

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 1209-1210 OF 2003

VIJAYA SRIVASTAVA

.....

APPELLANT

VERSUS

M/S MIRAHUL ENTERPRISES & ORS.

.....

RESPONDENTS

WITH

CIVIL APPEAL NOS. 1211-1212 OF 2003

**CIVIL APPEAL NOS. 3353-3354 OF 2010
@ SLP(C) 8448-8449 OF 2010**

**CIVIL APEPAL NO. 3351-3352 OF 2010
@ SLP(C) 8450-8451 OF 2010**

AND

**CIVIL APPEAL NO. 3397 OF 2010
@ SLP (C) NO. 11430 OF 2010**

O R D E R

1. We have heard the learned counsel for the parties at very great length.

2. There are two sets of agreements to sell both

dated 2/11/1983 interse Vijaya Shrivastava and M/s Mirahul Enterprises and the second between Admiral R.R. Sood & M/s. Mirahul Enterprises. Vijaya Shrivastava and Admiral R.R. Sood are the plaintiffs in the suits whereas Mirahul Enterprises - respondent is the builder. The respondent has attempted to challenge the validity of these two agreements. The Division Bench of the High Court in its impugned judgments dated 14.07.2008 has held that the agreements had been executed and that the price of Rs. 2,64,000/- fixed for each of the two flats was indeed the correct price. On the contrary, the Single Bench, which is the trial court in this case, has given a positive finding that the agreements also dated 2/11/1983 which fixed the sale price at Rs. 2,64,261/- plus Rs. 1,71,000 in both the cases were in fact which needed to be specifically enforced. Be that as it may, in order to balance the equities between the parties and on account of the number of years that have gone by, we deem it appropriate that though the Division Bench in its judgment had recorded a positive finding that the amount to be paid for each of the flats was Rs. 2,64,261 yet as the execution of second agreement fixing a higher price has not been denied by the flat owner applicants, it would balance the equities if the

aforesaid plaintiff-appellants are called upon to pay some extra amount to the respondent. We are also informed that a sum of Rs. 9 lakhs lies deposited in respect of both the properties in this Court under the interim orders dated 07th February, 2003. We, accordingly, feel that the interests of justice would be met if a sum of Rs. 4 lakhs i.e. 2 lakhs each to be apportioned between the two plaintiffs is deducted and paid to the respondent i.e. M/s. Mirahul enterprises and that the balance amount deposited in this Court be returned to the plaintiffs forthwith. We also direct that the sale consideration that has been deposited by M/s Mirahul Enterprises in this Court or in the High Court shall be refunded to them forthwith. The appeals are disposed of in the above terms.

3. Mr. A.T.M. Sampath the learned counsel appearing for Mohd. Arshad, the appellant in Civil Appeal No. 3397 of 2010 arising out of SLP(C) No. 11430 of 2010 who claims to be a purchaser for value without notice has also made a claim to the property claimed by Vijaya Shrivastava. In the light of what we have held above endorsing the view of the Single Judge and the Division Bench of the High Court, Mohd. Arshad has no claim against the plaintiff Vijaya Shrivastava. Mohd. Arshad

may, accordingly, pursue such other remedies which are available to him with respect to the respondent Mirahul Enterprises or any other party.

4. We further direct that the respondent-builder will execute the sale deed in favour of the plaintiffs within a period of four months from today.

.....J
[HARJIT SINGH BEDI]

.....J
[J.M. PANCHAL]

NEW DELHI
APRIL 15, 2010.

