

) Suit No. 87/2003 (H.C.S.No. 1323/99) vs Hardev Dohil on 30 May, 2007

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

1) Suit No. 87/2003 (H.C.S.No. 1323/99)

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25, Rajendra Place,
New Delhi - 110008.

... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Angela Dohil,
E-39, NDSE Part-II,
New Delhi-110040.
3. M/s.H.Dohil Construction
Company Pvt.Ltd.,
Flat No. 204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019.

... Defendants

2) Suit No. 88/2003 (H.C.S.No. 1330/99)

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25,Rajendra Place,
New Delhi - 110008.

... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Deepak Kumar,
C-1/28, Model Town,
Delhi.
3. M/s.H.Dohil Construction
Company Pvt.Ltd.,
Flat No. 204, Dohil Chambers,
46, Nehru Place,

2

New Delhi-110019.

... Defendants

3) Suit No. 89/2003 (H.C.S.No. 1331/99)

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25,Rajendra Place,
New Delhi - 110008.

... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Hardeep kaur,
K-17/17, DLF Qutab Enclave,
Phase- III,
Gurgaon.
3. M/s.H.Dohil Construction
Company Pvt.Ltd.,
Flat No. 204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019.

... Defendants

4) Suit No. 90/2003 (H.C.S.No. 1335/99)

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25,Rajendra Place,
New Delhi - 110008.

... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Prem Raksha Dohil,
E-39, NDSE Part-II,
New Delhi - 110049.
3. M/s.H.Dohil Construction
Company Pvt.Ltd.,

3

Flat No. 204, Dohil Chambers,
46, Nehru Place,

New Delhi-110019.

... Defendants

5) Suit No. 91/2003 (H.C.S.No. 1322/99)

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25,Rajendra Place,
New Delhi - 110008.

... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. M/s.H.Dohil Construction
Company Pvt.Ltd.,
Flat No. 204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019.

... Defendants

6) Suit No. 92/2003 (H.C.S.No. 1340/99)

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25,Rajendra Place,
New Delhi - 110008.

... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Harbans Kaur,
2/33, Sarvopriya Vihar,
New Delhi.
3. M/s.H.Dohil Construction
Company Pvt.Ltd.,
Flat No. 204, Dohil Chambers,

4

46, Nehru Place,
New Delhi-110019.

... Defendants

7) Suit No. 93/2003 (H.C.S.No. 1343/99)

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25,Rajendra Place,
New Delhi - 110008.

... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Rakesh Sohal,
E-39, NDSE Part-II,
New Delhi - 110049.
3. M/s.H.Dohil Construction
Company Pvt.Ltd.,
Flat No. 204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019.

... Defendants

8) Suit No. 94/2003 (H.C.S.No. 1334/99)

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25,Rajendra Place,
New Delhi - 110008.

... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Maninder Kaur,
2/33, Sarvopriya Vihar,
New Delhi.
3. M/s.H.Dohil Construction
Company Pvt.Ltd.,

5

Flat No. 204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019.

... Defendants

9) Suit No. 95/2003 (H.C.S.No. 1339/99)

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25,Rajendra Place,
New Delhi - 110008.

... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Manav Sohal,
MCA 1461, Adampur,
Distt.Jalandhar,
Punjab.
3. M/s.H.Dohil Construction
Company Pvt.Ltd.,
Flat No. 204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019.

... Defendants

10) Suit No. 96/2003 (H.C.S.No. 1336/99)

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25,Rajendra Place,
New Delhi - 110008.

... Plaintiff

Versus

6

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Saroj Jetik,
K-17/13, DLF Qutab Enclave,
Phase-II,
Gurgaon.
3. M/s.H.Dohil Construction
Company Pvt.Ltd.,
Flat No. 204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019.

... Defendants

11) Suit No. 97/2003 (H.C.S.No. 1342/99)

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25,Rajendra Place,
New Delhi - 110008.

... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Veena Sohal,
Bhullarai,
Phagwara,
Distt.Jalandhar,
Punjab.
3. M/s.H.Dohil Construction
Company Pvt.Ltd.,
Flat No. 204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019.

... Defendants

12) Suit No. 98/2003 (H.C.S.No. 1326/99)

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,

7

25,Rajendra Place,
New Delhi - 110008.

... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Pradeep Kumar,
C-1/28, Model Town,
Delhi.
3. M/s.H.Dohil Construction
Company Pvt.Ltd.,
Flat No. 204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019.

... Defendants

13) Suit No. 99/2003 (H.C.S.No. 1329/99)

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25,Rajendra Place,
New Delhi - 110008.

... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Jasbir Kaur,
2/33, Sarvopria Vihar,
New Delhi.
3. M/s.H.Dohil Construction
Company Pvt.Ltd.,
Flat No. 204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019.

... Defendants

14) Suit No. 100/2003 (H.C.S.No. 1327/99)

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25,Rajendra Place,

8

New Delhi - 110008.

... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Mamta Sohal,
Bhullarai,
Phagwara,
District Jalandhar,
Punjab.
3. M/s.H.Dohil Construction
Company Pvt.Ltd.,
Flat No. 204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019.

... Defendants

15) Suit No. 101/2003 (H.C.S.No. 1324/99)

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25,Rajendra Place,

New Delhi - 110008.

... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Shakti Kumar Jetik,
K-17/13, DLF Qutab Enclave,
Phase-III,
Gurgaon.
3. M/s.H.Dohil Construction
Company Pvt.Ltd.,
Flat No. 204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019.

... Defendants

16) Suit No. 102/2003 (H.C.S.No. 1332/99)

Date of Institution: 30.06.1999

Date of Decision : 30.05.2007

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M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25,Rajendra Place,
New Delhi - 110008.

... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Kanta Sohal,
E-39, NDSE Part-II,
New Delhi.
3. M/s.H.Dohil Construction
Company Pvt.Ltd.,
Flat No. 204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019.

... Defendants

17) Suit No. 103/2003 (H.C.S.No. 1337/99)

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25,Rajendra Place,
New Delhi - 110008.

... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Harbhajan Kaur,
2/33, Sarvopriya Vihar,
New Delhi.
3. M/s.H.Dohil Construction
Company Pvt.Ltd.,
Flat No. 204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019.

... Defendants

18) Suit No. 104/2003 (H.C.S.No. 1325/99)
10

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25,Rajendra Place,
New Delhi - 110008.

... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Rajan Sohal,
MCA 1461, Adampur,
Distt.Jalandhar,
Punjab.
3. M/s.H.Dohil Construction
Company Pvt.Ltd.,
Flat No. 204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019.

... Defendants

19) Suit No. 105/2003 (H.C.S.No. 1333/99)

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25,Rajendra Place,
New Delhi - 110008.

... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Upasana Dohil,

E-39, NDSE Part-II,
New Delhi-110049.

3. M/s.H.Dohil Construction
Company Pvt.Ltd.,
Flat No. 204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019. ... Defendants

20) Suit No. 106/2003 (H.C.S.No. 1341/99)
11

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25,Rajendra Place,
New Delhi - 110008. ... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Ranjan Dohil,
E-39, NDSE Part-II,
New Delhi-110049.
3. M/s.H.Dohil Construction
Company Pvt.Ltd.,
Flat No. 204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019. ... Defendants

21) Suit No. 107/2003 (H.C.S.No. 1338/99)

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25,Rajendra Place,
New Delhi - 110008. ... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Piara Singh,

C-1/28, Model Town,
Delhi.

3. M/s.H.Dohil Construction
Company Pvt.Ltd.,
Flat No. 204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019.

... Defendants

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22) Suit No. 108/2003 (H.C.S.No. 1328/99)

M/s.H.B.Stock Holdings Ltd.,
2nd Floor, Gopala Tower,
25,Rajendra Place,
New Delhi - 110008.

... Plaintiff

Versus

1. Hardev Dohil,
E-39, NDSE Part-I,
New Delhi.
2. Manpreet Singh,
2/33, Sarvopirya Vihar,
New Delhi.
3. M/s.H.Dohil Construction
Company Pvt.Ltd.,
Flat No. 204, Dohil Chambers,
46, Nehru Place,
New Delhi-110019.

... Defendants

Date of Institution of all suits : 30.06.1999
Date of Decision : 30.05.2007

APPEARANCES

FOR THE PLAINTIFF : SH. P. K. MITTAL, ADVOCATE
FOR THE DEFENDANTS : SH. RAJESH MANCHANDA, ADVOCATE

SUITS FOR SPECIFIC PERFORMANCE

JUDGMENT

This judgment shall decide twenty two suits filed by the plaintiff against the defendants for specific performance as commonf acts are involved. All the suits were consolidated vide order dated 18.04.2001. The suit bearing no. 90/2003 (H.C.Suit No. 1335/99) was treated as the main suit. In all suits the plaintiff is same but the defendant no.2/vendor is different in each suit. The defendants no.1 and 3 are same in all suits except in suit no. 91/2003 where defendant no.1 is vendor.

2. Briefly stated the relevant facts as pleaded by the plaintiff are that the plaintiff, a company incorporated under the Companies Act, 1956, was earlier known as H. B. Portfolio Leasing Limited and upon Scheme of Arrangement as per the orders passed by the High Court of Delhi u/s 391 to 394 of the Companies Act, 1956 changed to M/s.H.B.Stock Holdings Limited i.e.the present plaintiff; the defendant no.3, a private limited company incorporated under the Companies Act, 1956 is owned, controlled and managed by its Managing Director i.e defendant no.1; the defendant no.3 was allotted a Plot bearing No.11, Rajendra Place, New Delhi by Delhi Development Authority for construction of a commercial building; the defendant no.3 has promoted and developed a commercial building known as "Prem Dohil Sadan" over said plot; the defendants no.2 of all suits (hereinreferred to as 'defendants no.2'), but in suit no. 91/2003 the defendant no.1 is vendor, are either nominee or friends, associates of the defendant no.1 who have purchased the office spaces on 5th floor of the commercial building known as "Prem Dohil Sadan" ; the defendants on.2 have agreed to sell office spaces to the plaintiff, the details of which are given hereinbelow:--

Serial Defendant Details of Office Sale consideration No. No.2/Vendor Space
Situating at Suit No. 5th floor 1 87/2003 Angela Dohil Hall No.2, 292 Rs.6,42,400/-

sq.ft.super area 2 88/2003 Deepak Kumar Hall No.1, 302 Rs.6,64,400/-

sq.ft.super area 3 89/2003 Hardeep Kaur Hall No.2, 292 Rs.6,42,400/-

sq.ft.super area 4 90/2003 Prem Raksha Hall No.2, 292 Rs.6,42,400/-

| | | Dohil | sq.ft.super area |
|----|---------|--|--|
| 5 | 91/2003 | Hardev Dohil (in Hall No.1, 302 Rs.6,64,400/- this case sq.ft.super area defendant no.1 is vendor) | |
| 6 | 92/2003 | Harbans Kaur | Hall No.3, 300 Rs.6,60,000/- sq.ft.super area |
| 7 | 93/2003 | Rakesh Sohal | Hall No.3, 300 Rs.6,60,000/- sq.ft.super area |
| 8 | 94/2003 | Maninder Kaur | Hall No.3, 300 Rs.6,60,000/- sq.ft.super area |
| 9 | 95/2003 | Manav Sohal | Hall No.3, 300 Rs.6,60,000/- sq.ft.super area |
| 10 | 96/2003 | Saroj Jetik | Hall No.1, 303 Rs.6,66,600/- sq.ft.super area |
| 11 | 97/2003 | Veena Sohal | Hall No.3, 300 Rs.6,60,000/- sq.ft.super area |
| 12 | 98/2003 | Pradeep Kumar | Hall No.2, 292 Rs.6,42,400/- sq.ft.super area on |

5th floor

| | | | | |
|----|----------|--------------------|------------------------------------|---------------|
| 13 | 99/2003 | Jasbir Kaur | Hall No.2, 292 sq.ft.super area | Rs.6,42,400/- |
| 14 | 100/2003 | Mamta Sohal | Hall No.2, 292 sq.ft.super area | Rs.6,42,400/- |
| 15 | 101/2003 | Shakti Kumar Jetik | Hall No.2, 292 sq.ft.super area | Rs.6,42,400/- |
| 16 | 102/2003 | Kanta Sohal | Hall No.2, 292 sq.ft.super area | Rs.6,42,400/- |
| 17 | 103/2003 | Harbhajan Kaur | Hall No.1, 302 sq.ft.super area | Rs.6,64,400/- |
| 18 | 104/2003 | Rajan Sohal | Hall No.2, 292 sq.ft.super area | Rs.6,42,400/- |
| 19 | 105/2003 | Upasana Dohil | Hall No. 3,300 sq. ft. super area | Rs.6,60,000/- |
| 20 | 106/2003 | Ranjan Dohil | Hall No. 3, 300 sq. ft. super area | Rs.6,60,000/- |
| 21 | 107/2003 | Piara Singh | Hall No. 2, 300 sq. ft. super area | Rs.6,60,000/- |
| 22 | 108/03 | Manpreet Singh | Hall No. 3, 301 sq.ft. super area | Rs.6,62,200/- |

3. The defendant no.1 has been representing or otherwise acting as an agent of the defendants no.2 and defendant no.3; the defendant no.1 has approached the plaintiff for the sale of office spaces as detailed hereinabove; the plaintiff after negotiations with the defendant no.1 for and on behalf of defendants no.2 has entered into an Agreement to Sell dated 27.04.1994 with the defendant no.2 for the purchase of office spaces as detailed hereinabove; the defendant no.1 on behalf of defendant no.3 has signed the Agreement to Sell dated 27.04.1994 as 'confirming party'; the plaintiff has made the payment of Rs.1,00,000/- in terms of contractual obligations as per Agreement to Sell dated 27.04.1994 to the defendants no.2 as an earnest money, the receipt of which is acknowledged by the defendants no.2; the defendants no.2 in the Agreement to Sell dated 27.04.1994 has stated that the defendants no.2 as a vendors had made the full payment of the sale consideration of office spaces to the defendant no.3 i.e. the builder; the defendants have grossly and severally defaulted and neglected to perform the covenants as per the agreement which are;--

- i) to get completed the construction/finishing in time,
- ii) to get installed Transformer (sub-station) in the building in question,
- iii) to get installed Lifts and Fire Fighting Equipments,
- iv) to obtain completion certificate from the MCD,
- v) to obtain necessary approvals from various statutory authorities necessary for handing over physical possession of office space in habitable condition, and
- vi) to get electricity/power connection from DESU.

The defendant no.3 has admitted and acknowledged said defaults; a Memorandum of Understanding dated 24.03.1995 was entered into between the plaintiff and defendant no.3 whereby the plaintiff was not required to pay the maintenance charges to the defendant no.3 till the installation of sub- station and handing over of physical possession of the office spaces to the plaintiff after obtaining completion certificate and fire fighting clearance and the plaintiff was required to pay the balance sale consideration to the defendant no.2 in terms of aforesaid Agreement to Sell dated 27.04.1994; the defendant no.3 in terms of Agreement to Sell dated 27.04.1994 and Memorandum of Understanding dated 24.03.1995 was required to obtain completion certificate from MCD and also to obtain fire fighting clearance from Delhi Fire Services besides electricity connection from Delhi Vidyut Board; the defendant no.3 could not obtained the completion certificate from the MCD, failed to install requisite fire fighting equipments in the building in question and also to obtain electricity/power connection from DVB and due to these reasons the building in question "Prem Dohil Sadan" was not fit for occupation, use and enjoyment by the plaintiff and other purchasers; the defendant no.1 on behalf of defendant no.2 has written a letter dated 14.04.1998 alleging breach of Memorandum of Understanding dated 24.03.1995 on the part of the plaintiff and called upon the plaintiff to make the balance payment alongwith 18% interest while in fact the defendant no.3 has failed to perform certain acts as detailed hereinabove; the plaintiff has replied the letter dated 14.04.1998 vide reply dated 21.04.1998 and conveyed to the defendants that the plaintiff is ready and willing to make the payment of balance sale consideration to the defendants no.2 providing that the defendants no.2 are willing to hand over the physical possession of the office spaces; the defendant no.1 once again wrote a letter dated 23.04.1998 to the plaintiff calling upon the plaintiff to make the payment of balance sale consideration; the plaintiff could not occupy the office spaces due to breaches, defaults and neglects on the part of the defendants as the defendants could not obtained the completion certificate from the MCD, install fire fighting equipments and could not obtained fire fighting clearance from the Delhi Fire Services, lifts were not operational, electricity connection was not obtained, occupancy certificate was not obtained besides other finishing work; the meetings took place between the plaintiff and the defendant no.1 during the period May, 1998 to March, 1999 but meetings could not be materialized; the defendant no.1 has sent a final demand notice dated 22.06.1999 received by the plaintiff on 24.06.1999 calling upon the plaintiff to make the balance sale consideration by 30.06.1999; the plaintiff was ready and willing to perform his part of agreement by paying the balance sale

consideration but the defendants could not obtained the completion certificate from the MCD, installed fire fighting equipment, could not obtained fire fighting clearance from Delhi Fire Services and could not installed electricity connection. The plaintiff has filed the suits for specific performance directing the defendant no.2 to execute the sale deed or conveyance deed or title deed or some other documents in respect of the office spaces in question as detailed hereinabove.

4. The defendants have filed respective written statements and contested the suits on similar grounds. The defendants in respective written statements stated that the plaintiff was not ready and willing to perform its obligations under the contract governing the contractual obligations between the plaintiff and the defendant no.3; the plaintiff was not ready and willing to pay the various amounts due and payable to the defendant no.3; the defendants no.2 have applied for the allotment of office spaces in "Prem Dohil Sadan" which was accepted by the defendant no.3 vide letter of allotment dated 07.06.1984 on the terms and conditions as stated therein; the plaintiff is an assignee under the defendants no.2 and the contractual obligations between the plaintiff and defendant no.3 are contained in the letter of allotment dated 07.06.1984; the plaintiff was obliged to perform all the obligations under letter of allotment dated 07.06.1984 before the plaintiff can seek enforcement of the obligations of the defendant no.2 under the letter of allotment dated 07.06.1984; as per clause 8 of the letter of allotment dated 07.06.1984, the defendant no.2 was required to pay charges for electrification, service permanent connection charges, fan and light fixtures which were not included in the cost of the office spaces besides other charges; the defendants no.2 were also obliged to pay maintenance charges, house tax and other levy as per clause 13 and 14 of the letter of allotment dated 07.06.1984; the cost of the office spaces did not include the costs/charges/payments as contemplated by paras 8,10,13 and 14 of the letter of allotment dated 07.06.1984; the defendant no.3 has endorsed the transfer as per clause 3 of the Agreement to Sell dated 27.04.1994 which was signed by the defendant no.3 in confirmation of the terms and conditions; the office spaces were transferred in the name of the plaintiff in the books and records of defendant no.3 as per the separate receipts executed by the defendants no.2 in favour of the plaintiff confirming the receipt of earnest money paid by the plaintiff; the defendants no.2 had complied with the requirement of clause 3 of the Agreement to Sell dated 27.04.1994 and further all dues, rates, charges and taxes payable in respect of the office spaces after 27.04.1994 became payable by the plaintiff in terms of clause 5 of the Agreement to Sell dated 27.04.1994 to the defendant no.3; the liability of the plaintiff to make the payment of dues, rates, charges and taxes in terms of clause 8,10,13 and 14 of the letter of allotment dated 07.06.1984 was in addition to its liability to pay the sale consideration to the defendants no.2; the defendant no.3 has also made the payment to the contractors for air conditioning, false ceiling and ducting till 11.02.1998 and the accounts have not been settled so far; the space was handed over to the DESU (now DVB) in February, 1995, the payment demanded by the said department was made in October, 1995 and the consultant for fire detection was engaged in 1995; the plaintiff at the time of execution of Memorandum of Understanding dated 24.03.1995 has accepted its liability to pay balance sale consideration to the defendants no.2 in terms of Agreement to Sell dated 27.04.1994; the availability of the lift and requisite electricity was duly confirmed in the said Memorandum of Understanding dated 24.03.1995; the plaintiff was exempted from making payment of the maintenance charges till installation of the transformer (sub-station); the defendant no.3 has applied to the DDA for issuance of completion certificate but due to transfer of the area from DDA to MCD, the completion

certificate could not be issued from MCD for which a writ petition was filed before the High Court of Delhi; the transaction between the parties were conducted in the presence of M/s. Balco Estate Agents; the plaintiff had intimation of the provisions of adequate electricity for operation of one lift and lights in the office spaces as required under clause 2 of the Agreement to Sell dated 27.04.1994 which was again confirmed in the Memorandum of Understanding dated 24.03.1995 executed between the plaintiff and the defendant no.3; the plaintiff has committed breach of the Agreement to Sell dated 27.04.1994 which entitled the defendants no.2 to forfeit the earnest money paid by the plaintiff in terms of clause 6 of the Agreement to Sell dated 27.04.1994; the defendant no.3 has provided a 15 kilowatt functional load in the building in question since 1985 and in addition to that the defendant no.3 has installed a stand by generator of 125 KVA as stipulated in the Memorandum of Understanding dated 24.03.1995 but the plaintiff has not paid the balance sale consideration. The defendants have controverted other allegations of the plaintiff.

5. The plaintiffs filed replications.

6. 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 plaintiff and defendant 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 plaintiff 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 defendant 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 plaintiff 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 plaintiff 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 plaintiff 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.

7. The plaintiff has examined Sh.J.M.L.Suri, who tendered his affidavit which is Ex.P1. The PW1 has referred documents which are Ex.PW1/1 to Ex.PW1/13. The PW1 in pursuance of order dated 14.02.2007 was also re- examined and tendered his supplementary affidavit which is Ex.PX. The PW1 in supplementary affidavit has referred document which is Ex.PW1/14. The defendants have examined the defendant no.1 as DW1 who tendered his affidavit as Ex.D1.

8. Sh.P.K.Mittal, Advocate, counsel for the plaintiff and Sh.Rajesh Manchanda, Advocate for the defendants heard. Written arguments/submissions placed on record by parties also considered. Record perused. Issuewise findings are as under.

9. Issue No.1 Whether the present suit has been signed, verified and instituted by a duly authorized and competent person ? OPP The plaintiff stated that the plaintiff is a company incorporated under the Companies Act, 1956 and was earlier known as HB Portfolio Leasing Limited and upon Scheme of Arrangement, the plaintiff is now known as H.B.Stock Holdings Limited. The plaintiff further stated that the plaint is signed, verified and instituted by Sanjeev Kumar, who is stated to be the authorized signatory of the plaintiff. The defendants in respective written statements did not take the objection that the plaint is not signed, verified and instituted by a duly authorized person.

The PW1, J.M.L.Suri, Executive Director of the plaintiff in his affidavit Ex.P1 has deposed that the plaint had been signed by Sanjeev Kumar, Vice President (Legal) and Company Secretary of the plaintiff who was duly authorized by the Board of Directors of the plaintiff to sign, verify and file the plaint and the said Sanjeev Kumar was also well conversant with the facts and circumstances of the case.

The PW1 has proved the certified copy of Board Resolution in favour of Sanjeev Kumar which is Ex.PW1/3 (Ex.PW1/1). The Board Resolution Ex.PW1/3 (Ex.PW1/1) perused. The perusal of Ex.PW1/3 (Ex.PW1/1) reflects that the Board of Directors of the plaintiff on 17.06.1999 has resolved to authorize Sanjeev Kumar, Vice President (Legal) and Company Secretary of the plaintiff alongwith J.M.L.Suri, Executive Director (PW1) to sign, verify, affirm plaint and to do all such acts which may be necessary for filing of the present cases. The plaintiff also filed the supplementary affidavit of PW1 which is Ex.PX wherein PW1 has deposed that the plaintiff in its meeting held on 29.06.1999 has taken on record the resolution passed by circulation dated 17.06.1999 Ex.PW1/3 (Ex.PW1/1) whereby Dr.Sanjeev Kumar, Vice President (Legal) and Company Secretary and PW1 were authorized to sign, verify and file legal cases against the defendants in respect of the building in question "Prem Dohil Sadan". The Board of Directors of the plaintiff again in the meeting held on 27.10.2006 have confirmed and ratified the acts and proceedings taken by the PW1 and Dr.Sanjeev Kumar, the then Vice President (Legal) and Company Secretary in signing, verifying and filing of

plaints and other proceedings. The plaintiff also proved the extract of the minutes of the meeting of Board of Resolution held on 27.10.2006 as Ex.PW1/14. The perusal of Ex.PW1/14 reveals that all the acts taken by the PW1 and Dr.Sanjeev Kumar, Vice President(Legal) and Company Secretary in signing, verifying and filing of complaints were ratified. The relevant resolution is reproduced as under for facility of reference :--

"RESOLVED THAT actions, steps and proceedings taken by Mr.J.M.L.Suri, Executive Director and Dr.Sanjeev Kumar, the then Vice-President (Legal) and Company Secretary in signing, verifying and filing of complaints/suits, applications, affidavits and giving evidence, from time to time, and now here after against various Vendors who had entered into Agreement to Sell dated 27.04.1994 with the company and also against Mr.Hardev Dohil and also against M/s. H.Dohil Construction Co (P) Ltd and any other actions, steps and proceedings taken thereat in the said suits filed before Hon'ble Delhi High Court now pending in the Hon'ble Court of Dr.Sudhir K.Jain, Addl.District Judge, Delhi, be and is hereby ratified, approved and confirmed."

10. The PW1 J.M.L.Suri was cross examined by the defendants. There is nothing in the cross examination of PW1 which can establish that Dr.Sanjeev Kumar, Vice President (Legal) and Company Secretary of the plaintiff was not authorized to sign, verify and institute the complaint.

11. Sh. Rajesh Manchanda, Advocate, Counsel for the defendants has argued that PW1 J.M.L.Suri in the cross examination admitted that he has not brought the minute books of the plaintiff and notice or agenda of the meeting in which decision was taken to authorize Dr.Sanjeev Kumar, Vice President (Legal) and Company Secretary of the plaintiff to institute the suits as such the plaintiff has not proved that Dr.Sanjeev Kumar was authorized to sign the suits; the authority of Dr.Sanjeev Kumar can only be proved as per section 193 and 194 of the Companies Act, 1956. Sh.Manchanda relied upon Birla DLW Ltd. V M/s.Prem Engineering Works, 77(1999) DLT 171 (DB).

Sh. P.K. Mittal, Advocate, Counsel for the plaintiff has argued that vide resolution dated 17.06.1999 Ex.PW1/3 (Ex.PW1/1), Dr.Sanjeev Kumar was authorized to sign, verify and institute the present complaint as well as to initiate all the necessary steps for initiation of legal proceedings against the defendants; the Board of Directors vide Ex.PW1/14 has ratified all the acts done by Dr. Sanjeev Kumar for initiation of legal proceedings against the defendants; and the suit is signed, verified and instituted by a duly authorized person.

12. 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.

13. 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 dehors 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.

14. 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.

15. 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.

16. Sh. Rajesh Manchanda, Advocate, Counsel for the plaintiff placed reliance on decision delivered in 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 plaintiff.

17. The plaintiff is a company incorporated under the Companies Act, 1956. The plaint is signed, verified and instituted by Dr.Sanjeev Kumar, Vice President (Legal) and Company Secretary of the plaintiff. The defendants in their respective written statement did not take the specific objection that the suit is not signed, verified and instituted by a duly authorized person. The plaintiff has proved the resolution passed by the Board of Directors of the plaintiff on 17.06.1999 wherein PW1 J.M.LSuri and Dr.Sanjeev Kumar, Vice President (Legal) and Company Secretary of the plaintiff were authorized to sign, verify and institute the suit which was later on ratified by Ex.PW1/14. The suits are signed, verified and instituted by a duly authorized person. The issue no.1 is decided in favour of the plaintiff and against the defendants.

18. Issue No.2 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.

19. The present suits are suits for specific performance of the Agreement to Sell dated 27.04.1994 Ex.PW1/5. The Article 54 of the schedule of the Limitation Act, 1963 deals with limitation prescribed for filing a suit for specific performance of a contract. It provides 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. The last column of Article 54 of the schedule contains two parts. The first part indicates that in case any date has been 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 notice of performance is refused by the plaintiff.

20. The defendants have pleaded that the suits are barred by limitation as have been filed after the expiry of period of limitation of three years from the date of execution of Agreement to Sell dated 27.04.1994 Ex.PW1/5 and Memorandum of Understanding dated 24.03.1995 Ex.PW1/6. Sh.P.K.Mittal, Advocate, counsel for the plaintiff has stated that the time was not the essence of the contract as such it cannot be said that the period of limitation has started from the date of execution of Agreement to Sell dated 27.04.1994 Ex.PW1/5 and Memorandum of Understanding dated

24.03.1995 Ex.PW1/6.

21. To decide the controversy whether the suit is within the period of limitation or not, certain facts are required to be highlighted which are not disputed by the parties. The defendant no.3 was allotted a plot bearing no. 11 Rajendra Place, New Delhi-110008 by Delhi Development Authority for construction of a commercial building. The defendant no.3 has promoted and developed a commercial building known as "Prem Dohil Sadan" on the said plot. The defendants no.2 have booked office spaces on 5th floor with the defendant no.3. The defendant no.3 has allotted the office spaces to the defendants no.2 vide letter of allotment dated 07.06.1984 executed in favour of each of the defendant no.2. The defendants no.2 thereafter sold the office spaces situated in halls no.1, 2 and 3 on the 5th floor of building in question to the plaintiff vide Agreement to Sell dated 27.04.1994 Ex.PW1/5. The dealings between the plaintiff and defendants regarding the purchase of office spaces forming part of halls no.1,2 and 3 situated on the 5th floor of the building in question took place through Balco Estate Agents as reflected from letters dated 30.12.1993 Ex.DW1/Y and dated 04.04.1994 Ex.DW1/Z . The Agreement to Sell dated 27.04.1994 Ex.PW1/5 was signed by the the defendants no.2 as vendors and the Director of the plaintiff. The defendant no.1 as Director of defendant no.3 also signed the Agreement to Sell dated 27.04.1994 Ex.PW1/5 as confirming party. Some relevant clauses of Agreement to Sell dated 27.04.1994 Ex.PW1/5 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 Space 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 Space.

5. That all dues, rates, charges, and taxes payable upto the date of transfer of the Said Office Space 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.

22. The perusal of Agreement to Sell dated 27.04.1994 Ex.PW1/5 reflects that the defendants no.2 i.e.the Vendors have booked undivided shares in the office spaces of hall nos.1,2 and 3 situated on the 5th floor of the building in question vide letter of allotment dated 07.06.1984 issued by the defendant no.3 and at that time Flat Buyer Agreement was also issued by the defendant no.3 i.e builder. The Agreement to Sell dated 27.04.1994 Ex.PW1/5 further reflects that the defendant no.2 i.e.the Vendor has made the full payment of the sale consideration to the defendant no.3 i.e builder. The plaintiff has paid Rs.1,00,000/- to the defendants no.2 as an earnest money in respect of office spaces. The plaintiff has not paid the balance sale consideration. Clause 2 provides that the balance sale consideration shall be paid by the purchaser i.e.the plaintiff to the Vendor i.e.the defendant no.2 against delivery of vacant physical possession of office space 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. Clause 5 further provides that all dues, rates, charges, and taxes payable upto the date of transfer of the said office space shall be paid by the vendor i.e.the defendants no.2 and thereafter the said charges shall be paid by the purchaser i.e.the plaintiff. The Agreement to Sell dated 27.04.1994 Ex.PW1/5 also cast certain obligations on the defendant no.3 i.e.the builder. The defendant no.3 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 to install Transformers in the building within six months from the date of the execution of Agreement to sell dated 27.04.1994 Ex.PW1/5 failing which the plaintiff shall hold back the payment of maintenance charges till the transformers are installed.

23. Subsequent to the execution of Agreement to Sell dated 27.04.1994 Ex.PW1/5, Memorandum of Understanding dated 24.03.1995 Ex.PW1/6 was also executed between the plaintiff and the defendant no.3. The perusal of Ex.PW1/6 reflects that undivided office spaces on the 5th floor of "Prem Dohil Sadan" purchased by defendants no.2 were not operational. As per Clause 2, builder i.e.the defendant no.3 has made one lift operational for the use of the purchaser i.e.the plaintiff. Clause 4 provides that the purchaser i.e.the plaintiff shall not be required to pay any maintenance charges to the Builder/Maintenance Company i.e.the defendant no.3 till the transformer (sub-station) is installed and physical possession of office space on 5th floor is handed over to the respective purchasers after completion certificate and fire- fighting clearance have been obtained. The relevant clauses of Ex.PW1/6 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 space on 3rd and 5th floor is handed over to the respective purchasers after completion certificate and fire-fighting clearance have been obtained.

24. The plaintiff has pleaded that the defendants have breached the terms and conditions of the sale and purchase as per Agreement to Sell dated 27.04.1994 Ex.PW1/5 and Memorandum of Understanding dated 24.03.1995 Ex.PW1/6; and the plaintiff has always been ready and willing to perform its part of contract. The plaintiff alleged that the defendants have defaulted and neglected to perform the following covenants under the Agreement to sell dated 27.04.1994 ExPW1/5 and Memorandum of Understanding dated 24.03.1995 ExPW1/6.

- i) To get completed the construction/finishing in time;
- ii) To get installed Transformer (sub-station) in the building in question;
- iii) To get installed lifts in the said building;

- iv) To get installed fire fighting equipments;
- v) To get completion certificate from MCD;
- vi) To get all requisite approvals and consents from all statutory authorities for handing over physical possession of office space in habitable condition; and
- vii) To get electricity/power connection from DESU.

The plaintiff stated that the defendant no.3 till date could not obtained the completion certificate from MCD and could not installed fire fighting equipments and as such was denied the certificate from Delhi Fire Services. The defendants have defaulted in the performance of their part of contract. The plaintiff has further stated that the cause of action has arisen in favour of the plaintiff on 24.06.1999 when the plaintiff has received the letter dated 22.06.1999 ExPW1/10 from the defendant no.3 threatening to forfeit the earnest money and to treat the Agreement to Sell dated 27.04.1994 Ex.PW1/5 as null and void. The suit was filed on 30.06.1996. The PW1 in affidavit Ex.P1 also deposed on the similar lines. The PW1 in affidavit Ex.P1 in para 29 stated that the cause of action has arisen in favour of the plaintiff on 24.06.1999 when the plaintiff has received the letter dated 22.06.1999 Ex.PW1/10.

25. The defendants have pleaded that the plaintiff is an assignee under the defendants no.2. The defendants no.2 vide letter of allotment dated 07.06.1984 were allotted the office spaces in hall nos.1, 2 and 3 of the 5th floor of the building in question. The rights and obligations of the defendants no.2 under the letter of allotment dated 07.06.1984 have been taken over by the plaintiff. The plaintiff is obliged to perform all the obligations under the letter of allotment dated 07.06.1984 before the plaintiff can seek enforcement of the obligations of the defendant no.2 under the Agreement to sell Dated 27.04.1994 ExPW1/5. The defendants further stated that as per letter of allotment dated 07.06.1984 it was the obligation of the allottee to pay maintenance charges. The defendants no.2 have made the full payment towards the office spaces @ Rs.420/-per sq.ft. as stipulated under clause 3 of the letter of allotment dated 07.06.1984, however, the costs/charges payable under clauses 8,10,13 and 14 have remained outstanding till date. The plaintiff and the defendants no.2 have entered into an Agreement to Sell dated 27.04.1994 Ex.PW1/5 wherein it was mentioned that the rights of the defendants no.2 have emanated from the letter of allotment dated 07.06.1984. 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 plaintiff in terms of clause 5 of the Agreement to Sell dated 27.04.1994 Ex.PW1/5 to the defendant no.3. The defendants have stated that the plaintiff has 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 to the defendant no.3. The plaintiff has defaulted to perform its obligation in terms of Agreement to Sell dated 27.04.1994 Ex.PW1/5 and Memorandum of Understanding dated 24.03.1995 Ex.PW1/6 . The defendants have denied that the cause of action accrued in favour of plaintiff to file the suits on 24.06.1999.

26. Sh.Rajesh Manchanda, Advocate, Counsel for the defendants has argued that as per section 3 of the Limitation Act, 1963, every 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 limitation/time for filing the suit can never stop and the time has started to run for filing the suits for specific performance by the plaintiff w.e.f.01.04.1995 as per clause 6 of the Agreement to Sell dated 27.04.1994 Ex.PW1/5; the defendant no.3 has made one lift operational and also made the provision for lighting in the office spaces purchased by the plaintiff as appeared from Memorandum of Understanding dated 24.03.1995 Ex.PW1/6; the PW1 J.M.L.Suri in cross examination admitted that the defendant no.2 had only to inform the plaintiff about the electricity in suit premises and one lift was functional in the premises for completion of sale transaction by the defendants; as per the Agreement to Sell dated 27.04.1994 Ex.PW1/5 and Memorandum of Understanding dated 24.03.1995 Ex.PW1/6, the defendant no.2 was only required to intimate in writing to the plaintiff about the adequate electricity in the building in question to run the lift and light in the office space which have been done by the defendants at the time of execution of Memorandum of Understanding dated 24.03.1995 Ex.PW1/6; once the limitation started to run can never be stopped; the period of limitation has started for filing the suits for specific performance by the plaintiff w.e.f.01.04.1995 ; the plaintiff was to make payment of balance sale consideration within seven days from the date of written intimation as per clause 2. Sh.Manchanda further argued that the present cases fall in the first category of Article 54 and the 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 and other decided cases.

27. Sh.P.K.Mittal, Advocate, counsel for the plaintiff argued that the defendants in their respective written statements have not pleaded that the suits are barred by law of limitation and as such they have waived the objection regarding the period of limitation; the plaintiff was 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 also installation of transformer in terms of Memorandum of Understanding dated 24.03.1995 Ex.PW1/6; 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.

Sh. P.K. Mittal 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.

28. The defendant no.1 for himself as well as on behalf of defendants no.2 and 3 has written a letter dated 14.04.1998 Ex.PW1/7 with carbon copy to Balco Estate Agents wherein asked the plaintiff to pay the balance sale consideration and interest @ 18% for the delayed period. The letter was replied by the plaintiff vide reply dated 21.04.1998 Ex.PW1/8. In Ex.PW1/8 the plaintiff has informed the defendants no.1 to 3 that the plaintiff is ready and willing to pay the balance sale consideration as per clause 2 of the Agreement to Sell dated 27.04.1994 Ex.PW1/5 on receipt of the vacant physical possession. The defendant no.1 as the Managing Director of defendant no.3 again sent a letter dated 23.04.1998 Ex.PW1/9 to the plaintiff whereby the plaintiff was asked to pay the balance sale consideration to the defendant no.2 and also to take physical possession/endorsement from the

defendant no.3. The defendant no.1 in the said letter further stated that the defendant no.3 has provided 6 KW power for lighting and also allowed the plaintiff to use 125 KVA generator already installed in the building. It was further informed that one lift is also functioning. Thereafter, the defendant no.1 as Managing Director of defendant no.3 sent a final notice dated 22.06.1999 Ex.PW1/10 asking the plaintiff to make the balance payment of 85% of sale consideration alongwith interest @ 18%. The defendant no.1 for himself as well as on behalf of defendants no.2 and 3 again sent a letter dated 09.08.1999 Ex.DW1/PX1 to inform the plaintiff regarding the completion of following formalities :--

- 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 sft.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.3 called upon the plaintiff to make the payment i.e.the balance sale consideration by 20.08.1999.

29. The defendant no.1 as the Managing Director of defendant no.3 has also written a letter dated 08.09.1999 Ex.PW1/11 to defendants no.2 and asked them to pay charges in terms of clauses 8, 10,13 and 14 of the letter of allotment dated 07.06.1984 with copy to the plaintiff. The plaintiff has also sent a letter dated 04.10.2000 Ex.PW1/12 and asked the defendant nos. 1 and 3 to provide the necessary documents pertaining to completion certificate from DDA, electricity connection from DVB, clearance from Chief Fire Officer relating to installation of fire fighting equipments, completion of installation of central air conditioning system and other necessary statutory approvals required to be obtained. The letter ExPW1/12 was replied by the defendant no.1 for himself as well as on behalf of defendants no.3 vide reply dated 02.11.2000 Ex.PW1/13.

30. The Agreement to Sell dated 27.04.1994 Ex.PW1/5 cast certain obligations upon the defendant no.2 as well as on plaintiff. The plaintiff has paid a sum of Rs.1,00,000/- as earnest money. The plaintiff was required to pay the balance sale consideration to the defendant no.2 subject to delivery of vacant physical possession of the office space 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 space. The obligation of the plaintiff to pay the balance sale consideration was subject to two conditions, i.e (i) the delivery of vacant physical possession by the defendant no.2 to the plaintiff, and (ii) 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 space. The plaintiff was liable to pay all dues, rates, charges and taxes as per various clauses of letter of allotment dated 07.06.1984 only after the transfer of vacant physical possession of the office space. The obligations cast upon the defendant no.2 under the Agreement to Sell dated 27.04.1994 Ex.PW1/5 are to hand over the vacant physical possession of the office space and to pay all dues, rates, charges and taxes upto the date of transfer of office space. The Agreement to Sell dated 27.04.1994 Ex.PW1/5 also casts certain obligations upon the defendant no.3 i.e to provide 100 K.W.capacity within three months of the execution of the Agreement to Sell dated 27.04.1994 Ex.PW1/5 and to install Transformers in the building within six months from the date of the execution of the Agreement to Sell dated 27.04.1994 Ex.PW1/5. The Memorandum of Understanding dated 24.03.1995 Ex.PW1/6 executed between the plaintiff and the defendant no.3 through defendant no.1 further reveals that the defendant no.3 has made one lift operational for the use of plaintiff and also allowed the plaintiff to run the existing stand-by generator of 125 KVA capacity at the cost of the plaintiff. The obligation which was put on the defendant no.3 was that the plaintiff shall not be liable to pay maintenance charges to the defendant no.3 i.e. the builder till the installation of transformer and the physical possession of the office spaces situated on 5th floor of the building is handed over to the plaintiff after completion certificate and fire fighting clearance have been obtained. Clause 4 of the Memorandum of Understanding dated 24.03.1995 Ex.PW1/6 cast an important obligation on the defendants to obtain completion certificate and fire fighting clearance and also to install the transformer in the building in question.

31. The Agreement to Sell dated 27.04.1994 Ex.PW1/5 and Memorandum of Understanding dated 24.03.1984 Ex.PW1/6 raised important question for determination i.e whether the time was the essence of contract and whether the limitation has started to run from 24.06.1999, the day on which the plaintiff has received the final notice dated 22.06.1999 Ex.PW1/10. If the time has started to run in pursuance of Agreement to Sell dated 27.04.1994 Ex.PW1/5 then the suits are barred by limitation and if the time has started to run from the date of receipt of letter dated 22.06.1999 Ex.PW1/10 i.e. on 24.06.1999 then the suits are within limitation.

32. The legal position regarding 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.

33. 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 plaintiff has 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.

34. 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 plaintiff has 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 plaintiff 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 plaintiff 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.

35. 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 plaintiff has 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 plaintiff 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 plaintiff intimated thereof, it could be safely said that the plaintiff 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 plaintiff 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 plaintiff 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 plaintiff 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.

36. 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.

37. Sh. Rajesh, Manchanda, Advocate, Counsel for the defendants 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 plaintiff alleged that the defendant requested the plaintiff 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 in was upheld by the Division Bench of the High Court of Delhi in *Subhash Chand Kathuria V Umed Singh and Anr.*, 2006 IV AD (Delhi) 737.

38. In case of *Ramzan V Hussaini*, (1990) 1 SCC 104, it was observed that in a 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 event specified in the contract. In this case, contract of 1965 stipulates that on the day of redemption of the mortgaged house by the plaintiff, the defendant would execute the sale deed of the house in plaintiff's favour. Mortgage redeemed in 1970. However notice preceding the suit for specific performance served by plaintiff 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.

39. 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.

40. The defendants no.2 were required to deliver the vacant physical possession of the office spaces to the plaintiff as per clause 2 of the Agreement to Sell dated 27.04.1994 Ex.PW1/5. There is nothing on record which can suggest that the

defendants no.2 i.e vendors have ever delivered the vacant physical possession of the office spaces to the plaintiff. The defendant no.3 was under an obligation to provide adequate electricity for operation of one lift and lights in the office spaces. The perusal of Memorandum of Understanding dated 24.03.1995 Ex.PW1/6 reflects that the builder has made one lift operational for the use of plaintiff and also made the provision to run stand-by generator of 125 KVA. The defendants no.2 i.e vendors were also required to pay all dues, rates, charges and taxes payable upto the date of transfer of office spaces and thereafter the plaintiff was liable to pay. There is nothing on record which can suggest that the defendants no.2 have paid all the dues, rates, charges and taxes upto the date of transfer of said office space. In fact there is nothing on record which can suggest that the office spaces have ever been transferred in the name of the plaintiff. The defendant no.3 was also required to provide stand-by generator of minimum of 100 K.W.capacity within three months from the execution of Agreement to Sell dated 27.04.1994 Ex.PW1/5 and to install transformers in the building in question within six months from the date of execution of Agreement to Sell Ex.PW1/5. The defendant no.3 has only provided the installation of 125 KVA generator but there is nothing on record which can suggest that the defendant no.3 has installed the transformers in the building in question within six months from the date of execution of Agreement to Sell dated 27.04.1994 Ex.PW1/5.

41. The Agreement to Sell dated 27.04.1994 Ex.PW1/5 and Memorandum of Understanding dated 24.03.1995 Ex.PW1/6 can not be read in isolation, separately, independently and mutually exclusive from each other.

The Memorandum of Understanding dated 24.03.1995 ExPW1/6 was an extension of the Agreement to Sell dated 27.04.1994 ExPW1/5. The defendant no.1 was acting on behalf of defendants no.2 and 3 for all practical purposes. In pursuance of Memorandum of Understanding dated 24.03.1995 Ex.PW1/6, the defendant no.3 has also undertaken to obtain the completion certificate and fire fighting clearance from the concerned departments and also installation of transformer (sub-station). The combined reading of Agreement to Sell dated 27.04.1994 Ex.PW1/5 and Memorandum of Understanding dated 24.03.1995 Ex.PW1/6 clearly stipulates that the plaintiff was required to pay the balance sale consideration in terms of Agreement to Sell dated 27.04.1994 Ex.PW1/5 after handing over the vacant physical possession of the office spaces by the defendants no.2 to the plaintiff and after obtaining completion certificate and fire fighting clearance from concerned department by the defendant no.3.

42. The acts and liabilities of defendant no.2 cannot be separated from the acts and liabilities of defendant no.3. The defendants were under the obligations before calling the plaintiff for payment of balance sale consideration to hand over the physical possession of the office space 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 to put plaintiff under a contractual obligation to pay the balance sale consideration. The DW1 during the cross examination denied the suggestion that the MCD has not issued the completion certificate in respect of the building in question. However, the defendants have not placed on record the

completion certificate and certificate of clearance from Fire Fighting Department. 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. The defendant no.1 has only informed M/s.Balco Estate Agents vide letter dated 24.05.1995 Ex.DW1/X 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.DW1/X is not sufficient to establish that the defendants have performed their part of obligation as per Agreement to Sell dated 27.04.1994 Ex.PW1/5 and Memorandum of Understanding dated 24.03.1995 Ex.PW1/6. The defendants vide letters dated 14.04.1998 Ex.PW1/7, 23.04.1998 Ex.PW1/9 and 22.06.1999 Ex.PW1/10 have asked the plaintiff to pay the balance sale consideration alongwith interest @ 18%. However, there is nothing on record which can suggest that the defendants have performed their part of obligation. Time was not the essence of the contract i.e.the Agreement to Sell dated 27.04.1994 Ex.PW1/5 under given facts and circumstances of the case. The time has begin to run when the defendant no.1 has sent the final notice dated 22.06.1999 Ex.PW1/10 calling the plaintiff to pay the balance sale consideration. It is the starting point for limitation. The suits are filed on 30.06.1999. The suits are within the period of limitation. The issue no.2 is decided in favour of the plaintiff and against the defendants.

43. Issue No.3 Whether there is no privity of contract between the plaintiff and defendant no.1 as alleged in para 7 of the preliminary objections of WS and if so what its effect ? OPD The plaintiff has stated that the plaintiff is a company incorporated under the Companies Act, 1956 and was earlier known as HB Portfolio Leasing Limited and upon the Scheme of Arrangement under the orders of the High Court of Delhi, the name of HB Portfolio Leasing Limited was changed to M/s.H.B.Stock Holdings Limited i.e.the present plaintiff u/s 391 to 394 of the Companies Act, 1956. The defendants have not taken any objection that there is no privity of contract between the parties. The defendant no.1 in affidavit Ex.D1 stated that there is no privity of contract between the plaintiff and the defendant no.2 as the defendants have entered into an Agreement to Sell dated 27.04.1994 Ex.PW1/5 with M/s.H.B.Stock Holdings Limited.

44. The perusal of record reflects that the Agreement to Sell dated 27.04.1994 Ex.PW1/5 was executed between the defendants no.2 and M/s.HB Portfolio Leasing Limited. The Memorandum of Understanding dated 24.03.1995 Ex.PW1/6 was also executed between M/s.HB Portfolio Leasing Limited and the defendant no.3 through its Director i.e.the defendant no.1. The PW1 J.M.L.Suri in affidavit Ex.P1 stated that the plaintiff is a company incorporated under the Companies Act, 1956. The PW1 further deposed that the plaintiff was earlier known as HB Portfolio Leasing Limited and upon the Scheme of Arrangement pursuant to the orders of the High Court of Delhi under section 391 to 394 of the Companies Act, is now known as M/s.H.B.Stock Holdings Limited. The PW1 during cross examination stated that he is associated with the plaintiff since 1992 and the name of the erstwhile of the plaintiff was M/s.H.B.Portfolio Leasing Limited. He further deposed that he was the Managing Director of M/s.H.B.Portfolio Leasing Limited. The PW1 further deposed that the Memorandum of Understanding dated 24.03.1995 Ex.PW1/6 was entered into between M/s.H.B.Portfolio Leasing Limited and the defendant no.3. The PW1 proved the fresh certificate of incorporation consequent upon change of name as Ex.PW1/2. The perusal of Ex.PW1/2 reveals that erstwhile M/s.H.B.Portfolio Leasing Limited has been changed to M/s.H.B.Stock Holdings Limited

vide letter no. 66- 21616/1549 dated 19.02.1992. The said certificate Ex.PW1/2 was issued pursuant to section 23(1) of the Companies Act, 1956.

45. The defendant no.1 for himself as well as on behalf of defendants no.2 and 3 has sent letter to the plaintiff dated 23.04.1998 Ex.PW1/9 which was addressed to the present plaintiff i.e.M/s.H.B.Stock Holdings Limited. In subsequent correspondence between the parties, the defendants have sent the letters to M/s.H.B.Stock Holdings Limited i.e.the present plaintiff. The defendants have not taken any objection that the defendant no.2 has not entered into an agreement with M/s.H.B.Stock Holdings Limited. The erstwhile M/s.H.B.Portfolio Leasing Limited was changed to M/s.H.B.Stock Holdings Limited in pursuance of Ex.PW1/2. There was a privity of contract between the plaintiff and defendant no.2 as the plaintiff has stepped into the shoes of erstwhile M/s.H.B.Portfolio Leasing Limited. The issue no.3 is decided in favour of the plaintiff and against the defendants.

46. 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 plaintiff has valued the suits for the purpose of jurisdiction and court fee at Rs.6,42,400/-, Rs.6,64,400/-, Rs.6,60,000/-, Rs.6,66,000/- as per the sale considerations on which the defendants no.2 have agreed to sell the office space to the plaintiff. The defendants in the corresponding para of respective written statements stated that the sale consideration was not Rs.6,42,400/- etc. as the cost price excluded the charges to be paid by the plaintiff as per clauses 8,10,13 and 14 of the letter of allotment dated 07.06.1984. The defendant no.1 in affidavit Ex.D1 also stated that the suit is not properly valued as per the Suit Valuation Act and the plaintiff has not affixed the proper court fees on the plaint. The DW1 further deposed that the market value of the office spaces is much higher than the value assessed by the plaintiff and the total cost of the office space is around Rs.13,13,400/-on which the plaintiff is required to pay court fees. The DW1 in affidavit Ex.D1 also stated that the value of the office space is increasing day by day. The perusal of Agreements to Sell dated 27.04.1994 reflects that the total sale consideration for the office space was Rs.6,42,400/- and as detailed hereinabove on which the plaintiff had paid the court fees. The plea of the defendants that in the cost of office space, other charges which are to be payable in pursuance of letter of allotment dated 07.06.1984 be also included does not inspire confidence. These charges are not quantified. The sale consideration of the office space was fixed. The valuation of the suit is to be done on the basis of value of the property as per Agreement to Sell dated 27.04.1994. The valuation of the suit for the purpose of court fees and jurisdiction cannot be changed on the basis of fluctuation 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 plaintiff and against the defendants.

47. Issue no.5 Whether the defendants could legally forfeit the earnest money paid by the plaintiff pursuant to an Agreement to Sell dated 27.04.94? OPD The defendants no.2 has purchased the office spaces from the defendant no.3 vide letter of allotment dated 07.06.1984. Thereafter the defendants no.2 has entered into Agreement to Sell dated 27.04.1994 Ex.PW1/5 for sale of said office space with the plaintiff for a sale consideration. As per the terms and conditions of the Agreement to Sell dated 27.04.1994 Ex.PW1/5, the plaintiff has to pay the balance sale consideration to the defendant no.2 against 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 office space. The clause 6 deals with the forfeiture of the earnest money of Rs.1,00,000/- paid by the plaintiff to the defendant no.2 at the time of execution of Agreement to Sell dated 27.04.1994 Ex.PW1/5. Clause 6 provides that if the purchaser fails to pay the balance sale consideration then the earnest money paid by the plaintiff shall stand forfeited to the defendant no.2 and the Agreement to Sell dated 27.04.1994 Ex.PW1/5 shall be deemed as null and void. The Agreement to Sell dated 27.04.1994 Ex.PW1/5 has places some obligations on the defendant no.3 who was the promoter and builder of the building in question. The defendant no.3 was required to provide stand-by generator of minimum 100 K.W.capacity within three months from the execution of the Agreement to Sell dated 27.04.1994 Ex.PW1/5 and also to install transformers in the building in question within six months from the date of execution of Agreement to Sell dated 27.04.1994 Ex.PW1/5. Subsequently Memorandum of Understanding dated 24.03.1995 Ex.PW1/6 was also executed between the plaintiff and the defendant no.3. As per clause 5 of the Memorandum of Understanding dated 24.03.1995 Ex.PW1/6, the plaintiff was required to pay the sale consideration to the defendant no.2 in terms of Agreement to Sell Ex.PW1/5. As per clause 4, the defendant no.3 was required to install the transformer (sub-station) and to hand over the physical possession of the office space to the plaintiff after obtaining the completion certificate and fire fighting clearance from concerend departments. The defendant no.1 was acting on behalf of defendant no.2 i.e.vendor and the defendant no.3 i.e.builder. The defendant no.1 has also signed the Agreement to Sell dated 27.04.1994 Ex.PW1/5 as confirming party and also executed Memorandum of Understanding dated 24.03.1995 Ex.PW1/6. For all practical purposes the defendant no.1 was acting on behalf of defendants no.2 and 3.

48. The isuse which need consideration is whether the plaintiff was liable to pay the balance sale consideration in pursuance of Agreement to Sell dated 27.04.1994 Ex.PW1/5. The defendants could not proved that the defendant no.3 has obtained the completion certificate and fire fighting clearance from concerend authorities and also installed the transformer in terms of Memorandum of Understanding dated 24.03.1995 Ex.PW1/6. The Agreement to Sell dated 27.04.1994 Ex.PW1/5 and Memorandum of Understanding dated 24.03.1995 Ex.PW1/6 cannot be read mutually exclusive and independent of each other. The Memorandum of Understanding dated 24.03.1995 Ex.PW1/6 is just an extension of Agreement to Sell dated 27.04.1994 Ex.PW1/5 although it is not signed by the defendants no.2. The defendant no.1 was entering into the correspondence with the plaintiff even on behalf of defendant no.2. The balance sale consideration was required to be paid by the plaintiff only after the handing over of physical possession of the office space which was never handed over to the plaintiff. The defendant no.1 for himsefl as well as acting on behalf of defendants no.2 and 3 sent various letters dated 14.04.1998 Ex.PW1/7, dated 23.04.1998 Ex.PW1/9, dated 22.06.1999 Ex.PW1/10 and dated 09.08.1999 Ex.DW1/PX1. The defendant no.1 in all letters had demanded from the plaintiff to pay the balance sale consideration.

49. There is nothing on record whcih can suggest that the defendant no.1 for himself as well as acting on behalf of defendants no.2 and 3 has obtained the completion certificate and fire fighting clearance from Fire Department and also installed the transformer (sub-station). There was no occasion for the plaintiff to pay the balance sale consideration to the defendant no.2 as the defendant no.2 has never handed over the vacant physical possession of the office space to the plaintiff. Although as per Memorandum of Understanding dated 24.03.1995 Ex.PW1/6, one lift was

made operational and the generator of 125 KVA was installed but the defendants have failed to fulfill other obligations arising out of the Agreement to Sell dated 27.04.1994 Ex.PW1/5 and Memorandum of Understanding dated 24.03.1995 Ex.PW1/6. The defendants are not legally entitled to forfeit earnest money paid by the plaintiff in pursuance of Agreement to Sell dated 27.04.1994 Ex.PW1/5. Issue no.5 is decided in favour of plaintiff and against defendants.

50. Issue No.6 Whether the allotment letter dated 07.06.84 in respect to suit building in favour of defendant 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 defendant no.3 was allotted a plot no.11 at Rajendra Place, New Delhi-110008 by DDA for construction of a commercial building. The defendants no.2 have booked office spaces on 5th floor with the defendant no.3 vide letter of allotment dated 07.06.1984 signed by the defendant no.1. Subsequently the plaintiff has purchased the office spaces from the defendants no.2 vide Agreement to Sell dated 27.04.1994 Ex.PW1/5. The plaintiff alleged that the defendants have not fulfilled their part of obligations as per Agreement to Sell dated 27.04.1994 Ex.PW1/5 and Memorandum of Understanding dated 24.03.1995 Ex.PW1/6. The defendants stated that the plaintiff was just an assignee of defendant no.2 in respect of office space and the defendant no.2 cannot sell the better title than what has been transferred to defendant no.2 in pursuance of letter of allotment dated 07.06.1984. The defendants stated that the letter of allotment dated 07.06.1984 is an integral part of the Agreement to Sell Ex.PW1/5. The letter of allotment dated 07.06.1984 is perused. The perusal of various clauses of letter of allotment dated 07.06.1984 reflects that the defendants no.2 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.2 were also required to pay the maintenance service charges besides other taxes in pursuance of clauses 13 and 14. The perusal of Agreement to Sell Ex.PW1/5 reveals that at the time of execution of Agreement to Sell dated 27.04.1994 Ex.PW1/5 the defendants no.2 have already made the full payment of the sale consideration of the office spaces to the defendant no.3. The defendants no.2 were required to pay all dues, rates, charges and taxes payable upto the date of transfer of the office space in favour of plaintiff and thereafter it was the liability of the plaintiff to pay such charges to the defendant no.3. It has not been mentioned in the Agreement to Sell dated 27.04.1994 Ex.PW1/5 that the plaintiff after the purchase of office spaces was immediately liable to pay various charges as per letter of allotment dated 07.06.1984. The PW1 was not cross examined on the issue that the letter of allotment dated 07.06.1984 was an integral part of the Agreement to Sell dated 27.04.1994 Ex.PW1/5. It is true that the defendants no.2 cannot sell the better right or title to the plaintiff than what they have acquired as per letter of allotment dated 07.06.1984. Even if it is assumed that the letter of allotment dated 07.06.1984 was an integral part of the Agreement to Sell dated 27.04.1994 Ex. PW1/5, 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.

51. 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 plaintiff has purchased the office spaces from the defendants no.2 at a sale consideration in pursuance of Agreement to Sell dated 27.04.1994 Ex.PW1/5. The Agreement to Sell dated 27.04.1994 Ex.PW1/5 has created some rights and obligations in favour of both the parties i.e. the plaintiff and the defendants. The plaintiff i.e. the buyer has paid a sum of Rs.1,00,000/- as earnest money to the defendant no.2. The plaintiff was required to pay the balance sale consideration but subject to delivery of physical possession by the defendant no.2 and the receipt of written intimation by registered post that the defendant no.3 has provided adequate electricity for operation of one lift and lights in the office spaces. The defendant no.2 was required to pay all dues, rates, charges and taxes upto the date of transfer of office spaces in favour of the plaintiff to defendant no.3. It is not proved that the defendants no.2 have transferred the office spaces in favour of the plaintiff. It is not proved that the defendants no.2 have delivered the physical possession of the office spaces to the plaintiff although in the receipts of Rs.1,00,000/- it is mentioned that the defendants no.2 have handed over the vacant possession of the office spaces to the plaintiff but in fact it is not true. The defendant no.3 was also required to provide stand-by generator of minimum 100 KW within three months from the date of execution of Agreement to Sell dated 27.04.1994 Ex.PW1/5 and to install transformers in the building in question within six months from the date of execution of Agreement to Sell Ex.PW1/5. Subsequently a Memorandum of Understanding dated 24.03.1995 Ex.PW1/6 was also executed between the plaintiff and the defendant no.3. The defendant no.1 was acting on behalf of defendant no.2 as well as on behalf of defendant no.3. The defendant no.1 who was acting on behalf of defendants no.2 and 3 was responsible to fulfill all the obligations arising out of the Agreement to Sell Ex.PW1/5 and Memorandum of Understanding Ex.PW1/6. The defendant no.3 has only made provision of one lift for the use of plaintiff and allowed the plaintiff to run stand-by generator of 125 KVA. The obligations of the defendants did not end with the Agreement to Sell dated 27.04.1994 Ex.PW1/5. The Memorandum of Understanding dated 24.03.1995 Ex.PW1/6 has also created some obligations on the defendant no.3 i.e. to obtain completion certificate, fire fighting clearance, to hand over the vacant physical possession of the office space and to install the transformer in the building in question. The handing over the physical possession of office space was the essence of the Agreement to Sell dated 27.04.1994 Ex.PW1/5. The defendants have never completed their obligations. The defendant no.1 for himself as well as acting on behalf of defendants no.2 and 3 asked the plaintiff to pay sale consideration but without fulfilling the obligations of the defendants. The defendant no. 2 was not entitled to forfeit the earnest money of Rs.1,00,000/-. The defendants are guilty of breach of Agreement to Sell dated 27.04.1994 Ex.PW1/5. The issue no.7 is decided in favour of the plaintiff and against the defendants.

52. Issue No.8 Whether the plaintiff 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 plaintiff and the defendant no.2 has entered into an Agreement to Sell dated 27.04.1994 Ex.PW1/5 for the sale of office spaces as detailed in Annexure A Ex.PW1/4. The plaintiff has paid the earnest money of Rs.1,00,000/- towards each office space as detailed in Ex.PW1/4. The Memorandum of Understanding dated 24.03.1995 Ex.PW1/6 was also executed between the plaintiff and the defendant no.3. The defendant no.3 also signed the Agreement to Sell dated 27.04.1994 Ex.PW1/5 as confirming party. As per the plaintiff, the defendants have failed to fulfill the obligations created under the Agreement to Sell dated 27.04.1994 Ex.PW1/5 and Memorandum of Understanding dated 24.03.1995 Ex.PW1/6. The plaintiff also stated that the plaintiff is always ready and willing to pay

the balance sale consideration in terms of Agreement to Sell dated 27.04.1994 Ex.PW1/5 before the filing of the suit. The plaintiff in para no.19 of the plaint stated that the plaintiff is ready and willing and otherwise having sufficient means to make payment of balance consideration to the defendants within a week of their intention to handover the vacant, physical possession of the premises after obtaining all due and requisite approvals, licence, permission and consents from various statutory authorities.

The defendants stated that the plaintiff has not paid the balance sale consideration despite providing of one lift operational and electricity in the building in question in terms of Agreement to Sell dated 27.04.1994 Ex.PW1/5. The defendants in their respective written statements also stated that the plaintiff was not ready and willing to perform its obligations under the contract governing the contractual obligations between the plaintiff and the defendant no.3 and the plaintiff has not even averred that the plaintiff is willing to perform the essential terms of the contract. The PW1 during cross examination admitted that the plaintiff has not offered or paid balance sale consideration because the conditions mentioned in Memorandum of Understanding dated 24.03.1995 Ex.PW1/6 and Agreement to Sell dated 27.04.1994 Ex.PW1/5 were not fulfilled by the defendants.

53. 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 plaintiff 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 plaintiff 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 plaintiff 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.

54. 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.

55. 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."

56. In case of Shakuntal Devi V M/s.Mohanlal Amrit Raj Jain Market, Pali, AIR 1994 Rajasthan 259, it was observed that the plaintiff has 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 plaintiff is ready and willing to perform her part of the agreement. There is nothing to indicate that the plaintiff 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 plaintiff has to prove that he went about jingling money to demonstrate his capacity to pay the purchase

price. It is sufficient if the plaintiff 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 plaintiff was always ready and willing to perform his part of the agreement.

57. Sh.Rajesh Manchanda, Advocate, Counsel for the defendants has relied upon the judgment delivered in Chand Rani (dead) by L.Rs. V 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.

58. The DW1 during cross examination admitted that the defendant no.3 signed the Agreement to Sell dated 27.04.1994 Ex.PW1/5 as confirming party. He had written some letters to the plaintiff w.e.f.1994 till March, 1998 asking the plaintiff to act in terms of letter of allotment dated 07.06.1984. But the said letters were not proved by the defendants. The defendant no.3 after the execution of Agreement to Sell dated 27.04.1994 Ex.PW1/5 and Memorandum of Understanding dated 24.03.1995 Ex.PW1/6 has written a letter dated 24.05.1995 Ex.DW1/X to M/s.Balco Estate Agents wherein it was stated that the defendant no.3 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 asked to contact concerend parties i.e.plaintiff and proceed to finalise the sale. It was further mentioned that on the receipt of balance amount the defendants shall allow the plaintiff to start with internal fitting and decoration work. The copy of the letter dated 24.05.1995 ExDW1/X was not endorsed to the plaintiff. The defendant no.1 has written a letter dated 14.04.1998 Ex.PW1/7 to the Director of the erstwhile plaintiff i.e.M/s.H.B.Portfolio Leasing Limited wherein the plaintiff was called to pay balance 85% sale consideration along with 18% interest for the delayed period. The letter dated 14.04.1998 ExPW1/7 was replied by the plaintiff vide reply dated 21.04.1998 Ex.PW1/8. In para 4 of the said reply/letter, ExPW1/8 the plaintiff has stated that the plaintiff is willing to make the balance payment as per Clause 2 of the Agreement to Sell dated 27.04.1994 Ex.PW1/5. It was further intimated to the defendant no.1 that on the receipt of vacant physical possession, the payment shall be made within seven days as per the terms and conditions of the Agreement to Sell dated 27.04.1994 Ex.PW1/5. Thereafter the defendant no.1 as the Managing Director of defendant no.3 has written another letter dated 23.04.1998 Ex.PW1/9 whereby the plaintiff was asked to pay the balance sale consideration to defendant no.2 and take physical possession/endorsement from the builder. The letter Ex.PW1/9 clearly reflects that till 23.04.1998 the physical possession was not handed over to the plaintiff in terms of Agreement to Sell dated 27.04.1994 Ex.PW1/5 and Memorandum of Understanding dated 24.03.1995 Ex.PW1/6. The plaintiff was also informed that the defendant no.3 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 this letter does not contain anything with respect to obtaining of completion certificate and fire fighting clearance from Delhi Fire Services in terms of Memorandum of Understanding dated 24.03.1995 Ex.PW1/6. The defendant no.3 again wrote a letter dated 22.06.1999 Ex.PW1/10 wherein again asked the plaintiff

to pay the balance sale consideration but again the defendant no.3 has not mentioned anything about completion certificate and fire fighting clearance from Fire Department besides installation of electricity. The defendant no.1 for himself as well as acting on behalf of defendants no.2 and 3 sent another letter dated 09.08.1999 Ex.DW1/PX1 wherein asked the plaintiff to make the payment of balance sale consideration. The plaintiff was informed 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 on record any completion certificate issued from concerned authority i.e.DDA/MCD and clearance from Chief Fire Officer. The plaintiff has written a letter dated 04.10.2000 Ex.PW1/12 whereby again requested the defendants to supply the documents pertaining to clearance from DDA, electricity connection from DVB, clearance from Chief Fire Officer and other necessary statutory approvals. The said letter was replied by the defendant no.1 on behalf of defendant no.3 vide reply dated 02.11.2000 Ex.PW1/13. The perusal of said letter reveals that the plaintiff was always ready and willing to pay balance sale consideration in terms of Agreement to Sell dated 27.04.1994 Ex.PW1/5 and Memorandum of Understanding dated 24.03.1995 Ex.PW1/6 but 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 plaintiff to make the payment of balance sale consideration. The plaintiff has expressed continuous willingness to pay the balance sale consideration subject to fulfilment of obligations by defendants in terms of Agreement to Sell dated 27.04.1994 Ex.PW1/5 and Memorandum of Understanding dated 24.03.1995 Ex.PW1/6 Issue no.8 is decided in favour of the plaintiff and against the defendants.

Whether the plaintiff 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 plaintiff 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 plaintiff has prayed that the defendant no.2 be directed to execute the sale deed/conveyance deed or title deed or some other document conveying the right, title or interest in respect of office spaces in favour of the plaintiff and to hand over vacant, quiet and peaceful possession after completing all the legal and contractual formalities by passing a decree against defendants.

60. 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. 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.

61. In case of D.Anjaneyulu V Damacheria Venkata Seshaiah, AIR 1987 SC 1641 the Court declined to grant a decree for specific performance in favour of the plaintiff, even though the defendant was

guilty of breach of agreement. The defendant was directed to pay compensation to the plaintiff.

62. It was also held in the case of Parakunnan 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 plaintiff.

63. 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.

64. The Agreement to Sell dated 27.04.1994 Ex.PW1/5 was executed in the year 1994. The Memorandum of Understanding dated 24.03.1995 Ex.PW1/6 was executed in the year 1995. As per the Memorandum of Understanding dated 24.03.1995 Ex.PW1/6, the defendant no.3 was to obtain completion certificate, to install fire fighting equipments and to take fire fighting clearance from Chief Fire Officer. The defendant no.3 was also required to install the electricity and transformer (sub-station). The said acts were not done by the defendant no.3. Although the plaintiff has purchased the office spaces from the defendant no.2 but in fact the defendant no.1 was acting on behalf of defendants no.2 and 3. It is not proved that the building in question is in habitable condition and can be occupied by the plaintiff for the purpose of running the office. It has not come on record whether the concerend authority has 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 plaintiff even then it may not be feasible for the defendants to get completed all the legal formalities from different departments. The plaintiff has paid only Rs.1,00,000/- i.e.18% of the total sale consideration. The market value of the property has been increasing considerably since the execution of Agreement to Sell dated 27.04.1994 Ex.PW1/5. It is not a fit case where the defendants can be directed to execute the sale deed in favour of plaintiff after complying with obligations as created under Agreement to Sell dated 27.04.1994 Ex.PW1/5 and Memorandum of Understanding dated 24.03.1995 Ex.PW1/6. It raises the question what relief under given facts and circumstances of the case be granted to the plaintiffs. It will be in the fitness of things if the defendants are directed to pay appropriate compensation to the plaintiff 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 alongwith interest @ 9% w.e.f.22.06.1999 when the defendant no.3 had issued the final notice on behalf of defendant no.2 to the plaintiff till realization in respect of each office space (total twenty two).

65. Relief In view of above discussion, all the suits (twenty two in number) are decreed in favour of the plaintiff and against the defendants 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.3 had issued the final notice on behalf of defendant no.2 to the plaintiff till realization is passed in each case (total twenty two). The decree sheets be prepared separately in each case. This 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.3 had issued the final notice on behalf of defendant no.2 to the plaintiff till realization is passed in favour of the plaintiff and against the defendants. The decree sheets be prepared accordingly. File be consigned to the record room.

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