

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Order delivered on: 20th July, 2015

+ **CS (OS) No. 2937/2014**

LIC HOUSING FINANCE LIMITED Plaintiff
Through Mr. Pankul Nagpal, Adv.

versus

MAHESH MITTAL & ORS Defendants
Through None

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The present suit has been filed by the plaintiff under Order XXXVII CPC for recovery of a sum of Rs.25,69,399.23/- along with pendent lite and future interest @ 18% p.a. against the defendants.

2. Brief facts of the case as stated in the plaint are that the plaintiff is engaged in the business of giving financial assistance in the form of their loan schemes, for purchasing residential accommodation for individual etc. The defendants No.1 and 2 are the borrowers under the individual home loan scheme within the meaning of Loan Agreement executed between the plaintiff and defendants No.1 and 2. The defendant No.3 is the builder/ Society to whom the loan amount has been disbursed. The defendant No.2 is also represented by the Secretary, Interim Committee, Appointed by Uttar Pradesh, Awas Vikas Parishad, Lucknow.

3. It is also stated in the plaint that the defendant No.3 being a Co-operative Society, having its Registration No.3289, registered on 7th April, 2004, through its Authorized Signatory, was allotted a plot of land bearing No.7, Sector Pi II, Greater Noida, as per Lease Deed dated 29th March, 2005, registered in Book No.1, Volume No.916, on pages from 213 to 248, with registration No.2509, registered on 29th March, 2005 in the Office of Sub-Registrar, Gautam Budh Nagar, Ghaziabad, Uttar Pradesh and was constructing multi-storey Group Housing Society. The defendant No.3 proposed that as per its scheme they were in process of constructing various flats for its members.

4. Accordingly, the defendants No.1 and 2 approached the plaintiff for the loan against the Property/Flat/Unit No.3043, on 4th Floor, measuring 1450 sq. ft. in Block/Tower - T 3, in Shiv Kala Charms. Plot No.07, Sector-Pi II, Greater Noida, U.P. (hereinafter referred to as the "suit property") under the plaintiff's individual home loan scheme for purchasing the suit property.

5. It is averred in the plaint that the defendants No.1 and 2 also produced a Share Certificate showing Membership No.248 issued by the defendant No.2 society and further stated that the defendant No.1 had been allotted suit property, the tentative cost of the suit property was Rs.25,00,000/- out of which a sum of Rs.6,50,000/- has already been paid by the defendant No.1 to the defendant No.3 society vide his share of purchase of the suit property as per details below:-

- i. Receipt No.918 dated 10th May, 2008 for Rs.5.00,000/-
- ii. Receipt No.936 dated 17th June, 2008 for Rs. 1,50,000/-

The said payment of Rs.6,50,000/- was confirmed by the defendant No.3 society, which also assured the plaintiff that no other dues were outstanding against the defendant No.1 in respect of the suit property.

The defendant No.3 also assured that it would not issue duplicate share certificate to the defendant No.1 without obtaining written consent of the plaintiff and further assured that in the event of default by the defendant No.1, if the plaintiff enforce the security by sale, the defendant No.3 would accept the purchaser of the suit property as a member.

It was also agreed by the defendant No.3, that in the event of cancellation of the above allotment/ purchase of the suit property before actual possession on any ground, the defendant No.3 shall refund to the plaintiff the entire amount advanced / disbursed by the plaintiff towards the cost/ value of the suit property. It was also confirmed by the defendants that they have complied with all the conditions set out by the local authorities while sanctioning the lay out plan etc.

6. Therefore, the plaintiff considered the request of the defendants and vide offer letter dated 16th June 2008 sanctioned/granted the Loan of Rs. 18,50,000/- for the purchase of suit property to the defendants No.1 and 2.

On the basis of the loan application the plaintiff Company had sanctioned a sum of Rs. 18,50,000/- out of which Rs. 18,40,000/-

was disbursed to the defendant No.2 on 27th June, 2008 under the instructions of defendant No.1 vide cheque No.768083 drawn on HDFC Bank, KG Marg, New Delhi and defendant No. 1 was allotted the Loan Account No. 14011015366 (14111575) and the above said disbursed amount was debited to his above said loan account.

7. It is evident from the documents executed between the parties whereby the defendants No.1 and 2 agreed to the terms and conditions of the loan offer letter and further in order to secure the above said loan of Rs. 18,50,000/- sanctioned to and availed by the defendants No.1 and 2, the defendants executed various loan documents and agreed to pay back the loan amount along with interest at the floating rate of 10.50 % per annum with monthly rests as per the terms and conditions of the offer letter and loan documents or such other rate which the plaintiff may specify from time to time. The defendant No.1 further accepted and confirmed that the defendant No.2 has taken the necessary permission and approvals from the concerned authority in respect of the project, in which the defendant No. 1 has booked/purchased the suit property. The defendant No.1 in order to secure the loan facility granted to him, signed and executed the following documents:-

- i. Loan Agreement dated 24th June, 2008
- ii. APF-7

8. The defendant No.1 had also agreed to repay the said amount advanced by plaintiff with interest in 240 Equated Monthly Installments (EMI), regularly. The defendant No.1 had also agreed to

pay additional interest as per the rules of the plaintiff and all other charges as applicable from time to time as per policy of the plaintiff in case of delay/default in making repayment of the loan.

The defendant No.1 created security/lien/mortgage against the suit property in favour of the plaintiff by depositing the relevant/title documents of the suit property as security for the repayment of the aforesaid loan. The defendant No.1 in order to create such security also deposited the following documents in original with the plaintiff : -

- i. Original Agreement cum Allotment Letter
- ii. Original Share Certificate
- iii. Original payment receipts

9. According to the plaintiff, defendants had also executed Tripartite Agreement and agreed that on handing over possession of suit property the defendant No.1 shall mortgage the suit property in favour of the plaintiff. It was also agreed that till the suit property was mortgaged in favour of the plaintiff, the suit property shall be treated as security against which the plaintiff advanced loan to the defendants No.1 and 2 and paid to defendant No.3.

In accordance with the loan offer letter and agreement the defendant No.1 started paying installments. However the defendant No.1 has defaulted in making the Equated Monthly Installments (EMI) as per the above said agreement, and thereby has shown complete negligence and deliberate default in payment of EMI resulting in huge arrears in his account. It is pertinent to mention that the defendant No.1 have not paid any sum towards the repayment of loan since the

month of October 2011 (last payment received on 5th September, 2011). When the ECS was presented on 5th October 2011, 5th November 2011, 5th December 2011, the same were returned on 13th October, 2011, 9th November 2011 and 9th December 2011 respectively and since then the defendants No.1 and 2 have not paid any amount thereafter. The defendant No.3 has not completed the construction work and has made multiple allotments due to which the plaintiff was compelled to lodge criminal complaint in Economic Offence Wing against the builder/society, the defendant No.3.

10. It is stated that the plaintiff on various occasions requested the defendants to pay the outstanding amount however the defendants failed to do so. Thereafter, the plaintiff got issued notice dated 7th October, 2013 calling upon the defendants to pay the outstanding amount. Thus, the defendant No.1 had violated the terms and conditions of the Loan Agreement and other loan documents as they had continued to default in the payment of EMI. The defendant No.2 also did not comply with the terms and conditions of the tripartite agreement. By the aforesaid notice the plaintiff recalled the entire loan. Despite the issuance of the said Legal Notice, the defendants failed to make payment of the outstanding loan dues.

As per the books of account maintained by the plaintiff in due course of its business, the defendants are now liable to pay a sum of Rs.25,69,399.23 as outstanding loan as on 30th August, 2014 as per details given below:

Particulars	Amount (Rs.)
EMI Principal	94,207.92
Broken Period Interest	13451.00
EMI Interest	587457.08
Additional Interest	2,33,060.00
Document Retrieval Charges- Higher Education Cess	3.00
Document Retrieval Charges- Education Cess	6.00
Document Retrieval Charges	2,500.00
Cheque Dishonour	600.00
Document Retrieval Charges-Service Tax	300.00
Legal charges	1300.00
Principal	16,36,514.23
Excess amount	.00
Total	Rs.25,69,399.23

It is argued on behalf of plaintiff that defendants are jointly and severally, co-extensively and continuously liable to pay the outstanding amount fully detailed above which the defendants have failed to pay despite of repeated demands and issuance of demand notice. Therefore, the plaintiff has no other option but to file the present suit for recovery.

11. When the matter was taken up, no one appeared on behalf of the defendants despite service. Memo of appearance is not on record. No application for leave to defend was filed. Therefore, the claim of the plaintiff is liable to be allowed.

12. Under these facts and circumstances, the plaintiff is entitled for a decree for recovery of a sum of Rs. 25,69,399.23/- along with pendente-lite and future interest @ 18% per annum as claimed in

terms of the prayer clause 25(a) and (b) of the plaint from the date of filing of the suit till the date of payment.

13. The plaintiff is also entitled for costs.

14. The decree be drawn accordingly. The suit is disposed of.

(MANMOHAN SINGH)
JUDGE

JULY 20, 2015