

GAHC010049132017



2026:GAU-AS:5973

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : RFA/116/2017

MEGHMALLAR ESTATES and SERVICES and ANR.
A CO INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT
1956 AND HAVING ITS REGISTERED OFFICE SITUATED AT F.C. ROAD,
UZAN BAZAR, GUWAHATI 781028 IN THE DIST. OF KAMRUP, ASSAM.

2: ANUP SAIKIA
MANAGING DIRECTOR
MEGHMALLAR ESTATES and SERVICES PVT. LTD.
R/O SURVEY
BELTOLA
GUWAHATI 78102

VERSUS

DR. KISHORE KUMAR DAS and ANR.
S/O SRI BHOLARAM DAS, TRINAYAN PATH, NEAR CID OFFICE, BELTOLA,
GUWAHATI 781028, IN THE DIST. OF KAMRUP, ASSAM.

2:UTPAL DAS

MANAGING DIRECTOR
SWAGATAM ESTATES and SERVICES PVT. LTD.
EX DIRECTOR
MEGHMALLAR ESTATES and SERVICES PVT. LTD.
R/O BELTOLA
SURVEY
GUWAHATI 78102

Advocate for the Petitioner : MR.J CHOPRA, MS. P DUTTA,MR. N BARUAH,MR.O P
BHATI,MR.S K SINGH,MR.V K CHOPRA,MS.A LAHKAR

Advocate for the Respondent : MR. R SARMA (R2), N CHAUDHURY,MR A DEKA,MR. M
DAS,MR.B BARMAN(R-1),MR.D BARUAH(R-1),MR.N B P SINGHA(R-1),MR H DEKA (R2),MR
D HAZARIKA (R2),MR A HUSSAIN (R2)

Linked Case : CO/15/2018

KISHORE KUMAR DAS
S/O SRI BHOLARAM DAS
R/O HOUSE NO. 7
TRINAYAN PATH
NEAR CID OFFICE
BELTOLA
GUWAHATI 781028 IN THE DIST. OF KAMRUP
ASSAM.

2: SRI ANUP SAIKIA
MANAGING DIRECTOR
MEGHMALLAR ESTATES AND SERVICES PVT. LTD. R/O SURVEY
BELTOLA
GUWAHATI 781028
VERSUS

MEGHMALLAR ESTATE AND SERVICES PVT LTD
A CO. INCORPORATED UNDER THE PROVISIONS OF THE COMPANIES ACT
1956 AND HAVING ITS REGISTERED OFFICE SITUATED AT F.C. ROAD
UZAN BAZAR
GUWAHATI 781028 IN THE DIST. OF KAMRUP
ASSAM.

2:SRI UTPAL DAS
MANAGING DIRECTOR
SWAGATAM ESTATES AND SERVICES PVT. LTD. EX-DIRECTOR
MEGHMALLAR ESTATES AND SERVICES PVT. LTD. R/O BELTOLA

SURVEY
GUWAHATI 781028

Advocate for : MR D BARUAH
Advocate for : MR. O P BHATI appearing for MEGHMALLAR ESTATE AND
SERVICES PVT LTD

:::BEFORE:::

HON'BLE MR. JUSTICE SANJEEV KUMAR SHARMA

Advocate for the appellants : Mr. N. Baruah

Advocate for the respondents : Mr. B. Deka

Date on which judgment is reserved : **26.03.2026**

Date of pronouncement of judgment : **30.04.2026**

Whether the pronouncement is of the : N/A

operative part of the judgment ?

Whether the full judgment has been : yes

pronounced?

JUDGMENT & ORDER (CAV)

(Sanjeev Kumar Sharma,J)

Heard Mr. N. Baruah, learned counsel for the appellant in RFA No. 116/2017 and respondent in CO No. 15/2018. Also heard Mr. B.D. Deka, learned counsel appearing for the respondents in RFA No. 116/2017 and objector in CO No. 15/2018.

2. The present respondent, as plaintiff, had instituted a suit for specific performance of contract, permanent injunction, alternatively for recovery of money and compensation, etc.

3. This appeal has been preferred against the judgment and decree dated 17.07.2017 passed by the Civil Judge No. 3, Kamrup (M) Guwahati in Title Suit No. 86/2010 decreeing the suit.

4. The brief facts of the case are that the plaintiff and his wife are doctors by profession. In search of space to open up a doctor's chamber cum clinic they met defendant No.3 who introduced them to defendant No.2, the MD of defendant No.1 Company. A discussion took place amongst them and the defendant No.2 verbally agreed to provide ground floor space measuring 1000 sq. ft plus frontage area of about 400 sq. ft as well as first floor area of 1375 sq. ft. in the under construction Meghmallar Hill View apartment of defendant No.1 to the plaintiff and his wife at Rs. 33,00,000/- which included registration cost etc. Plaintiff was, however, told that permission for ground floor space has been applied for and there was 99% chance of getting the same from GMDA. He was further told that in case permission was not granted, he would be provided contiguous two bed room apartment on Guwahati the first floor alongside three bed room apartment at Rs.14,94,200/- agreed to the said proposal and also agreed to pay Rs.33,00,000/-for the entire area. On 22.06.2007 vide two allotment letters plaintiff and his wife were allotted apart/flat bearing No-01/Gr. and apart/flat bearing No. 101/AI measuring 1000 sq. ft and 1350 sq. ft. at

Rs.9,30,000/- and Rs.13,50,000/- respectively excluding cost of extra work under construction project 'Meghmallar Hill View', by defendant No.1. Rest Rs.10,20,000/- was, thus, charged for registration and frontage area etc. On 06.07.2007 registered deeds of agreement bearing Nos.8705/07 & 8706/07 were executed by defendant No.1 through defendant No.2 in favor of the plaintiff and his wife respectively for apart/flat bearing No.-01/Gr. and apart/flat bearing No. 101/AI measuring 1000 sq. ft & 1350 sq. ft. respectively for consideration price of Rs. 9,30,000/- & Rs. 13,50,000/- respectively. The defendants failed to obtain NOC in respect of 1000sq.ft. open space on the ground floor. They kept on assuring the plaintiff of getting the permission or NOC stating that requisite steps were taken by them in this regard. The plaintiff, on Bonafide belief, continued to make payment and since 23.06.2006 till 05.09.2008 (on different dates) he and his wife together paid Rs.30,00,000/- to the defendants. The plaintiff paid Rs.12,00,000/- and his wife paid Rs.18,00,000/-.

5. Further case of the plaintiff is that on 23.06.2008 defendant No.2 informed him that frontage in front of 1000 sq. ft. area was not possible to be conveyed. The plaintiff then asked for providing alternative option of two bed room flat contiguous to three bed room flats but the defendants deferred the same till 1

week of July 2008. The plaintiff, on 09.08.2008, was again informed that frontage, as agreed, would be provided subject to NOC from GMDA. The plaintiff agreed the same too. On 03.10.2008, a revised plan was provided to the plaintiff. As per said plan ground floor space of 1010 sq. ft. and frontage of 463 sq. ft. would be provided to the plaintiff subject to payment of additional amount of Rs.6,29,000/-. The plaintiff, under compelling circumstances, agreed to pay Rs.5,50,000/- although initial package of Rs.33,00,000/-included the price of frontage area of 400 sq. ft. The defendants, on 26.11.2008 informed the plaintiff that permission for ground floor space could not be procured. The plaintiff, then, on 08.01.2009, requested the defendants to allow him to avail alternative option as initially agreed to by them, but defendant No. 2 flatly refused.

6. On 19.02.2009, the plaintiff informed the defendant No.2 that he was willing to make payment as per terms and conditions of brochure supplied to him at the time of booking of flats and he offered to pay Rs.41,96,475/-in total for three bed room flat, a two-bed room flat, four car parking space, society and registration fee, GMC bill etc. The defendant No. 2 on 17.03.2009 informed the plaintiff that the then GMDA Bye Law did not permit construction in parking space and as such the same could be retained for parking only and if it was

used for any other purpose it would be void as per said Bye Law. The plaintiff vide letter dated 04.03.2009 was informed that earlier final call letters stood cancelled. As per said final call letters an amount of Rs. 2,30,000/- &Rs. 8,54,983/- respectively were shown outstanding in respect of agreements executed in favor of plaintiff and his wife respectively. It was also mentioned that defendants would not be able to execute a conveyance deed in respect of the ground floor space. The plaintiff replied that no question could arise for further payments as asked for and rather expressed that he and his wife would pay Rs. 3,00,000/- only as additional amount. The defendants did neither handover the flats to the plaintiff and his wife nor did respond to the various communications of the plaintiff. They, in utter, disregard to the requests of the plaintiff and his wife, did not execute conveyance deeds.

7. The plaintiff, in response to application filed under RTI Act, to the GMDA, could learn that in fact no permission/NOC at all was ever sought for by the defendants for ground floor space of 1000 sq. ft. for converting the same into semi-finished place. It is alleged that this conduct of the defendants exhibits that they played fraud upon the plaintiff and frustrated the plan of opening doctor's chamber cum clinic. It is further alleged that by the said conduct the defendants had made the plaintiff and his wife to alter their position and to part

with huge amount of their hard earned money for no gain. The plaintiff further alleges that he apprehends that defendants may create third party interest in schedule-A and may frustrate the agreement entered and in that event he will suffer irreparably. The plaintiff further states that the said act of the defendants has caused financial, physical and mental loss to him besides causing loss on account of breach of contract. Accordingly, the present suit has been instituted praying for specific performance of registered agreement dt.8705/07 dated 06.07.2007 in respect of schedule-A. For a decree of permanent and mandatory injunction and alternatively for realization of Rs. 40,30.124/- and for damages etc., the defendants Nos. 1 & 2 in their written statement contended inter alia that though it was verbally accepted that 1000 sq. ft. floor space may be provided subject to approval from GMDA but they never gave any assurance or entered into any agreement with the plaintiff to provide a two bed-room flat contiguous to three bed-room flat at first floor as there does not exist any two bed-room flat contiguous to the flat allotted to the plaintiff. It is further contended that they (defendants No.1 & 2) never gave any assurance to provide space by way of illegal construction to open a doctor's clinic in violation of GMDA Bye-Law. It was subject to permission by GMDA. It is also contended that there was no agreement to provide 400 sq. ft. frontage area. It is stated further that the defendants Nos. 1&2 received Rs. 7,45,762/-and Rs. 1,54,238/- for

Society Corpus Fund, GMC holding and external electrification, total Rs. 9,00,000/- from the wife of the plaintiff towards payment of three bed-room flat. Likewise they received Rs. 6,47,700/- & Rs. 52,300/- total Rs. 7,00,000/- from the plaintiff towards cost of 1000 sq. ft. space. It is stated that it was learnt from the site engineers that the plaintiff had incurred cash expenditure of Rs.14,00,000/- for the internal construction of the three bed-room flat directly. It is contended that the defendants have received Rs.16,00,000/- only from the plaintiff and his wife. The said defendants denied that they charged Rs. 10,20,000/- for registration, frontage area etc. It is contended further that the defendants personally approached the authority concerned for allowing permission for 1000 sq. ft. but it was learnt that there was no such provision in the revised building Bye-Law to use the parking space and open space for any other purpose and as such they did not officially approach the authority for obtaining NOC for 1000 sq. ft. for clinic in the parking area of ground floor. It is contended that the plaintiff, therefore, agreed to take a two bed-room flat but not contiguous to the three bed-room flat as there is no such provision in the plan to that effect as there is stair case in between one three bed-room flat and two bed-room flat. The defendants Nos. 1 & 2 reiterated that they received only Rs. 16,00,000/- and not Rs. 30,00,000/- from the plaintiff as claimed. The defendants Nos. 1 & 2 denied the allegation of fraud and contended that it is

due to operation of law that NOC could not be obtained for converting parking space into a clinic or for using the same for any other purpose. It is also contended that the defendants have not committed any breach of contract as alleged and therefore the plaintiff is not entitled to any compensation and other relief as prayed for and the suit is liable to be dismissed. The defendant No. 3 in his written statement contended inter alia that the suit is not maintainable as the allegation of fraud is unfounded. It is the Bye-Law of GMDA which specifically stipulates that parking space are not allowed to be converted for any other purposes and as such the instant suit for specific performance cannot be enforced for performing illegal acts. It is contended that the contract of the plaintiff does not support the facts pleaded as the same are afterthoughtis contended that the suit is bad for mis-joinder of defendant No.3 as it is an admitted fact that defendant No.3 was not acting as director of the defendant No. 1 at the relevant time.

8. It is contended that as per averments made in the plaint Dr. M. D. Mazumder, the wife of the plaintiff was a necessary party but for failure of the plaintiff to array her the suit is not maintainable and liable to be dismissed. It is stated that the defendant No. 3 resigned as director from the Board of Directors of defendant No.1 on 25.02.2009 and his cessation was confirmed by Registrar

of companies with effect from 25.02.2009. He stated that after he introduced the plaintiff and his spouse to defendant No. 2, he was ousted from the defendant No. I company by acts and deeds of defendant No. 2 and his wife and as such he was not interested in maintaining his part in the company and he never played any role with respect to the dealing involving purchase of flat in question.

9. The learned Court below framed seven numbers of issues and held, inter alia, that the suit was maintainable and not bad for non-joinder or mis-joinder of parties, and allowed recovery of the payments made alongwith interest @ 12% from the date of institution of the suit and @ 6% from the date of the decree till realization, but declined specific performance of the contract.

10. Aggrieved, the defendants as appellants have preferred the instant Regular First Appeal, to which a cross objection has also been filed by the present respondent/plaintiff, wherein compensation/damages have been claimed, inasmuch as no decree/order was made in this regard, either allowing or rejecting the same by the learned Court below.

11. Both the appeal and the cross objection have been heard together. Upon hearing the learned counsel for the parties, in the course of the extensive

arguments advanced by the learned counsel for the parties, what has emerged is that the parties are not in dispute with regard to the finding of the learned Trial Court with regard to specific performance of contract, and therefore that issue no longer remains for adjudication. It is also fairly conceded that the respondent/cross objector/plaintiff will be entitled to recovery of a certain amount at the rate of 10% interest per annum, which is in terms of clause 4 of the Deed of Agreement dated 06.07.2007. However, the bone of contention is with regard to the principal amount that would be recoverable by the plaintiff/respondent/cross objector, inasmuch as the learned Trial Court has decreed an amount of Rs. 12,00,000/-, whereas the appellant claims that the plaintiff had paid only an amount totaling Rs. 7,00,000/- pursuant to the Deed of Agreement concerning the work in question. It is also to be determined as to the point of time from which the said interest at the rate of 10% per annum would be due, that is, whether from the date of actual payment made by the plaintiff or from the date of institution of the suit as decreed by the learned Trial Court.

12. Hence, upon hearing the learned counsel for the parties, the following common points for determination arise:-

i.) Whether the suit was bad for non-joinder of the plaintiff's wife?

ii). If not, whether the respondent is entitled to the refund of a principal amount of Rs. 12,00,000/- lakhs as decreed or to a lesser amount of Rs. 7,00,000/- lakhs as claimed by the appellant?

iii). Whether the plaintiff/respondent/cross objector is entitled to interest on the principal amount from the date of payments made to the appellant or from the date of the institution of the suit.?

iv). Whether the plaintiff/respondent/cross objector is entitled to compensation/damages for breach of contract/fraud committed by the appellant, and if so, to what extent?

Point No. i.) Whether the suit was bad for non-joinder of the plaintiff's wife.

13. The learned counsel for the appellant submitted that, admittedly, the plaintiff and his wife had agreed to pay Rs. 33,00,000/- lakhs, but there was no segregation with regard to the amount payable by the plaintiff and his wife, respectively. The plaintiff and his wife jointly desired to purchase the apartment/flat bearing No. 01/GR and 101/1A, respectively, and agreed to a consideration of Rs. 33,00,000/- lakhs, which was a joint consideration without segregation of their respective parts of the considerations,

14. It is further submitted that Exhibits 1, 12, 13, 17, 24, 26, 28, 31, 32, & 35 are in relation to both the plaintiff as well as his wife, while Exhibits 3, 5, 7, 9, 11, 14, 16, 18, 20, 22, 23, 34 & 36 are related to the plaintiff's wife, relied upon by the plaintiff in this case. Hence, in the absence of the said wife of the

plaintiff, i.e., Madhumita Das Mazumdar, as a necessary party, the learned Court ought not to have decreed the suit for recovery of money.

15. However, on a perusal of the impugned Judgment & Order, it is seen that the learned Trial Court relied only upon exhibits 2, 4, 13, 15, 17, 19 & 21, all of which, upon examination by this Court, are found to be in relation to the plaintiff only, the present plaintiff/respondent only. Therefore, I do not find any force in the submission of learned counsel in this regard.

16. As held by the learned Trial Court in its discussion under issue No. 2, wherein it has been noticed that the agreement for sale in question is only between the defendant No. 1, represented by defendant No. 2, on the one hand, and the plaintiff, Dr. Kishore Kumar Das, on the other hand, and the said defendants have agreed to sell, on terms and conditions set forth in the said agreement, the ground floor space of 1,000 sq. ft. in their under-construction project, "Meghamallar Hill View" to the plaintiff only. Since the present suit is based on the said agreement, the parties thereto are the only necessary parties, in whose absence the suit could not be decided completely and effectively, and no effective decree can be passed. In other words, no person other than the aforesaid parties can enforce the said agreement.

In this regard, the learned Trial Court has rightly relied upon the decision of the Hon'ble Apex Court in ***Kasturi Vs. Illiam Perumal and Ors.*** reported in ***AIR (2005) SC 2813***, wherein it was observed as follows:-

‘In our view a bare reading of Order 1 Rule 10 (2) CPC would clearly show that the necessary parties in a suit for specific performance of contract for sale are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not necessary party. From the above, it is now clear that two tests are to be satisfied for determining the question who is a necessary party. Tests are-(1) there must be a right to some relief against such party in respect of controversies involved in the proceeding; (2) no effective decree can be passed in the absence of such party.’

17. Therefore, the learned Trial Court in the considered opinion of this Court, has rightly decided that the suit was not bad for non-joinder of the wife of the plaintiff.

Point No. ii). If not, whether the respondent is entitled to the refund of a principal amount of Rs. 12,00,000/- lakhs as decreed or to a lesser amount of Rs. 7,00,000/- lakhs as claimed by the appellant.

18. The learned counsel for the appellant had referred to the statements of accounts maintained by the appellant company in respect of the plaintiff, in connection with the property in question, to show that only an amount of Rs. 7,00,000/- lakhs in separate installments had been paid by the present

plaintiff/respondent to the appellant company, and there has been an error on the part of the learned Trial Court in arriving at the figure of Rs. 12,00,000/- lakhs. A perusal of the impugned Judgment shows that the learned Trial court relied upon the receipts issued by the officials of the appellant company, which were exhibited as Exhibits 2, 4, 13, 15, 17, 19 & 21, which were duly proved by the plaintiff, and on perusal of the said exhibits, it is apparent that all of them were in respect of the plaintiff only, as far as the amounts contained therein are concerned. In other words, the amounts paid by the plaintiff and his wife have been shown separately in some of the exhibits, whereas the remaining exhibits pertain only to the plaintiff and not his wife. None of the aforesaid exhibits were challenged during cross-examination. The learned counsel for the appellant has also submitted that the payment of Rs. 30,00,000/- lakhs said to have been made vide Exhibit 12, the same is from the plaintiff and his wife, even if the said exhibit is accepted as genuine and binding upon the appellant.

19. That position has been recognized by the learned Trial Court, as it has recorded in the impugned judgment that is an admitted position that the defendants received Rs. 30,00,000/- from the plaintiff and his wife via the exhibit 12 acknowledgement, and the same has not at all been disputed by the defendants at the trial. Be that as it may, since the plaintiff/respondents during

the trial have proved exhibits 2, 4, 13, 15, 17, 19 & 21, showing a total payment of Rs. 12,00,000/- and which exhibits were unchallenged during cross-examination, this Court has no hesitation in holding that the learned Trial Court has rightly arrived at the figure of Rs. 12,00,000/- as the principal amount recoverable from the appellants by the plaintiffs. It is also to be noted that the defendants could not adduce any documentary evidence to show that an amount of Rs. 14,00,000/- out of Rs. 30,00,000/- was spent by the plaintiff directly on internal works. The point is determined accordingly.

Point No. iii). Whether the plaintiff/respondent/cross objector is entitled to interest on the principal amount from the date of payments made to the appellant or from the date of the institution of the suit.

20. As per clause 4 of the agreement in question, if for any reason the company is not in a position to allot the property applied for, the company shall refund the amount deposited with simple interest at the rate of 10% per annum.

21. The learned counsel for the appellant has not disputed that the rate of interest would be 10% and the learned counsel for the plaintiff/respondent has also fairly conceded that instead of the 12% interest awarded by the learned Trial Court, the petitioner the plaintiff/respondent would be entitled to interest

at the rate of 10% per annum. It may be noted at this stage that the agreement in question contains a clause, i.e., clause 19 which reads as follows:-

‘19. The intending allottee(s) agrees that, if as a result of any legislation, order or rule the company, after allotment, is unable to deliver possession to the intending allottee, the only responsibility and liability of the company will be to pay to the intending allottee(s) the amount (attribute to the said apartment) that may have been received by the company at the time without any interest or compensation of whatsoever nature and in the manner as may be decided by the company and same as aforesaid, neither party shall have any right or claim against the order or in relation to this agreement.’

22. The aforesaid clause of the agreement appears to be with reference to any legislation, order, or rule that comes into effect after execution of the agreement, inasmuch as it could not have been the intention of the parties to agree to do any act which was already illegal on the date of entering into the agreement. In this regard, reference may be made to Section 56 of the India Contract Act wherein, it is inter alia provided as follows:-

A contract to do an act which, after the contract is made, becomes impossible or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Therefore, any other interpretation of the aforesaid clause would render the agreement itself void, inasmuch as Section 56 of the Contract Act also provides that an agreement to do an impossible act is itself void, and it is the case of neither of the parties that the agreement in question is void.

23. Reverting to clause 4 of the agreement referred to herein before, the said clause does not speak of any point of time from which the interest would accrue on the principal sum, and therefore, it logically follows that interest will begin to run from the date of payment itself. Therefore, the appellant will be liable to pay interest on the sums mentioned in the aforesaid exhibits number 2, 4, 13, 15, 17, 19 & 21 from the dates mentioned therein at the rate of 10% per annum until the date of decree and thereafter on the principal amount of Rs. 12,00,000/- at the rate of 6% per annum in view of Section 34 CPC until realization. Even otherwise, principles of equity demand that in the facts of the present case, the interest should accrue from the date of payment/deposit made by the plaintiff (respondent) to the appellant company which has not incurred any expenditure in respect of the 1,000 sq.ft. of empty space on the ground floor allotted to the plaintiff/respondent and rather the appellant company has been enjoying the benefits of the deposit made by the plaintiff/respondent either in the form of interest or by way of investment in its other businesses/elsewhere. This fact can of course be readily presumed.

24. Furthermore, the recent Judicial trend has been to direct interest to be paid from the date of payment/deposit, and in this regard, the decision of the Hon'ble Apex Court in ***Vidya Vs. Parsvanath Developers, Ltd.*** reported in

(2024) 9 SCC 651, wherein it has been directed as follows:

“22. However, we find that, insofar as award of interest @ 9% p.a. is concerned, the learned Commission was not justified in the facts of the case to award a lesser interest than even the one agreed upon in the agreement. Undisputedly, the facts of the case show that the project was delayed inordinately. The appellant complainants were made to suffer for long, for no fault of them. In spite of making the entire payment, they were deprived of the possession within the stipulated time.

23. In our view, the learned Commission, at least, ought to have awarded interest @ 12% p.a. in view of Clause 7(b) of the agreement.

24. In the result, the appeal is partly allowed. The direction made by the learned Commission for refund of the entire amount deposited by the appellant complainants is upheld. However, the direction with regard to interest is modified to the extent that it shall be paid @ 12% p.a. from the date of respective deposit till the date of refund. The unpaid amount in terms of the aforesaid shall be paid within a period of three months from the date of this judgment [Vidya v. Parsvnath Developers Ltd., 2022 SCC OnLine NCDRC 522].”

Therefore, the point is determined as above.

Point No. iv). Whether the plaintiff/respondent/cross objector is entitled to compensation/damages for breach of contract/fraud committed by the appellant, and if so, to what extent.

The plaintiff had made the following claim on account of damages:-

Sl. No.	Particulars of Claim	Amount(in Rs.)
	Financial loss caused to the plaintiff in respect to his professional life on account of the illegal	

1.	actions of the Defendants calculated @ Rs. 1,00,000/- per month for the period from 01.10.2009 till date -	6,50,000/-
2.	Loss caused to the plaintiff both mentally and physically on account of the illegal actions of the Defendants	10,00,000/-
3.	Loss caused to the plaintiff on account of breach of contract calculated in the following manner:- Rate per sp. ft. as on the date of the Agreement – Rs. 930/- per sp. ft. for the ground floor area. Present rate per sp. ft. – Rs. 1,850/- Difference – Rs. 920/- per sp. ft.	9,20,000/-
	Total claim of the plaintiff	25,70,000/-

25. The learned Trial Court did not deal with this aspect of the claim of the plaintiff. The plaintiff has not led any evidence to establish the extent of the loss of income. It is stated that he was working as Senior Consultant at the Biborwa Cancer Institute, Guwahati, in the department of Radiology. And in order to start his doctor's clinic, he had submitted his resignation on 10.04.2006, which was accepted on 10.07.2006. This claim of the plaintiff cannot be accepted, inasmuch as the agreement itself was entered into on 06.07.2007, that is nearly a year after the petitioner's resignation was accepted. It is also seen from the correspondence made by the plaintiff/respondent to the appellant and company that even thereafter, he was working as Managing Director of the Central

Polyclinic (x-ray and U.S.G. division), Central Nursing Home Building Complex, Beltola survey. In view of the same, the plea of loss of income cannot be accepted.

26. It was further submitted on behalf of the respondent-plaintiff that the appellant company had known all along that the plaintiff-respondent required the aforesaid 1,000 sq.ft of ground floor space for the purpose of establishing a doctor's clinic. In this regard, he has referred to paragraph three of the plaint where the aforesaid facts have been stated, and the same has been admitted by the defendant, appellant, in their written statement. But, despite knowing full well that the same was impermissible under the GMDA by laws/rules, the appellant company had induced the plaintiff/respondent to deposit his hard-earned money on the promise of providing the ground floor space for setting up the doctor's clinic along with 400 square meters of sq. ft. front edge, which amounts to fraud and deception. On the other hand, learned counsel for the appellant, denying any fraudulent intent on the part of the appellant, submitted that the plaintiff himself was displaying his greed in trying to acquire the aforesaid space for establishment of a doctor's clinic despite having come to know that the same is impermissible under the law, and he was also ready to pay a higher price for the same as evidenced by his correspondence with the

Appellant Co. It is candidly submitted that during those times, despite the existence of such by laws, the GMDA used to issue NOC's for such kind of constructions and the plaintiff was in the hope that the defendant/appellant, would be able to secure or procure such an NOC. Therefore, the plaintiff-respondent is also not wholly innocent in this matter, and therefore, he is not entitled to any damages, either general or special, because of the part played by him as outlined above.

27. Continuing his submissions, learned counsel for the plaintiff-respondent has referred to the evidence of DW 3 to show that he had been in the building business since 1997 and it had also come to his knowledge prior to the agreement that the construction on the ground floor was for purposes other than parking, was impermissible. From his interactions with one Mr. Gogoi, of GMDA, and as a builder of repute, the appellant company was presumed to know the requirements of the law, but despite having knowledge of the same, the appellant had conducted itself in a manner that led the Plaintiff, to part with his hard-earned money in favor of the appellant company, and therefore, he is entitled to special as well as general damages on account of breach of contract.

28. At this stage, what is important to notice is that the plaintiff-respondent, by instituting the suit, has taken a certain stand.

29. The plaintiff had instituted the suit not just for recovery and damages, but primarily for specific performance of the contract, which is, by making the following prayers in the plaint:-

(i) A decree of declaration in favour of the Plaintiff and against the Defendants that the Defendants are bound by the Registered Deed of Agreement bearing No. 8705/07 dated 06.07.2007 executed by and between the Plaintiff and the Defendant No. 1;

(ii) A decree of declaration in favour of the Plaintiff and against the Defendants for specific performance of the Registered Deed of Agreement bearing No. 8705/07 dated 06.07.2007 in respect to the area more specifically described in Schedule 'A' to the Plaint thereby directing the Defendant Nos. 1 and 2 to obtain the permission from the Guwahati Metropolitan Development Authority for conversion of the Schedule 'A' area into a semi finished area and thereafter execute a Registered Deed of Sale in favour of the Plaintiff in respect to the Schedule 'A' area as per the Registered Deed of Agreement bearing No. 8705/07 dated 06.07.2007 within a time specified by this Hon'ble Court and failing which the Deed of Sale be executed and registered according to the provisions of Order XXI Rule 34 of the Code of Civil Procedure, 1908.

30. Therefore, on the one hand, the plaintiff-respondent claims that the appellant company had knowledge that the construction on the ground floor as per the agreement was illegal/impermissible under the rules, and thereby duped the plaintiff-respondent into parting with his hard-earned money, for which he is entitled to damages; and, at the same time, he seeks to invoke the process of the court to enforce an act which he himself claims to be illegal. In other words, by instituting the suit for specific performance with the aforesaid prayers, the plaintiff-respondent has resulted from his claim of illegality of the construction

covered by the agreement, i.e., the 1000 sq.ft on the ground floor of the schedule building, inasmuch as the plaintiff certainly could not have jurisdiction of the court asking it to enforce an illegal act.

31. Thus situated, the claim of the plaintiff-respondent for compensation/damages under the heads of mental and physical agony, as well as the presumptive loss on account of price appreciation, must fail, since the claimant, by his own action, has negated the plea of fraud on the part of the appellant company.

32. The learned counsel for the plaintiff-appellant had referred to the third clause of section 56 of the Indian Contract Act, which is as follows:

‘If a promisor knew or with reasonable diligence could have known that a contract was impossible or unlawful, but the promise did not, the promisor must compensate the promisee for any loss.’

33. However, for the same reason, as enunciated herein above, that is, in view of the aforesaid conduct of the plaintiff/respondent himself, I do not find any scope to apply the aforesaid provision in order to enforce payment of compensation by the appellant company. The point is decided accordingly.

34. In view of the above discussion, the impugned judgment and decree stands modified and partly allowed to the extent of the quantum of interest

payable and the point of time from which it is to be paid, as held under Point No. 3 above. Decree accordingly.

35. The appeal stands partly allowed with regard to the quantum of interest, and the cross-objection stands dismissed accordingly.

36. Send back the TCR.

JUDGE

Comparing Assistant