law that every pleading should be signed by the party or its pleader and if the party is a corporation, in that case the pleading should be signed and verified by its secretary, any director or other principal officer. 16 In the judgment delivered in Union Bank of India V Naresh Kumar & others, AIR 1997 SC 3, the only question arisen before the Supreme Court was that whether the plaint was duly signed and verified by a competent person. Their Lordships observed as under :--

9. In cases like the present where suits are instituted or defended on behalf of a public corporation, public interest should not be permitted to be defeated on a mere technicality. Procedural defects which do not go to the root of the matter should not be permitted to defeat a just cause. There is sufficient power in the Courts, under the Code of Civil Procedure, to ensure that injustice is not done to any party who has a just case. As far as possible a substantive right should not be allowed to be defeated on account of a procedural irregularity which is curable.

10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure, a pleading is required to be signed by the party or its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by or against a corporation the Secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any

formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example, by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a Corporation can ratify the said action of its officers in signing the pleadings. Such ratification can be express or implied. The Court can on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.

17 . The following principles have been laid down by the Supreme Court about signing and verification of a suit filed or defended by a corporation :--

- i. Where the suits are instituted or defended on behalf of the public corporation, public interest should not be permitted to be defeated on a mere technicality;
- ii. The pleadings in case of a company has to be signed by some person on behalf of the company;
- iii. Order XXIX Rule 1 of the Code of Civil Procedure, 1908 provides that in a suit by or against a corporation, the Secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company;
- iv. The absence of any formal letter of authority or power of attorney having been executed, a person referred to in Rule 1 of Order XXIX can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation;
- v. A company being a juristic entity can duly authorise any person to sign the plaint or the written statement on its behalf which would be regarded as sufficient compliance with the provisions of Order VI Rule 14 of the Code of Civil Procedure, 1908;
- vi. A person may be expressly authorised to sign the pleadings by passing a resolution or by a power of attorney; and vii. In case where the pleadings are signed by any person in the absence of resolution or power of attorney having been executed, a corporation can ratify the said action of its officer in signing the pleadings expressly or impliedly.

18 A person may be permitted to sign, verify the pleadings on behalf of a corporation in the absence of any resolution being passed by the Board of Directors or any power of attorney having been executed in his favour. However, such signing and verification by such person is required to be ratified by corporation either expressly or impliedly. Even the court on the basis of evidence and after considering circumstances of the case, may conclude that the corporation has ratified the act of signing of pleadings by its officer.

19 Sh. Rajesh Manchanda, Advocate, Counsel for the defendants has placed reliance on decision delivered in M/s.M/s. Birla DLW Ltd. V M/s. Prem Engineering Works 77(1999) DLT 171 (DB). In the said case the trial court has dismissed the suit as the appellant has failed to prove that plaint has been signed, verified and instituted by a duly authorised person. It was observed that the ratio of Naresh Kumar (Supra) is applicable where the suits are instituted or defended on behalf of public corporation like bank, the public interest should not be permitted to be defeated on mere technicality and the procedural defects which do not go to the root of the matter, should not be permitted to defeat a just cause. The suit was between two private parties. The appellant has failed to prove or produce the resolution of Board of Directors authorising M.D. Poddar to execute the power of attorney. M.D. Poddar was also not produced as a witness. The power of attorney has not been proved. The signatory of the plaint Saraogi was neither a principal officer nor the director of the appellant and was merely described as a constituted attorney on the basis of power of attorney which was not proved in accordance with law. Even in the verification, the rank of Saraogi who signed the plaint has not been mentioned. It was held that the benefit of Order XXIX of the Code of Civil Procedure, 1908 is not available to the plaintiffs. 20 The plaintiffs are the companies incorporated under the Companies Act, 1956. The plaints are signed, verified and instituted by Sh.Vijay Gupta, one of the Directors of M/s.Nahar Exports Ltd.,one of the group companies of the plaintiffs. The plaintiffs have proved the resolutions passed by the Board of Directors of all three plaintiffs on 31.07.1999 and 09.08.1999 wherein PW2 Vijay Gupta was authorized to sign, verify and institute the suits on behalf of the plaintiffs. The Acts of Sh.Vijay Gupta (PW2) to sign, verify and institute the suits were duly proved by resolutions Ex.PW2/A1 to Ex.PW2/A3. The testimony of PW2 as well as resolutions Ex.PW2/A1 to Ex.PW2/A3 have proved that Sh.Vijay Gupta was authorized to sign, verify and institute the suits on behalf of the plaintiffs. The suits are signed, verified and instituted by a duly authorized person. The issue no.1 is decided in favour of the plaintiffs and against the defendants.

Whether the present suit is barred by limitation ? OPD Section 3 of the Limitation Act deals with the bar of limitation. It provides that subject to the provisions contained in Sections 4 to 24 every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence. The law of limitation is a procedural law. The limitation does not distinguish the right but only bars the remedy. Section 3 mandates that every suit shall be dismissed if it is filed after the prescribed period of limitation although the limitation is not set up as a defence. There can be no waiver of the ground of limitation. Section 3 places a statutory obligation on the courts to examine whether the suit is filed within limitation or not and if the suit is filed beyond limitation it must be dismissed. If the suit is time barred, it cannot be decreed. The issue pertaining to limitation in all suits is a mixed question of law and facts.

22. The present suits are suit for specific performance of the Agreements to Sell dated 27.04.1994 (Ex.PW1/A to Ex.PW1/V). The Article 54 of the schedule of the Limitation Act, 1963 deals with limitation which is prescribed for a suit for specific performance of a contract. It provides the period of three years from the date fixed for the performance or if no such date is fixed, when the plaintiff has notice that performance is refused. Article 54 of the Schedule of the Limitation Act, 1963 is reproduced as under :--

Description of suit Period of limitation Time for which period begins to run

54. For specific performance Three years The date fixed for the of a contract. performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

The suit for specific performance of a contract can be filed within a period of three years as per Article 54. The last column of Article 54 of the schedule contains two parts. The first part indicates that in case any date is fixed for the performance of contract in that event three years period will be counted from that date. But where there is no date fixed, the second part would be applicable which in substance is that the period of three years would commence to run, when the plaintiff has notice that performance is refused by the plaintiffs.

23. The defendants have contented that the suits are barred by limitation as the same have been filed after the expiry of period of limitation from the date of execution of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and Memorandum of Understanding date 24.03.1995 Ex.PW1/W. Sh.Simran Mehta, Advocate, counsel for the plaintiffs has argued that the time was not the essence of the contract as such it cannot be said that the period of limitation has started after the expiry of date of execution of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and Memorandum of Understanding dated 24.03.1995 Ex.PW1/W.

24. To decide the real controversy whether the suits are within the period of limitation or not, certain facts are required to be highlighted which are not in dispute. The defendant no.2 was allotted a plot no. 11, Rajendra Place, New Delhi-110008 by Delhi Development Authority for construction of a commercial building. The defendant no.2 has promoted and developed a commercial building known as Prem Dohil Sadan on the said plot. The defendants no.1 have booked commercial flats/office spaces in halls no.1,2 and 3 situated on 3rd floor with the defendant no.2. The defendant no.2 has allotted the office spaces to the defendants no.1 vide letter of allotment dated 07.06.1984 ExPW1/DX4. The defendants no.1 thereafter sold the office spaces to the plaintiffs vide Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V. The dealings between the plaintiffs and defendants regarding the sale and purchase of office spaces forming part of hall nos.1,2 and 3 situated on the 3th floor of the building in question took place through Balco Estate Agents, a proprietorship concern of Amar Nath (PW1) as reflected from letters dated 30.12.1993 Ex.PW1/DX1 and dated 04.04.1994 Ex.PW1/DX2. The Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V were signed by the Vendors i.e.the defendants no.1 and the Director of the plaintiffs. Hardev Dohil as Managing Director of defendant no.2 has also signed the Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V as confirming party.

25. Relevant clauses of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V are reproduced as under:--

2. That the balance sale consideration shall be paid by the PURCHASER to the VENDOR against delivery of vacant physical possession of the Said office spaces and within 7 (Seven) days of the receipt of written intimation by REGD POST that the Builder has provided adequate electricity for operation of one Lift and lights in the Said office spaces.

5. That all dues, rates, charges, and taxes payable upto the date of transfer of the Said office spaces shall be paid by the VENDOR and thereafter the same shall be paid by the PURCHASER.

7. That the Builder (M/s.H.Dohil Construction Co. (P) Ltd.) has undertaken to provide Stand-by Generator of minimum 100 K.W.capacity within three months of the execution of this Agreement to Sell and also install Transformers in the building within six months from the date of the execution of this Agreement failing which the purchaser shall hold back the payment of Maintenance charges till the Transformers are installed.

26. The perusal of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V reveals that the defendants no.1 i.e. the Vendors booked undivided shares in the office spaces of hall nos.1,2 and 3 situated on the 3th floor of the building in question vide letter of allotment dated 07.06.1984 Ex.PW1/DX4 issued by the defendant no.2 and at that time Flat Buyer Agreement was also issued by the builder i.e. the defendant no.2. The Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V further reflects that the defendants no.1 have made the entire payment of the sale consideration to the builder. The plaintiffs in pursuance of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V have paid Rs.1,00,000/- to the defendants no.1 as an earnest money for each office space. Clause 2 provides that the balance sale consideration shall be paid by the purchaser i.e. the plaintiffs to the Vendors i.e. the defendants no.1 against delivery of vacant physical possession of office spaces and within seven days of the receipt of written intimation by registered post that the builder has provided adequate electricity for operation of one Lift and lights in the office spaces. Clause 5 provides that all dues, rates, charges, and taxes payable upto the date of transfer of the office spaces shall be paid by the vendors i.e. the defendants no.1 and thereafter the said charges shall be paid by the purchaser i.e. the plaintiffs. The Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V also cast certain obligations on the defendant no.2 i.e. the builder. The defendant no.2 has undertaken to provide Stand-by Generator of minimum 100 K.W.capacity within three months of the execution of Agreement to Sell and also install Transformers in the building within six months from the date of the execution of Agreement to Sell failing which the plaintiffs shall hold back the payment of maintenance charges till the transformers are installed.

27. Subsequent to the Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V, a Memorandum of Understanding dated 24.03.1995 Ex.PW1/W was also executed between the plaintiffs and the defendant no.2. The perusal of Memorandum of Understanding Ex.PW1/W reflects that different individuals i.e. the defendants no.1 had purchased undivided office spaces on

the 3th floor of Prem Dohil Sadan which was not operational. As per Clause 2 builder i.e.the defendant no.2 has made one lift operational for the use of the purchaser i.e.the plaintiffs. As per Clause 4 the plaintiffs shall not be required to pay any maintenance charges to the Builder/Maintenance Company i.e.the defendant no.2 till the transformer (sub-station) is installed and physical possession of office spaces or Hall no.1,2 and 3 situated on 3th floor are handed over to the respective purchasers after completion certificate and fire- fighting clearance have been obtained. The relevant clauses of Ex.PW1/W are reproduced as under:--

2. That the Builder has made one lift operational for the use of the Purchasers.

4. That the Purchasers herein shall not be required to pay any Maintenance Charges to the Builder/Maintenance Company till the Transformer (Sub-station) is installed, and physical possession of office spaces on 3rd and 5th floor is handed over to the respective purchasers after completion certificate and fire-fighting clearance have been obtained.

28. The plaintiffs have pleaded that the defendants have breached the terms and conditions of the sale and purchase as contained in the Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and Memorandum of Understanding dated 24.03.1995 Ex.PW1/W as such they were not liable to pay the balance sale consideration. The plaintiffs always been ready and willing to perform their part of contract. The plaintiffs alleged that the defendants have grossly and severely defaulted and neglected to perform the covenants under the Agreements to Sell dated 27.04.1994 ExPW1/V and Memorandum of Understanding dated 24.03.1995 Ex.PW1/W. The plaintiffs have stated that the defendant no.2 till date could not obtain the completion certificate from MCD and could not install fire fighting equipments and as such was denied the certificate from Delhi Fire Services. The defendants as such defaulted in the performance of their part of contract. The plaintiffs stated that the cause of action has accrued in favour of the plaintiffs on 27.04.1994 and 24.03.1995 when the Agreements to Sell dated 27.04.1994 ExPW1/A to ExPW1/V and Memorandum of Understanding dated 24.03.1995 Ex.PW1/W were executed. The plaintiffs further stated that cause of action has further accrued on different dates when the plaintiffs have received the letters from the defendant no.2 whereby defendant no.2 has threatened to forfeit the earnest money and to treat the Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V as null and void. The suits were filed on 24.12.1999. The PW2 in affidavit Ex.P2 also deposed on the similar lines. The PW2 in affidavit Ex.P2 deposed about accrual of cause of action on different dates in favour of the plaintiffs when the plaintiffs have received the various letters as detailed in para no.2 of affidavit Ex.P2.

29. The defendants have pleaded that the plaintiffs are assignee under the defendant no.2. The defendants no.1 vide letter of allotment dated 07.06.1984 ExPW1/DX4 were allotted the office spaces in hall nos.1, 2 and 3 of the 3th floor of the building in question. The rights and obligations of the defendants no.1 under the letter of allotment dated 07.06.1984 ExPW1/DX4 have been taken over by the plaintiffs. The plaintiffs are obliged to perform all the obligations under the letter of allotment dated 07.06.1984 ExPW1/DX4 before the plaintiffs can seek enforcement of the obligations of the defendants no.1. The defendants further stated that as per letter of allotment dated 07.06.1984 ExPW1/DX4 it was the obligation of the allottee to pay maintenance charges in

terms of clauses 8,10,13 and 14. The defendants no.1 have made the entire payment towards the office spaces as stipulated under clause 3 of the letter of allotment dated 07.06.1984 ExPW1/DX4 but the costs/charges payable under clauses 8,10,13 and 14 remained outstanding till date. The plaintiffs and the defendants no.1 have entered into Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V wherein it was stipulated that the rights of the defendants no.1 have been emanated from the letter of allotment dated 07.06.1984 ExPW1/DX4. The defendants have stated that all the dues/rates/charges and taxes payable in respect of office spaces after 27.04.1994 became payable by the plaintiffs in terms of clause 5 of the Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V to the defendant no.2 . The defendants have stated that the plaintiffs have neither paid the balance sale consideration nor paid the charges in terms of clauses 8,10,13 and 14 of the letter of allotment dated 07.06.1984 ExPW1/DX4 to the defendant no.2 . The plaintiffs have defaulted to perform their obligations in terms of Agreement to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and Memorandum of Understanding dated 24.03.1995 Ex.PW1/W by not paying the balance sale consideration as stipulated. The defendants have denied that the accrual of cause of action in favour of plaintiffs to file the present suits as detailed in para no. 16 of the plaint.

30. Sh. Rajesh Manchanda, Advocate, Counsel for the defendants has argued that as per section 3 of the Limitation Act, 1963, any suit must be filed within the prescribed period of limitation and the time for filing a suit for specific performance is three years as per Article 54 of the schedule of the Limitation Act; the time for filing the suit can never stop and in the present suits the time has started to run for filing the suits for specific performance by the plaintiffs w.e.f.01.04.1995 as per clause 6 of the Agreement to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V; the defendant no.2 has made one lift operational and provision for lighting in the office spaces purchased by the plaintiffs as appeared from Memorandum of Understanding dated 24.03.1995 ExPW1/W; as per the Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and Memorandum of Understanding dated 24.03.1995 Ex.PW1/W, the defendants no.1 was only required to intimate in writing to the plaintiffs about the adequate electricity in the building in question to run the lift and light in the office spaces which has been done by the defendants at the time of execution of Memorandum of Understanding dated 24.03.1995 Ex.PW1/W; the period of limitation has started for filing the suit for specific performance by the plaintiffs w.e.f.01.04.1995 and as per Article 54 of the schedule, the period of limitation is three years from the date fixed for the performance or, if no such date is fixed, when the plaintiffs have notice that performance is refused; the plaintiffs were to make payment of balance sale consideration within seven days from the date of written intimation as per clause 2 of Agreements to Sell dated 27.04.1994 ExPW1/A to ExPW1/I. Sh.Manchanda further argued that the suits fall in the first part of Article 54 and as such are barred by limitation.

Shri Rajesh Manchanda, Advocate, counsel for the defendants has relied upon Suresh Chand Kathuria V Umed Singh & Anr., 2006 II AD (Delhi) 490; Suresh Chand Kathuria V Umed Singh & Anr., 2006 IV AD (Delhi) 737; Ramzan V Hussaini, (1990) I SCC 104, besides other authorities.

31. Sh.Simran Mehta, Advocate, counsel for the plaintiffs argued that the plaintiffs are always ready and willing to pay the balance sale consideration subject to obtaining of completion certificate from MCD, fire fighting certificate from Delhi Fire Services and installation of transformer in terms of Memorandum of Understanding dated 24.03.1995 Ex.PW1/W; the period of limitation in pursuance

of Article 54 should be counted when the condition precedent for handing over the possession has been duly complied with by the defendants.

Sh.Mehta relied upon Raja Sara Ramji Bhai Daya Bhai V Jani Narootam Das, AIR 1986 SC 1912, Ramzan V Hussaini, (1990) 1 Supreme Court Cases 104, Bhagwan Singh V Teja Singh, AIR 1995 Punjab and Haryana 64 and Shaik Buddan Sab V Nagamma, AIR 1977 AP 90, besides other authorities.

32. Hardev Dohil, Managing Director of defendant no.2 for defendant no.2 and on behalf of defendants no.1 has written a letter dated 14.04.1998 ExPW1/DX5 with carbon copy to Balco Estate Agents, to the plaintiffs wherein asked the plaintiffs to pay the balance sale consideration and interest @ 18% for the delayed period. Hardev Dohil as Managing Director of the defendant no.2 again sent a letter dated 23.04.1998 Ex.PW1/DX8 to the plaintiffs asking them to pay the balance sale consideration to the defendants no.1 and also to take physical possession/endorsement from the defendant no.2. The defendants no.2 in the said letter further stated that the defendant no.2 has provided 6 KW power for lighting and also allowed the plaintiffs to use 125 KVA generator already installed in the building. It was further informed that one lift is also functioning. Thereafter defendant no.2 sent a final notice dated 22.06.1999 Ex.PW1/DX7 asking the plaintiffs to make the balance payment of 85% of sale consideration alongwith interest @ 18%. The plaintiffs have responded to final notice dated 22.06.1999 ExPw1/DX7 vide replies ExPW2/D, ExPW2/E and ExPW2/F. Hardev Dohil as Managing Director of defendants no.2 and on behalf of others again sent a letter dated 06.07.1999 Ex.PW1/DX9 to inform the plaintiffs regarding the completion of certain formalities which are as under:--

- a) Form 'C' and 'D' approved by the DDA in February 1994
- b) Stand-by generator of 125 KW installed in August, 1994
- c) Otis lifts operating from June, 1994. Certificate granted and renewed w.e.f.11.06.1999
- d) Transformers & Panel rooms (for RT & LT load) of 528 sq.ft.on the ground floor was handed over to D.V.B.in July, 1995 (Feb)
- e) Water connection from M.C.D.in July, 1996
- f) Sub-station/transformers commissioned by D.V.B.on 07.09.1998 & individual connection can be availed from DVB on application
- g) Clearance from the Chief Fire Officer dated 22.04.1999 certifying that the building is safe for occupation.

The defendant no.2 called upon the plaintiffs to make the payment i.e.the balance sale consideration immediately. The plaintiffs have replied the letters dated 06.07.1999 ExPW1/DX9 and dated

26.07.1999 vide replies dated 17.08.1999 Ex.PW2/G, PW2/K and PW2/I .

33. Hardev Dohil on behalf of defendants again sent a letter dated 23.08.1999 Ex.DW1/PX1 asking the plaintiffs to pay the balance payment which was replied by the plaintiffs vide letters dated 28.08.1999 Ex.PW2/H, PW2/I and PW2/J. Hardev Dohil again sent a letter dated 10.09.1999 Ex.PW1/DX6 asking the plaintiffs to pay the balance payment which was replied by the plaintiffs vide letter dated 23.09.1999. The plaintiffs in reply dated 23.09.1999 asked vendors to hand over possession of office spaces till 07.10.1999.

34. The Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V cast certain obligations upon the defendants no.1as well as on plaintiffs. The plaintiffs have paid a sum of Rs.1,00,000/- as earnest money in respect of each office spaces. The plaintiffs were required to pay the balance sale consideration to the defendants no.1 but subject to two conditions i.e delivery of vacant physical possession of the office spaces and within seven days of the receipt of intimation by registered post that the builder has provided adequate electricity for operation of one lift and lights in the said office spaces. The plaintiffs were liable to pay all dues,rates, charges and taxes as per different clauses of letter of allotment dated 07.06.1984 ExPW1/DX4 after the transfer of vacant physical possession of the office spaces. The obligations cast upon the defendants no.1under the Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V are to hand over the vacant physical possession of the office spaces and to pay all dues, rates,charges and taxes upto the date of transfer of office spaces. It is apparent that the plaintiffs are not required to pay dues, rates, charges and taxes to defendant no.2 w.e.f. 27.04.1994. The Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V also cast certain obligations upon the defendant no.2 i.e to provide stand-by Generator of minimum 100 K.W.capacity within three months of the execution of the Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and also to install Transformers in the building within six months from the date of the execution of the Agreements to Sell Ex.PW1/A to Ex.PW1/V. As Memorandum of Understanding dated 24.03.1995 Ex.PW1/W, the defendant no.2 has made one lift operational for the use of the plaintiffs and also allowed the plaintiffs to run the existing stand-by generator of 125 KVA capacity at the cost of the plaintiffs. The plaintiffs were not be liable to pay maintenance charges to the defendant no.2 i.e.the builder till the installation of transformer and the physical possession of the office spaces situated on 3th floor of the building is handed over to the plaintiffs after completion certificate and fire fighting clearance have been obtained. Clause 4 of the Memorandum of Understanding dated 24.03.1995 Ex.PW1/W cast important obligations on the defendants i.e to obtain completion certificate and fire fighting clearance and also to install transformer in the building in question.

35. The Agreement to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and Memorandum of Understanding dated 24.03.1984 Ex.PW1/W raised an important question for determination whether the time was the essence of contract or whether the limitation has started to run from 24.06.1999, the day on which the plaintiffs have received the final notice dated 22.06.1999 Ex.PW1/DX7. If the time has started to run in pursuance of Agreement to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V then the suits are barred by limitation and if the time has started to run from the date of receipt of final notice dated 22.06.1999 Ex.PW1/DX7 i.e. 24.06.1999 then the suits are within limitation.

36. The legal position as regards the time being the essence of contract for transfer of immovable property is fairly well settled. The initial presumption is that time is not the essence of such contracts. The mere fixation of a period within which the contract may have to be performed also does not make any such stipulation as the essence of the contract. The intention to treat time as the essence of the contract may however be evidenced by circumstances that are strong enough to displace the initial presumption. Even a stipulation in the agreement that time is the essence of the contract has to be read alongwith other provisions of the contract to determine whether the completion of the transaction within the time specified was intended to be a fundamental requirement.

37. It was held in the case of C.Nazeer Ahmed V S.Jahan Ara, 2001(2) Kar.L.J.288 (DB) that there is no presumption that time is the essence of the contract in a suit for specific performance. It was further held that mere naming specific time within which performance is to be completed does not make time essence of contract. In Nazeer Ahmed's case, the court has also referred the judgment delivered by the Supreme Court in Gomathinayagam Pillai & Ors. V Palaniswami Nadar, AIR 1967 SC 868. It was held that the fixation of the period within which contract is to be performed does not make time as the essence of the contract nor could the default clause in the contract evidence the intention of the parties to make time as the essence. It was held in the case of Samina Venkata Sureswara Sarma V Meesala Kota Muvullayya, AIR 1996 Andhra Pradesh 440 that time is not the essence of the contract. In this case parties have entered into an Agreement to Sell with stipulation that the remaining balance of consideration has to be paid at the time of registration within six months. The Vendor has agreed to get tenants evicted within said period but tenants have not vacated. In these circumstances, it was held that the time is not the essence of the contract. In case of Smt.Shakuntala Devi V M/s.Mohanlal Amrit Raj Jain Market, Pali, AIR 1994 Rajasthan 259 it was observed that time is not the essence of the contract and particularly in the sale of immovable property. The normal presumption is that time is not the essence of the contract and mere fixation of date for execution of sale deed is not indicative that time is essence of contract particularly when said date was extended from time to time. In case of Ram karan and Others V Govind Lal and another, AIR 1999 Rajasthan 167 it was observed as under:-

As regards the question of limitation and maintainability of the suit, learned counsel for the respondents during the course of hearing, vehemently, contended at the bar that the suit for specific performance giving rise to the present appeal was hopelessly barred by limitation inasmuch as while the agreement was executed as on 24.04.1966, the suit was instituted on 13.11.1981. While Article 54 of the Limitation Act, 1963 stipulates three years as the date fixed for performance, or if no such date is fixed when the plaintiffs have notice that performance is refused. In the instant case in my humble opinion the limitation of three years would not be applicable since there was no clause in the agreement stipulating the time for execution of the sale deed being the essence of the contract, hence the limitation of three years for the purpose of institution of a suit of such nature would not be relevant and the only logical conclusion as regards the period of limitation of three years would be the date from the accrual of cause of action which in the instant case should obviously be construed as the date when the notice for justice demand was served on the

respondent by the plaintiffs i.e.19.06.1981 while the suit was filed on 13.11.1981. Hence the suit is obviously within the period of limitation and the trial Court has already recorded a well reasoned finding in this regard which has been upheld by the first appellate Court of the Addl.District Judge, Baran vide impugned order dated 03.08.1994.

38. It was also observed in the case of Kashi Prasad V Chhabi Lal and others, AIR 1933 Allahabad 410(2) that there must be a date clearly mentioned in the contract whether the said contract is oral or in writing. The force of the word "fixed" implies that it should be fixed definitely and should not be left to be gathered from surrounding circumstances. It was also observed in the case of P.Sivan Muthiah and Others V John Sathiavasagam, 1990 Madras Law Journal Reports 490 that the first part of Article 54 of the Limitation Act could be invoked only when there is a definite date fixed for performing the contract. It is true that the expression 'date fixed' could mean either the date expressly fixed or the date which can be fixed with reference to a future event which is certain to happen. It was further observed that if on the other hand, the date is to be ascertained depending upon an event which is not certain to happen, this part of Article 54 is not at all applicable. In that contingency, it is only the latter part of Article 54 that could be invoked treating the case as one in which no date has been fixed for performance and that would be three years from the date when the plaintiffs have notice that performance is refused. It was also observed in Shrikrishna Keshav Kulkarni and Others V Balaji Ganesh Kulkarni and Others, AIR 1976 Bombay 342 as under:--

Under the agreement for sale of two ancestral houses jointly held by defendants 1 and 3 the sale was to be executed after the attachment which the creditors had brought was raised. Held in the absence of any indication when the attachment would be raised it had to be treated as a case in which no date was fixed for the performance of the contract. To such a case, the starting point of limitation was when the plaintiffs had notice that performance was refused. In this case that date was when one of the defendants sold one house under a registered sale deed. On that date the plaintiffs could be said to have been posted with the knowledge that the defendants were refusing performance of the contract and the suit having been brought within three years from that date was within time.

39. In case of Bhagwan Singh V Teja Singh, AIR 1995 Punjab and Haryana 64, the parties have entered into an agreement for sale of land purchased from rehabilitation department. The date for execution of the sale deed was specified in the Agreement to Sell. The Vendor obtained the sale certificate before execution of sale deed. The permission required to be obtained from Government if resale is restricted. Vendor has failed to obtain sale certificate before date specified for execution of sale deed. It was held that the cause of action for suit cannot be said to have accrued on the date specified. It was held as under :--

Article 54 of the Limitation Act provides period of limitation to be three years from the date fixed for the performance or, if no such date is fixed when the plaintiffs have notice that performance is refused. Thus, the period of limitation is three years of the accrual of cause of action. The cause in this case would have accrued to the plaintiffs on the defendant obtaining sale certificate and permission, if any, from the State Government. If this had been done before August, 15, 1976 and the plaintiffs intimated thereof, it could be safely said that the plaintiffs was liable to get the sale deed completed on or before August 15, 1976 but that is not so, the defendant having not obtained the sale certificate before the date fixed and in the absence thereof it could not be ascertained, whether there was a restriction placed on his right to sell the suit property and up to what time and if there was a restriction, he had not obtained permission from the State Government to transfer the property in favour of the third party, the plaintiffs in this case. In the situation like this, the sale could be completed after the defendant had obtained permission and if this had happened, after August 15, 1976 obviously the period of limitation for completion of sale under the agreement would commence from the date the plaintiffs had knowledge of permission having been obtained or that the defendant had a right to transfer the property after the expiry of period of restriction. In the facts of this case it is clear that the defendant had not obtained sale certificate till today and did not inform the plaintiffs that the latter had no legal obstacle in his way to execute the sale deed. Therefore, in the facts of this case, period of limitation could not be taken to have started w.e.f. August 15, 1976. The suit filed on July 22, 1981 will have to be held to be within limitation.

40. It was observed in the case of *Saraswathamma V H. Sharad Shrikhande and ors*, AIR 2005 Karnataka 292 that the expression 'date fixed for the performance' has to be understood in the context of agreement, the obligations undertaken by the respective parties in the agreement. Vendor herself undertook to put up construction and complete same within 90 days in all respects. The limitation starts to run when flat is ready, vacant possession is kept ready to be handed over to vendee. It was observed as under:--

The meaning of the expression 'date fixed for the performance' has to be understood in the context of the agreement, the obligations undertaken by the respective parties in the agreement. Even if a date is fixed initially for the performance of the contract and if the performance itself is dependant on the discharge of several other obligations undertaken by the promisor himself what should happen is a question to be considered.

41 . Sh. Rajesh Manchanda, Advocate, Counsel for the defendant has placed reliance upon the judgment *Suresh Chand Kathuria V Umed Singh and another*, 2006 II AD(Delhi) 490. In the said case, it was held that as per Article 54 of the Limitation Act, the period for filing a suit is three years from the date of cause of action. The agreement was dated 27.07.1988 but the suit was filed in the year 1999. The plaintiffs

alleged that the defendant requested the plaintiffs to pay additional amount for getting no objection certificate and income tax clearance on 13.09.1996, as such period of three years be counted from 13.09.1996. It was observed that two clauses of agreement make clear that defendant were to get clearance from concerned authorities within three months from date of agreement. Fresh period of limitation cannot start from making payment of Rs.20,000/-, as such suit was held to be time barred. The decision given by the Ld.Single Judge was upheld by the Division Bench of the High Court of Delhi in Subhash Chand Kathuria V Umed Singh & Anr., 2006 IV AD (Delhi) 737

42. In case of Ramzan V Hussaini, (1990) 1 SCC 104, in suit for specific performance of contingent contract the date fixed for performance need not be ascertainable in the face of the contract deed and may be ascertainable on the happening of a certain contingent even specified in the contract. In this case, contract of 1965 stipulates that on the day of redemption of the mortgaged house by the plaintiffs, the defendant would execute the sale deed of the house in plaintiffs's favour. Mortgage redeemed in 1970. However notice preceding the suit for specific performance served by plaintiffs in 1984.

It was held that the suit is barred by limitation and the time from which the limitation period of three years began to run being the date of redemption of the mortgage. In case of T.L.Muddukrishana and another V Lalitha Ramchandra Rao, (1997) 2 SCC 611 it was held that limitation begins to run from the date the parties have stipulated for performance of the contract. The suit is required to be filed within three years from the date fixed by the parties under the contract.

43. It is a well-accepted principle that in the case of sale of immovable property, time is never regarded as the essence of the contract. In fact, there is a presumption against time being the essence of the contract. This principle is not in any way different from that obtainable in England. Under the law of equity which governs the rights of the parties in the case of specific performance of contract to sell real estate, law looks not at the letter but at the substance of the agreement. It has to be ascertained whether under the terms of the contract the parties named a specific time within which completion was to take place, really and in substance it was intended that it should be completed within a reasonable time. An intention to make time the essence of the contract must be expressed in unequivocal language. In Govind Prasad Chaturvedi V Hari Dutt Shastri, (1977) 2 SCC 539 as under:--

It is settled law that the fixation of the period within which the contract has to be performed does not make the stipulation as to time the essence of the contract. When a contract relates to sale of immovable property it will normally be presumed that the time is not the essence of the contract. (Vide Gomalthinayagam Pillai V Pallaniswami Nadar, (1967) 1 SCR 227, 233) : (AIR 1967 SC 868 at p.871). It may also be mentioned that the language used in the agreement is not such as to indicate in unmistakable terms that the time is of the essence of the contract. The intention to

treat time as the essence of the contract may be evidenced by circumstances which are sufficiently strong to displace the normal presumption that in a contract of sale of land stipulation as to time is not the essence of the contract.

In Indira Kaur V Sheo Lal Kapoor, AIR 1988 SC 1074, it was held as under :

The law is well-settled that in transactions of sale of immovable properties, time is not the essence of the Contract.

44. The defendants no.1 were required to deliver the vacant physical possession of the office spaces to the plaintiffs as per clause 2 of the Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V. There is nothing on record which can suggest that the defendants no.1 i.e vendors have ever delivered the vacant physical possession of the office spaces. The defendant no.2 was under an obligation to provide adequate electricity for operation of one lift and lights in the office spaces. The builder i.e defendant no.2 has made one lift operational for the use of the plaintiffs and also made the provision to run stand-by generator of 125 KVA. The defendants no.1 were required to pay all dues, rates, charges and taxes payable upto the date of transfer of said office spaces and thereafter the same were liable to be paid by the plaintiffs but there is nothing on record which can suggest that the defendants no.1 have paid all the dues, rates, charges and taxes upto the date of transfer of office spaces. In fact there is nothing on record which can suggest that the office spaces have ever been transferred in the name of the plaintiffs. The defendant no.2 was also required to provide stand-by generator of minimum of 100 K.W.capacity within three months from the execution of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and to install transformers in the building in question within six months from the date of execution of Agreements to Sell Ex.PW1/A to Ex.PW1/V. The defendant no.2 has only provided the installation of 125 KVA generator but there is nothing on record which can suggest that the defendant no.2 has ever installed the transformers in the building in question within six months from the date of execution of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V. The Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and Memorandum of Understanding dated 24.03.1995 Ex.PW1/W can not be read in isolation, separately and mutually exclusive from each other. The Memorandum of Understanding dated 24.03.1995 Ex.PW1/W was an extension of the Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V Hardev Dohil, Managing Director of defendant no.2 was acting on behalf of defendant no.1. In pursuance of Memorandum of Understanding dated 24.03.1995 Ex.PW1/W, the defendant no.2 has also undertaken to obtain the completion certificate and fire fighting clearance from the concerned department and also installation of transformer (sub-station). 45 The combined reading of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and Memorandum of Understanding dated 24.03.1995 Ex.PW1/W clearly stipulated that the plaintiffs was required to pay the balance sale consideration in terms of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V only after handing over the vacant physical possession of the office spaces by the defendants no.1 to the plaintiffs, and after obtaining completion certificate and fire fighting clearance from concerned department by the defendant no.2 . The acts and liabilities of defendants no.1 cannot be separated from the acts and liabilities of defendant no.2 . The defendants were under the obligations before calling the plaintiffs for payment of balance sale consideration to hand over the physical possession of the office spaces as well as to obtain completion certificate and fire

fighting clearance from concerned departments. Mere providing of generator of 125 KVA and to make one lift operational were not sufficient for the plaintiffs to pay the balance sale consideration. The defendants have failed to perform their part of obligation by not obtaining the completion certificate, fire fighting clearance as well as installation of electric/power connection from the concerned authorities.

46. Hardev Dohil, Managing Director of defendant no.2 and on behalf of defendants no.1 has only informed M/s.Balco Estate Agents vide letter dated 24.05.1995 Ex.PW1/DX3 that the defendants are in position to provide 6 KW to each floor for lighting and one lift in operation. Mere information to M/s.Balco Estate Agents vide letter dated 24.05.1995 Ex.PW1/DX3 is not sufficient to establish that the defendants have performed their part of obligation as per Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and Memorandum of Understanding dated 24.03.1995 Ex.PW1/W. Hardev Dohil while acting for and on behalf of defendants vide letters dated 14.04.1998 Ex.PW1/DX5, 23.04.1998 Ex.PW1/DX8 and 22.06.1999 Ex.PW1/DX7 has asked the plaintiffs to pay the balance sale consideration alongwith interest @ 18% but there is nothing on record which can suggest that the defendants have performed their part of obligation prior to this. Time was not the essence of the contract i.e.the Agreement to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V under given facts and circumstances of the case. The second part of the Article 54 is applicable and limitation is not governed by first part of Article 54. The time has begin to run when Hardev Dohil acting for and on behalf of defendants has sent final notice dated 22.06.1999 Ex.PW1/DX7 calling upon the plaintiffs to pay the balance sale consideration. It was the starting point for limitation. The suits are filed on 24.12.1999. The suits are filed within the period of limitation. The issue no.2 is decided in favour of the plaintiffs and against the defendants.

47. Issue No.3 Whether there is no privity of contract between the plaintiffs and defendants no.1 as alleged in para 7 of the preliminary objections of WS and if so what its effect ? OPD The plaintiff M/s.Nahar Exports Ltd has stated that the plaintiff is a company incorporated under the Companies Act, 1956 and Sh.Vijay Gupta has been authorized and empowered by resolution dated 09.08.1999 ExPW2/A2 passed by the Board of Directors to institute the suit and to sign, verify the pleadings. The defendants have not taken any specific objection as to the privity of contract between the plaintiff M/s. Nahar Exports Ltd. and defendants no.1. The Agreements to Sell dated 27.04.1994 (Ex.PW1/I to ExPW1/R total 10 in number) pertaining to the plaintiff M/s.Nahar Exports Ltd. were executed between the plaintiff M/s.Nahar Exports Ltd. and the defendants no.1 which were also signed by Hardev Dohil, Managing Director of defendant no.2. There was a privity of contract between the plaintiff M/s.Nahar Exports Ltd.and defendants.

48 The plaintiff M/s.Nahar International Ltd. stated that the plaintiffs is a company incorporated under the Companies Act, 1956 and was earlier known M/s.Punjab Con-Cast Steels Ltd. It is further stated that the name of M/s. Punjab Con-Cast Steels Ltd. was later on changed to M/s.Nahar International Ltd. The defendants in the preliminary objection no.7 of the written statement stated that there is no privity of contract between the plaintiff M/s.Nahar International Ltd. and the defendants no.1 as the defendants no.1 has entered into Agreements to Sell dated 27.04.1994 (Ex.PW1/A to ExPW1/H total 8 in number) with M/s.Punjab Con-Cost Steels Ltd. M/s.Punjab Con-Cost Steels Ltd. has never sent any intimation or information regarding the change or merger

with the plaintiff M/s.Nahar International Ltd. and as such the suits filed by the plaintiff M/s. Nahar International Ltd. are liable to be dismissed.

49 The PW2 Vijay Gupta in affidavit Ex.P2 stated that the plaintiff M/s.Nahar International Ltd. was formerly known as Punjab Con-Cast Steels Ltd. which was changed to the present plaintiff vide certificate of incorporation dated 06.10.1994 Ex.PW2/B. The perusal of Ex.PW2/B reflects that M/s.Punjab Con-Cast Steels Ltd. was changed to M/s.Nahar International Ltd. i.e. the present plaintiff and for this necessary certificate dated 06.10.1994 ExPW2/B was issued by the office of the Registrar of Companies, Punjab, Himachal Pradesh and Chandigarh at Jalandhar.

The Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/H were executed between M/s.Punjab Con-Cast Steels Ltd. and the defendants no.1 which was also signed by Hardev Dohil, Managing Director of the defendant no.2 as confirming party. The Memorandum of Understanding dated 24.03.1995 Ex.PW1/W was also executed between M/s.Punjab Con- Cast Steels Ltd. and Hardev Dohil. PW2 Vijay Gupta during cross examination stated that the name of the M/s.Punjab Con-Cast Steels Ltd. was changed to the plaintiff M/s. Nahar International Ltd. after entering into Agreements to Sell dated 27.04.1994 Ex.PW1/A to ExPW1/H with the defendants but the intimation about change in the name was never given by the plaintiff M/s. Nahar International Ltd. to the defendants in writing. The erstwhile M/s.Punjab Con-Cast Steels Ltd was changed to the plaintiff M/s. Nahar International Ltd. by certificate of incorporation Ex.PW2/B. The plaintiff M/s. Nahar International Ltd. has stepped into shoes of erstwhile M/s. Punjab Con- Cast Steels Ltd. by virtue of ExPW2/B. There is a privity of contract between the plaintiff M/s.Nahar International Ltd. and the defendants. 50 The plaintiff M/s.Nahar Industrial Enterprises Ltd. stated that the plaintiff is a company incorporated under the Companies Act, 1956 and was earlier known M/s.Oswal Fats and Oils Ltd. It is further stated that the name of the M/s. Oswal Fats and Oils Ltd. was later on changed to M/s.Nahar Industrial Enterprises Ltd. The defendants in the preliminary objection no.7 stated that there is no privity of contract between the plaintiff M/s. Nahar Industrial Enterprises Ltd. and the defendants no.1as the defendants no.1have entered into Agreements to Sell dated 27.04.1994 (Ex.PW1/S to ExPW1/V total 4 in number) with M/s. Oswal Fats and Oils Ltd. M/s.Oswal Fats and Oils Ltd. has never sent any intimation or information regarding the change or merger of the company with the plaintiff M/s. Nahar Industrial Enterprises Ltd. and as such the suits filed by the plaintiff M/s. Nahar Industrial Enterprises Ltd. are liable to be dismissed.

The PW2 Vijay Gupta in affidavit Ex.P2 stated that the plaintiff M/s.Nahar Industrial Enterprises was formerly known as Oswal Fats and Oils Ltd. which was changed to the plaintiff M/s. Nahar Industrial Enterprises Ltd. vide certificate of incorporation dated 21.10.1994 Ex.PW2/C. As per Ex.PW2/C M/s.Oswal Fats and Oils Ltd. was changed to M/s.Nahar Industrial Enterprises Ltd. The Agreements to Sell dated 27.04.1994 Ex.PW1/S to ExPW1/V were executed between M/s.Oswal Fats and Oils Ltd. and the defendants no.1which were signed by Hardev Dohil, Managing Director of the defendant no.2 as confirming party. The Memorandum of Understanding dated 24.03.1995 Ex.PW1/W was also executed between M/s.Oswal Fats and Oils Ltd. and Hardev Dohil on behalf of defendant no.2 i.e.the builder. The PW2 Vijay Gupta during cross examination stated that the name of the plaintiff M/s. Nahar Industrial Enterprises Ltd. was changed after entering into Agreements to Sell dated 27.04.1994 Ex.PW1/S to ExPW1/V with the defendants, but the intimation about

change in the name was never given by the plaintiff M/s Nahar Industrial Enterprises Ltd. to the defendants in writing. The erstwhile M/s.Oswal Fats and Oils Ltd was changed to the plaintiff M/s. Nahar Industrial Enterprises Ltd. by certificate of incorporation Ex.PW2/C. The plaintiff M/s. Nahar Industrial Enterprises Ltd. has stepped into shoes of erstwhile M/s. Oswal Fats and Oils Ltd. by virtue of ExPW2/C. There is a privity of contract between the plaintiff M/s.Nahar Industrial Enterprises Ltd.and defendants. The issue no.3 is decided in favour of the plaintiffs and against the defendants.

51. Issue No.4 Whether this suit has been properly valued for the purposes of court fee and jurisdiction as alleged in para 8 of the preliminary objections of WS? OPD The plaintiffs have valued the suit for the purpose of jurisdiction and court fee as per sale consideration as mentioned in Agreements to Sell ExPW1/A to ExPW1/V on which the defendants no.1have agreed to sell the office spaces to the plaintiffs. The defendants in the corresponding para of the written statements have stated that the sale consideration was not at the rate as mentioned by the plaintiffs as the cost price excluded the charges to be paid by the plaintiffs in terms of 8,10,13 and 14 of the letter of allotment dated 07.06.1984 ExPW1/DX4. The DW1 in para 9 of affidavit Ex.D1 also stated that the suits are not properly valued as per the Suit Valuation Act and the plaintiffs have not affixed the proper court fees on the plaints. The DW1 further deposed that the market value of the office spaces in question is much higher than the value assessed by the plaintiffs and the total cost of the office spaces is around Rs.13,13,400/-on which the plaintiffs are required to pay court fees. The DW1 in affidavit Ex.D1 also stated that the value of the office spaces is increasing day by day. The plaintiffs have affixed the court fees as per different sale consideration as mentioned in Tables herein above in terms of the Agreements to Sell ExPW1/A to ExPW1/V. The plea of the defendants that in the cost of office spaces, other charges which are to be payable in pursuance of letter of allotment dated 07.06.1984 ExPW1/DX4 be also included for purposes of valuation of suits does not inspire confidence. These charges are not quantified. The sale consideration of each office spaces was fixed. The valuation of the suit is to be done on the basis of value of the property on the date of institution of the suit. The valuation of the suit for the purpose of court fees and jurisdiction cannot be changed due to the fluctuations in the market. The suits are properly valued for the purposes of court fees and jurisdiction. Issue no.4 is decided in favour of the plaintiffs and against the defendants.

52. Issue no.5 Whether the defendants could legally forfeit the earnest money paid by the plaintiffs pursuant to an Agreement to Sell dated 27.04.94? OPD The defendants no.1has purchased the office spaces from the defendant no.2 vide letter of allotment dated 07.06.1984 ExPW1/DX4. Thereafter the defendants no.1has entered into Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V for sale of office spaces to the plaintiffs for different sale consideration. As per the terms and conditions of the Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V, the plaintiffs have to pay the sale consideration to the defendants no.1against the delivery of vacant physical possession of the office spaces and within seven days of the receipt of written intimation by registered post that the builder has provided adequate electricity for operation of one lift and lights in the said office spaces . The clause 6 deals with the forfeiture of the earnest money of Rs.1,00,000/- paid by the plaintiffs to the defendants no.1at the time of execution of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V. As per clause 6 if the purchaser fails to pay the balance sale consideration then the earnest money paid by the plaintiffs shall stand forfeited to the defendants no.1and the

Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V shall be deemed as null and void. The Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V have placed some obligations on the defendant no.2 , the promoter and builder of the building in question. The defendant no.2 was required to provide stand-by generator of minimum 100 K.W.capacity within three months from the execution of the Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and to install transformers in the building in question within six months from the date of execution of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V. Subsequently one Memorandum of Understanding dated 24.03.1995 Ex.PW1/W was also executed between the plaintiffs and the defendant no.2 . As per clause 5 of the Memorandum of Understanding dated 24.03.1995 Ex.PW1/W, the plaintiffs was required to pay the sale consideration to the defendants no.1 in terms of Agreements to Sell Ex.PW1/A to Ex.PW1/V. As per clause 4, the defendant no.2 was required to install the transformer (sub-station) and to hand over the physical possession of the office spaces to the plaintiffs after obtaining the completion certificate and fire fighting clearance from concerned departments. Hardev Dohil, Managing Director of defendant no.2 i.e.the builder was acting for and on behalf of defendants no.1 i.e.vendors as well as defendant no.2. Hardev Dohil also signed the Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V as confirming party and also executed Memorandum of Understanding dated 24.03.1995 Ex.PW1/W.

53. The issue which needs consideration is whether the plaintiffs were liable to pay the balance sale consideration in pursuance of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and the defendants no.1 were legally permitted to forfeit the earnest money. The defendant no.2 could not prove that defendant no.2 has obtained the completion certificate and fire fighting clearance from concerned authorities and also installed the transformer in terms of Memorandum of Understanding dated 24.03.1995 Ex.PW1/W . The Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and Memorandum of Understanding dated 24.03.1995 Ex.PW1/W cannot be ready mutually exclusive and independent of each other. The Memorandum of Understanding dated 24.03.1995 Ex.PW1/W is just an extension of Agreement to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V although it was not signed by the defendants no.1. Hardev Dohil, Managing Director of defendant no.2 was entering into the correspondence with the plaintiffs even on behalf of defendants no.1. The balance sale consideration was to be paid by the plaintiffs only after the handing over of physical possession of the office spaces which was never handed over to the plaintiffs. Hardev Dohil, Managing Director of defendant no.2, on behalf of defendants has sent various letters dated 14.04.1998 Ex.PW1/DX5, dated 23.04.1998 Ex.PW1/DX8, dated 22.06.1999 Ex.PW1/DX7 and dated 06.07.1999 Ex.PW1/DX9 and demanded from the plaintiffs to pay the balance sale consideration. Hardev Dohi. vide letter dated 06.07.1999 Ex.PW1/DX9 has informed the plaintiffs about getting the Form 'C' and 'D' approved by DDA in February 1994, stand-by generator of 125 KW installed in August 1994, lifts made operational from June, 1994, transformers were handed over to DVB in July, 1995, water connection has been obtained. There is nothing on record which can suggest that the defendant no.2 has ever obtained the completion certificate and fire fighting clearance from fire department and also installed the transformer (sub-station). There was no occasion for the plaintiffs to pay the balance sale consideration to the defendants no.1 as the defendants no.1 have never handed over the vacant physical possession of the office spaces. Although as per Memorandum of Understanding dated 24.03.1995 Ex.PW1/W , one lift was made operational and the generator of 125 KVA was installed but the defendants have failed to fulfill the other

obligations arising out of the Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and Memorandum of Understanding dated 24.03.1995 Ex.PW1/W . The defendants were not legally entitled to forfeit earnest money paid by the plaintiffs. Issue no.5 is decided in favour of the plaintiffs and against the defendants.

54. Issue No.6 Whether the allotment letter dated 07.06.84 in respect to suit building in favour of defendants no.1 is an integral part of Agreement to Sell dated 27.04.94 between the parties to the present suit and if so what its effect? OPD The defendants no.2 was allotted a plot no.11 at Rajendra Place, New Delhi-110008 by DDA for construction of a commercial building. The defendants no.1 have booked commercial flats/office spaces on 3rd floor with the defendant no.2 vide letter of allotment dated 07.06.1984 ExPW1/DX4 signed by the Hardev Dohil, Managing Director of defendant no.2 i.e.builder and defendant no.1. Subsequently the plaintiffs have purchased the office spaces from the defendants no.1 vide Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V. The plaintiffs alleged that the defendants have never fulfilled their obligations arising out of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and Memorandum of Understanding dated 24.03.1995 Ex.PW1/W. The defendants have stated that the plaintiffs were just assignees of defendants no.1 in respect of office spaces and the defendants no.1 cannot sell the better title than what has been transferred to defendants no.1 in pursuance of letter of allotment dated 07.06.1984 ExPW1/DX4. The defendants stated that the letter of allotment dated 07.06.1984 ExPW1/DX4 is an integral part of the Agreement to Sell Ex.PW1/A to Ex.PW1/V. The letter of allotment dated 07.06.1984 ExPW1/DX4 is perused. As per various clauses of letter of allotment dated 07.06.1984 ExPW1/DX4, the defendants no.1 were required to pay charges for electrification, service permanent connection, fan and light fixtures which were not included in the cost of the office spaces. The defendants no.1 were also required to pay the maintenance service charges besides other taxes in pursuance of clauses 13 and 14. As per Agreements to Sell Ex.PW1/A to Ex.PW1/V, the defendants no.1 at the time of execution of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V have already paid entire sale consideration of the office spaces to the defendant no.2 . The defendants no.1 were required to pay all dues, rates, charges and taxes payable upto the date of transfer of the office spaces in favour of plaintiffs and thereafter it was the liability of the plaintiffs to pay such charges. It has not been mentioned in the Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V that the plaintiffs after the purchase of office space was immediately became liable to pay said charges. The PW2 was not cross examined on the issue that the letter of allotment dated 07.06.1984 ExPW1/DX4 was an integral part of the Agreement to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V. The defendants no.1 cannot sell the better right or title to the plaintiffs than what they have acquired from the letter of allotment dated 07.06.1984 ExPW1/DX4. If it is assumed that the letter of allotment dated 07.06.1984 ExPW1/DX4 is an integral part of the Agreement to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V, even then it will not affect the rights and obligations of the parties. The defendants were under an obligation to install transformer (sub-station), to obtain completion certificate, and fire fighting clearance which they have failed to do so. Issue no.6 is decided accordingly .

55. Issue No.7 Who is guilty of breach of the terms of Agreement to Sell dated 27.04.94 and what its effect on the rights and liabilities of the parties in the present suit ? OP Parties.

The plaintiffs have purchased the office spaces from the defendants no.1 in pursuance of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V. The Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V have created rights and obligations in favour of both the parties i.e.the plaintiffs and the defendants no.1 and 2. The plaintiffs i.e.the buyer have paid Rs.1,00,000/-as earnest money to the defendants no.1. The plaintiffs were required to pay the balance sale consideration but subject to conditions i.e (i) delivery of physical possession by the defendants no.1and (ii) the receipt of written intimation by registered post that the defendant no.2 has provided adequate electricity for operation of one lift and lights in the office spaces. It is not proved that the defendants no.1have actually got transferred the office spaces in the favour of the plaintiffs. It is not proved that the defendants no.1have delivered the physical possession of the office spaces to the plaintiffs . The defendant no.2 was also required to provide stand-by generator of minimum 100 KW within three months from the date of execution of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and to install transformers in the building in question within six months from the date of execution of Agreements to Sell Ex.PW1/A to Ex.PW1/V. Subsequently a Memorandum of Understanding dated 24.03.1995 Ex.PW1/W was also executed between the plaintiffs and the defendant no.2 . Hardev Dohil, Managing Director of defendant no.2 was also acting on behalf of the defendants. Hardev Dohil, who was acting on behalf of defendants was responsible to fulfill all the obligations arising out of Agreements to Sell Ex.PW1/A to Ex.PW1/V and Memorandum of Understanding Ex.PW1/W . The defendant no.2 has only provided one lift for the use of the plaintiffs and allowed the plaintiffs to run stand-by generator of 125 KVA. The defendant no.2 has never obtained completion certificate, fire fighting clearance, handed over the vacant physical possession of the office spaces and to install the transformer in the building in question. The handing over the physical possession of the office spaces was the basic essence of the Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V. The defendants have never discharged/performed their obligations. The defendants are guilty of breach of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V. The issue no.7 is decided in favour of the plaintiffs and against the defendants.

56. Issue No.8 Whether the plaintiffs was ready and willing to perform its part of the contract in terms of Agreement to Sell dated 27.04.94 before filing of the present appeal? OPP The plaintiffs and the defendants no.1have entered into Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V for the sale of office spaces . The plaintiffs have paid the earnest money of Rs.1,00,000/- in respect of each office space. The Memorandum of Understanding dated 24.03.1995 Ex.PW1/W was also executed between the plaintiffs and the defendant no.2 . The defendant no.2 also signed the Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V as confirming party. The plaintiffs alleged that the defendants have never fulfilled their obligations created under the Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and Memorandum of Understanding dated 24.03.1995 Ex.PW1/W . The plaintiffs pleaded that they were always ready and willing to pay the balance sale consideration in terms of Agreement to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V. The defendants have alleged that the plaintiffs have not paid the balance sale consideration despite providing one operational lift and electricity in the building in question in terms of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V. The defendants in their respective written statements stated that the plaintiffs were/are not ready and willing to perform their obligations/contract.

57. The expression "readiness and willingness" cannot be treated as a strait-jacket formula and has to be determined from the totality of facts and circumstances relevant to the case and also to the conduct of the party concerned and in order to be real has to be backed by the capacity to do so. It was held in the case of Sant Lal V Shyam Dhawan, AIR 1986 Delhi 275 that the expression "readiness and willingness" cannot be treated as strait- jacket formula. It was held as under:--

The only essential term of the contract to be performed by the plaintiffs was the payment of the balance price at the time of the execution and the registration of the sale deed by the defendant. The question of payment of balance price could occur only after the defendant had got the sale permission from the Delhi Development Authority as also the income tax clearance certificate and the vacant possession of the house in question from his tenant. The stage of the payment of the balance price never arose in this case on account of the failure on the part of the defendant in the matter of performance of his part of the contract. The requirement of law is simply the continuous readiness and willingness on the part of the plaintiffs to perform his part of the contract throughout from the commencement of the Agreement to Sell till the hearing of the suit but that does not mean that the plaintiffs was expected to carry on the cash balance price of Rs.1,45,000/- in his pocket during all the period, but what he was to show was simply his continuous readiness and willingness to pay that balance price only as and when the appropriate occasion for the same was to arise. The expression "readiness and willingness" cannot be treated as a strait-jacket formula and has to be determined from the totality of facts and circumstances relevant to the case and also to the conduct of the party concerned and in order to be real has to be backed by the capacity to do so.

58. It was also held in the case of Ramesh Chandra Chandiok V Lal Sabharwal (dead) by his legal representatives, AIR 1971 SC 1238A as under:--

On the facts and circumstances of the case A must be held to be ready and willing to perform his part of the contract till date of suit and was therefore entitled to a decree for specific performance. Readiness and Willingness cannot be treated as a strait-jacket formula. These have to be determined from the entirety of facts and circumstances relevant to the intention and conduct of the party concerned. There was no material on record to show that A at any stage was not ready and willing to perform his part of contract or that he did not have the necessary funds for payment when the sale deed would be executed after due sanction was obtained.

59. In Nathulal V Phoolchand, AIR 1970 SC 546 it was held as under :--

[I]f, therefore, under the terms of the contract the obligations of the parties have to be performed in a certain sequence, one of the parties to the contract cannot, require compliance with the obligations by the other party without in the first instance performing his own part of the contract which in the sequence of obligations is performable by him earlier.

In view of the arrangement made by Phoolchand, it was clear that he had at all relevant times made necessary arrangements for paying the amount due, but so long as Nathulal did not carry out his part of the contract, Phoolchand could not be called upon to pay the balance of the price. It must therefore be held that Phoolchand was at all relevant time willing to carry out his part of the contract.

60. In case of *Shakuntal Devi V M/s.Mohanlal Amrit Raj Jain Market, Pali*, AIR 1994 Rajasthan 259, it was observed that the plaintiffs have specifically pleaded in his plaint about his readiness and willingness to perform his part of contract but the defendant did not execute the documents irrespective of oral and written request to do so which necessitated to file the present suit for specific performance of contract. It was further observed that the question of payment of balance price arises only when seller has performed his part of contract and failure of seller to obtain income tax clearance certificate then the purchaser need not prove his financial position to pay balance price. It was further observed that he has merely to show continuous readiness and willingness to pay balance price only as and when appropriate occasion for the same was to arise. In case of *Lata Ambwani V Sangeeta Karla*, 95 (2002) DLT 541 it was observed that the affidavit reveals that the plaintiffs is ready and willing to perform her part of the agreement. There is nothing to indicate that the plaintiffs did not have the funds or there was any act or omission which may prompt the Court to conclude that she is not entitled to decree for specific performance. It was also held in the case of *S.K.Gupta V Avtar Singh Bedi and Ors*, 122(2005) DLT 437 as under:--

To be prepared for something would mean to be equipped with what is needed for the action or event. Prepared to pay money would not mean that the plaintiffs have to prove that he went about jingling money to demonstrate his capacity to pay the purchase price. It is sufficient if the plaintiffs establishes that he had means to arrange for payment of the consideration payable by him. One cannot lose sight of the fact that many a sale transaction is financed by backup loans. Wealth tax assessment of the deceased for the year in question establishes that he was a man of means. His conduct, evidenced from PW-1/3, PW-1/8 and PW-1/11 and 12, establishes that the plaintiffs was always ready and willing to perform his part of the agreement.

61. Sh. Rajesh Manchanda, Advocate, Counsel for the defendants has relied upon the judgment delivered in *Smt.Chand Rani (dead) by L.Rs. V Smt.Kamal Rani (dead) by L.Rs.*, AIR 1993 SC 1742. It was held that when the purchaser was not ready and willing to pay the amount in part as agreed, before delivery of possession and income tax clearance certificate and redemption of property, it was contrary to the conditions of the agreement and the purchaser was not entitled to the specific performance of contract.

62. The defendant no.2 after the execution of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and Memorandum of Understanding dated 24.03.1995 Ex.PW1/W has written a letter dated 24.05.1995 Ex.PW1/DX3 to M/s.Balco Estate Agents wherein it was stated that the defendant no.2 is in a position to provide 6 KW to each floor i.e.power and one lift will always been in operation for their use. M/s.Balco Estate Agents was requested to contact the plaintiffs for

finalization of the sale. It was further intimated that on the receipt of balance amount the defendants shall allow the plaintiffs to start with their internal fitting and decoration work. The copy of the letter dated 24.05.1995 ExPW1/DX3 was not endorsed to the plaintiffs. Hardev Dohil for himself and on behalf of defendants has written a letter dated 14.04.1998 Ex.PW1/DX5 to the Directors of the plaintiff M/s.Nahar Exports Ltd., the erstwhile plaintiffs M/s.Punjab Con- Cast Steels Ltd. and M/s.Oswal Fats and Oils Ltd. wherein the plaintiffs were called to pay balance 85% sale consideration with 18% interest for the delayed period. Thereafter Sh.Hardev Dohil as Managing Director of defendant no.2 has written another letter dated 23.04.1998 Ex.PW1/DX8 whereby the plaintiffs were asked to pay the balance sale consideration to vendors i.e defendants no.1 and take physical possession/endorsement from the builder. The letter Ex.PW1/DX8 reflects that till 23.04.1998 the physical possession of the office spaces was not handed over to the plaintiffs in terms of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and Memorandum of Understanding dated 24.03.1995 Ex.PW1/W. The plaintiffs were also informed that the defendant no.2 has provided 6 KW power for lighting and allowed to use 125 KVA generator installed in the building and one lift has been made functional. But letter dated 24.09.1998 ExPW1/DX8 did not contain anything about obtaining of completion certificate and fire fighting clearance from Delhi Fire Services in terms of Memorandum of Understanding dated 24.03.1995 Ex.PW1/W. Hardev Dohil as Managing Director of defendant no.2 again sent a final notice dated 22.06.1999 Ex.PW1/DX7 whereby again asked the plaintiffs to pay the balance sale consideration. The letter 22.06.1999 Ex.PW1/DX7 was silent about obtaining of completion certificate and fire fighting clearance from Fire Department besides installation of electricity. The final notice dated 22.06.1999 was replied by the plaintiffs replies dated 30.06.1999 Ex.PW2/D, Ex.PW2/E and Ex.PW2/F.

63. Hardev Dohil as Managing Director of defendant no.2 and on behalf of defendants no.1 again sent a letter dated 06.07.1999 Ex.PW1/DX9 wherein asked the plaintiffs to make the payment of balance sale consideration. It was also informed to the plaintiffs regarding the completion of certain formalities such as Form 'C' and 'D' approved by DDA in February 1994, stand-by generator of 125 KW installed in August 1994, lifts made operational from June, 1994 etc. However, the defendants have not placed or proved on record any completion certificate issued from concerned authority i.e.DDA/MCD and clearance from Chief Fire Officer. The plaintiffs have replied letter dated 06.07.1999 ExPW1/DX9 vide replies dated 17.08.1999 Ex.PW2/G, Ex.PW2/K and 17.08.1999 Ex.PW2/I. The plaintiffs have requested the defendant no.2 to supply the documents pertaining to clearance from various authorities in terms of Agreements to Sell dated 27.09.1999 ExPW1/A to ExPW1/V and Memorandum of Understanding dated 25.03.1995 ExPW1/W. The defendant no.2 sent another letter dated 23.08.1999 Ex.DW1/PX1 which was replied vide replies dated 28.08.1999 Ex.PW2/L, Ex.PW2/J and Ex.PW2/H by the plaintiffs. The perusal of said letter reflects that the plaintiffs were always ready and willing to pay balance sale consideration in terms of Agreement to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and Memorandum of Understanding dated 24.03.1995 Ex.PW1/W. The defendants have failed to prove that they have obtained the necessary approvals from concerned authorities regarding the completion certificate and fire fighting system. There was no occasion for the plaintiffs to make the payment of balance sale consideration. Issue no.8 is decided in favour of the plaintiffs and against the defendants.

Whether the plaintiffs is entitled to the relief of specific performance in respect of suit property as prayed in para (a) of the plaint? OPP In case issue no.9 is decided in negative, what was the market value of the suit premises at the time of filing of the present suit and whether the plaintiffs is entitled to get difference in the price of the suit premises given in the Agreement to Sell dated 27.04.94 and what its market price on the date of filing of this suit?

The plaintiffs have prayed that the defendants be directed to specifically perform their part of contract/agreement and to execute necessary sale deeds in respect of office spaces after obtaining all the necessary permission/income tax clearance certificate as required for valid execution of the sale deeds in favour of the plaintiffs and to hand over vacant, physical possession of the same to the plaintiffs. The plaintiffs in alternate prayed that if specific performance of the Agreements to Sell dated 27.04.1994 ExPW1/A to ExPW1/V is not possible then a decree for damages equivalent to an amount being the difference in price of office spaces on date of Agreements to Sell ExPW1/A to ExPW1/V and market price on the date of judgment be passed in favour of the plaintiffs and against the defendant.

65. Section 20 of the Specific Relief Act, 1963 provides that the jurisdiction to decree specific performance is discretionary and the court is not bound to grant such relief merely because it is lawful to do so. However, the discretion of the Court is not arbitrary but sound and reasonable, guided by judicial principles. The court is not bound to decree specific performance of a contract simply because it would be lawful under any of the foregoing sections to grant such relief. A party cannot claim specific performance as a matter of right but the discretion is to be exercised on sound reasonable principles.

66. In case of D.Anjaneyulu V Damacheria Venkata Sessaiah, AIR 1987 SC 1641 the Court declined to grant a decree for specific performance in favour of the plaintiffs, even though the defendant was guilty of breach of agreement. The defendant was directed to pay compensation to the plaintiffs.

67. It was also held in the case of Parakunnnan Veetill Joseph's Son Mathew V Nedubara Karuvila's Son, AIR 1987 SC 2328 as under:--

Section 20 of the Specific Relief of Act, 1963 preserves judicial discretion to Courts as to decreeing special performance. The Court should meticulously consider all facts and circumstances of the case. The Court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter in the judicial verdict. The Court should take care to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiffs.

68. It was held in Govind Ram V Gian Chand, AIR 2000 SC 3106 that grant of a decree for specific performance of contract is not automatic and is one of the discretions of the Court and the Court has to consider whether it would be fair, just and equitable. The Court is guided by the principles of justice, equity and good conscience.

69. The Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V were executed in the year 1994. The Memorandum of Understanding dated 24.03.1995 Ex.PW1/W was executed in the year 1995. As per the Memorandum of Understanding dated 24.03.1995 Ex.PW1/W, the defendant no.2 was to obtain completion certificate, to install fire fighting equipments and to take fire fighting clearance from Chief Fire Officer. The defendant no.2 was also required to install the electricity and transformer (sub-station). The said acts were not done by the defendant no.2. Although the plaintiffs have purchased the office spaces from the defendants no.1 but in fact Hardev Dohil, Managing Director of defendant no.2 was acting on behalf of defendant no.1. It is not come on record that the building in question is in habitable condition and can be occupied by the plaintiffs for the purpose of running the offices. It has not come on record whether the concerned authorities have granted the completion certificate and the Chief Fire Officer has given the clearance about the fire fighting system in the building in question. There is nothing on record which can suggest that there is proper arrangement of electricity. Even if any specific performance is granted in favour of the plaintiffs even then it will not be feasible for the defendants to get completed all the legal formalities from different departments. The plaintiffs have paid only Rs.1,00,000/- i.e.18% of the total sale consideration towards each office space. The market value of the property has been increasing considerably since the execution of Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V. It is not a fit case where the defendants can be directed to execute the sale deeds in favour of the plaintiffs in discharge of obligations created under Agreements to Sell dated 27.04.1994 Ex.PW1/A to Ex.PW1/V and Memorandum of Understanding dated 24.03.1995 Ex.PW1/W. It raises the question what relief under given facts and circumstances of the case should be granted to the plaintiffs. It will be in the fitness of things if the defendants are directed to pay appropriate and suitable compensation to the plaintiffs under given facts and circumstances of the case. The ends of justice will be achieved if the defendants are directed to pay a sum of Rs.3,00,000/- including the costs of suit alongwith interest @ 9% w.e.f.22.06.1999 when the defendant no.2 had issued the final notice ExPW1/DX7 on behalf of defendants to the plaintiffs till realization in respect of each office space (total twenty two).

70. Relief In view of above discussion, all the twenty two suits are decreed in favour of the plaintiffs and against the defendants and a decree of Rs.3,00,000/- which shall include the costs of the suit alongwith interest @ 9% w.e.f.22.06.1999 when defendant no.2 had issued the final notice ExPW1/DX7 on behalf of defendants to the plaintiffs till realization is passed in each case (total twenty two) in favour of the plaintiffs and against the defendants. The decree sheets be prepared accordingly in each case. The judgment be placed in all the twenty two files. Files be consigned to the record room.

Announced in open court
Dated: 30.05.2007

(Dr.Sudhir Kumar Jain)
Additional District Judge, Delhi

30.05.2007.

Present : Proxy for the parties.

Vide separate judgment the suit is decreed and a decree of Rs.3,00,000/- which shall include the costs of the suit alongwith interest @ 9% p.a. w.e.f. 22.06.1999 when the defendant no.2 had issued the final notice ExPW1/DX7 on behalf of defendants to the plaintiff till realization is passed in favour of the plaintiff and against the defendants. The decree sheet be prepared accordingly. File be consigned to the record room.

(Dr. Sudhir Kumar Jain) Additional District Judge/Delhi 30/05/2007.