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

% Judgement reserved on: **06.11.2026**
Judgement delivered on: **18.11.2026**

\+ CS(COMM) 205/2025

M/S EASTMAN CAST AND FORGE LTD. ……Plaintiff

versus

M/S EXACT DEVELOPERS & PROMOTORS PVT. LTD.
....Defendant

Advocates who appeared in this case:

For the Plaintiff: Mr. Harish Malik and Mr. Kushal Bhattacharjee, Advocates.

For the Defendants: Dr. Bipin K. Dwivedi, Mr. Ankit Aakash Dwivedi and Mr. Abrar Ali, Advocates.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J.

I.A. 22162/2026 (U/o XIII-A, CPC seeking Summary Judgement)

1. The present application has been filed by the plaintiff under Order XIII-A Rules 2 and 3 of the Code of Civil Procedure, 1908 (hereinafter referred to as *"CPC"*) seeking a summary judgement against the defendant.

BRIEF FACTS OF THE CASE:-

2. The plaintiff claims to have booked six commercial units bearing Unit Nos. 703, 704, 705, 710, 711, and 712 in the defendant's project named "The Ace", situated at Manesar, Gurugram, in the year 2007. It is claimed that the plaintiff had remitted the entire sale consideration

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amounting to Rs.4,07,81,000/- to the defendant. However, it is the case of the plaintiff that the defendant failed to perform its part of the contract by not handing over possession of the said units to the plaintiff within the stipulated time.

3. Consequently, a Settlement Agreement dated 18.07.2023 is claimed to have been executed between the parties at New Delhi. It is stated that in terms of the said settlement agreement, the defendant admitted its failure to perform its obligations within the stipulated time and agreed to refund the entire principal amount of Rs.4,07,81,000/- to the plaintiff in five (5) installments.

4. It is further the case of the plaintiff that the defendant failed to honour the said settlement agreement and did not remit even a single installment in favour of the plaintiff. Accordingly, the plaintiff has preferred the present suit on 27.02.2025 seeking recovery of an amount of Rs.4,07,81,000/-, along with *pendente lite* and future interest @ 12% per annum against the defendant.

5. The defendant is stated to have filed its written statement on 15.05.2025. It is the case of the plaintiff that the preliminary objections and other defences raised by the defendant in its written statement are devoid of any substantial reasoning and are completely sham, evasive and vague.

6. In view thereof, it is stated by the plaintiff that the defendant has no real prospect of successfully defending the claim raised by the plaintiff. Accordingly, the present application under Order XIII-A of the CPC is being preferred by the plaintiff.

CONTENTIONS OF THE PLAINTIFF:-

7. Mr. Harish Malik, learned counsel appearing for the plaintiff submits that the present application under Order XIII-A of the CPC has been

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preferred by the plaintiff having regard to the fact that the defendant has made substantial admissions entitling the plaintiff to a summary decree. According to him, the defendant has no prospects of succeeding in its defence and the defence set up is moonshine and there is no requirement for the suit to proceed for trial.

8. At the outset, learned counsel drew attention to para 4(k) of the plaint whereby the plaintiff has made references and averments in respect of the transactions between the parties indicating that the plaintiff company had made a total payment of Rs.4,07,81,000/- in favour of the defendant company on 08.10.2009. It is stated that receipts against each of the part payments were also generated by the defendant.

9. He next referred to para 4(o) of the plaint where the averments in respect of admission by the defendant company of its defaults with regard to delay in handing over the possession and completion of the units were stated. In the said paragraph, the plaintiff asserted that both the parties had entered into an agreement for full and final settlement whereby the defendant company had agreed to refund the total amount paid by the plaintiff. It is stated that the said agreement was executed between the parties in the office of the defendant company at Delhi. It is stated that as per the said settlement agreement, the defendant company had agreed to make the payment of the first instalment to the plaintiff on or before 31.07.2023. It is stated that despite such agreement, the defendant failed to fulfil its commitment.

10. So far as the territorial jurisdiction of this Court is concerned, learned counsel referred to para 10 of the plaint to submit that the necessary territorial jurisdiction lies with this Court on account of the fact that the Settlement Agreement dated 18.07.2023 regarding repayment of the sale

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consideration by the defendant company was executed in Delhi and the present suit for recovery of the said amount described in the settlement agreement has correctly been instituted in this Court.

11. In order to demonstrate the admissions by the defendant company as also to substantiate the need for a summary judgement, learned counsel referred to the written statement particularly, the corresponding paras 4(k) and 4(o) of the plaint. So far as the reply to para 4(k) is concerned, the corresponding para of the written statement only mentions that "the contents of para (i - k)" are matter of record and need no reply. According to learned counsel, the averments in para 4(k) of the plaint are deemed to be admitted.

12. So far as para 4(o) of the plaint is concerned, though the defendant in the corresponding para 4(o) of the written statement has denied the liability of the defendant to pay a sum of Rs.4,07,81,000/- or the interest thereon, however, has specifically admitted that in case, the defendant is unable to collect funds for refund of the amount, the plaintiff would take possession of the units booked by it. He further submitted that the defendant asserted that it is holding and maintaining six (6) units of the plaintiff, which the plaintiff can take possession of by making balance payment and holding charges.

13. Learned counsel next referred to the Settlement Agreement dated 18.07.2023. By referring to Clauses 2, 4 and 5, learned counsel stoutly contended that the admissions contained in those clauses would entitle the plaintiff to a summary judgement under Order XIII-A of the CPC. He would submit that having regard to the fact that the execution of the Settlement Agreement dated 18.07.2023 has been admitted, the contents whereof are also deemed to be admitted, in which case, according to the

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learned counsel, the plaintiff is entitled to a summary judgement without the suit being put to trial. He would submit that the aforesaid submissions when cumulatively considered clearly disclose that there are no real prospects of the defendant being able to successfully defend the suit of the plaintiff.

CONTENTIONS OF THE DEFENDANT:-

14. Dr. Bipin K. Dwivedi, learned counsel for the defendant vehemently refuted the submissions and contentions urged on behalf of the plaintiff.

15. At the outset, learned counsel contended that this Court would not have the territorial jurisdiction to adjudicate the present matter inasmuch as the Builder Buyer Agreement (hereinafter referred to as the '*BBA*') which was executed between the parties on 19.11.2007, and is the principal document, confers exclusive jurisdiction upon competent Courts in Gurugram, Haryana. In order to substantiate this contention, learned counsel referred to Clause 62 of the BBA, which categorically excluded jurisdiction of Courts other than at Gurugram from adjudicating or entertaining any matter arising out of and/or concerning the agreement/transaction directly as well as impliedly. He would contend that once both parties have executed a document conferring exclusive jurisdiction to Gurugram's Courts, this Court could not exercise any territorial jurisdiction over the subject matter.

16. For the aforesaid proposition, he relied on the judgement of the Supreme Court in ***Rakesh Kumar Verma vs. HDFC Bank Ltd, 2025 INSC 473***, and ***Swastik Gases Pvt. Ltd. vs. Indian Oil Corporation Ltd., (2013) 9 SCC 32***. Thus, according to the learned counsel, the mere mention of the place i.e. Gurugram in the principal document i.e. BBA as a place of jurisdiction, this Court is clearly excluded from exercising any territorial

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jurisdiction over the subject suit matter.

17. Another leg of the same argument of the learned counsel was to the extent that even if this Court is inclined to take into consideration the settlement agreement, the settlement agreement itself arises directly or indirectly from the BBA, and thus, is a supplementary document which would not govern the territorial jurisdiction issue. According to him, it is only and only the BBA which confers jurisdiction on a Court situate in Gurugram to the exclusion of all other Courts.

18. The other contention of the learned counsel was that the defendant was not liable to make any payment to the plaintiff in case it is unable to arrange for the funds in terms of the settlement agreement as an alternate arrangement of the plaintiff taking over the possession of the six flats was also agreed to between the parties. He would submit that the six flats are ready to be given possession of. He would submit that there are other purchasers who have now taken possession of 80% of the flats constructed by the defendant. He would submit that the plaintiff can take possession of these six (6) flats which are subject matter of the BBA even today and without payment of any further charges.

ANALYSIS AND CONCLUSION:-

19. This Court has heard the learned counsel for the parties and also perused the record and examined the judgements relied upon.

20. As to under what conditions, a Court can, under Order XIII-A of the CPC, pass a summary judgment, is crystalised and no more *res integra* in view of the judgement of the Supreme Court in ***Reliance Eminent Trading and Commercial Pvt. Ltd. vs. Delhi Development Authority, (2026) SCC OnLine SC 744***. The relevant paragraphs are quoted hereunder:

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50. *Coming back to the Order necessary for adjudication of the present case, Rule 3 of Order XIII-A of the CPC provides that the Court, while adjudicating an application for summary judgment, has to bear in mind two things-*

(i) the Court considers -

> *(a) whether the plaintiff has any real prospect of succeeding on the claim or issue; or*
>
> *(b) whether the defendant has any real prospect of successfully defending the claim or issue; and*

(ii) there is no other reason why the case or issue should be allowed to go to trial.

51. *This brings us to the expression 'real prospect of success', as used in Rule 3 of Order XIII-A of the CPC. This phrase is, by its very nature, self-explanatory and admits of no further interpretation. It postulates that the likelihood of success must be real and substantial, as opposed to being merely fanciful or speculative. In other words, the standard envisages a degree of certainty higher than that of a claim which is merely arguable. Accordingly, where the Court finds that a claim or defence is so weak that it prima-facie discloses no reasonable prospect of success, it is neither necessary nor desirable to subject the parties to the rigours of a full-fledged trial. The provision, thus, empowers the Court to arrest such proceedings at the threshold, thereby preventing undue expenditure use of judicial time and resources. At the same time, the provision reflects the broader obligation of the Court to ensure expeditious delivery of justice. In this regard, reference can be made to the decision of the England and Wales Court of Appeal in Swain v. Hillman, (2001) 1 All ER 91, which set the standard for summary judgment under Part 24 of the Civil Procedure Rules, 1998 of the United Kingdom. In this case, it was held that the power of summary judgment is to be exercised where it is just and expedient to do so, enabling parties to know their legal position without being compelled to endure a trial.*

52. *The question then arises regarding the scope of enquiry under Order XIII-A of the CPC. At one end of spectrum, it is to follow the test laid out in Wenlock v. Moloney, [1965] 1 WLR 1238, wherein the English Court of Appeal adopted rigid standard to state that:—*

> *"...**this summary jurisdiction of the court was never intended to be exercised by a minute and protracted examination of the documents and facts of the case, in order to see whether the plaintiff really has a cause of action.** To do that is to usurp the position of the trial judge, and to produce a trial of the case is chambers, on affidavits only, without discovery and without oral evidence tested by cross-examination in the ordinary way. This seems to me to be an abuse of the inherent power of the court and not a proper exercise of*

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that power."

53. *A less stringent standard was adopted in William and Humbert Ltd. v. W & H Trade Marks (Jersey) Ltd., [1986] A.C. 368, wherein the U.S. Court of Appeals for the District of Columbia Circuit observed that a Court should, as a general rule, decline to proceed with the argument unless it not only harbours doubts about the soundness of the pleadings but, in addition, is satisfied that striking out will obviate the necessity for a trial or will substantially reduce the burden of preparing for the trial or the burden of the trial itself.*

54. *In Three Rivers District Council v. Governor and company of the Bank of England, [2001] UKHL 16, the House of Lords was considering a suit for damages against the Bank of England for misfeasance in public office arising from collapse of Bank of Credit and Commerce International SA. While considering the application of the defendant for summary judgment, it was held that:—*

*"**95.** I would approach that further question in this way. The method by which issues of fact are tried in our courts is well settled. After the normal processes of discovery and interrogatories have been completed, the parties are allowed to lead their evidence so that the trial judge can determine where the truth lies in the light of that evidence. To that rule there are some well-recognised exceptions. For example, it may be clear as a matter of law at the outset that even if a party were to succeed in proving all the facts that he offers to prove he will not be entitled to the remedy that he seeks. In that event a trial of the facts would be a waste of time and money, and it is proper that the action should be taken out of court as soon as possible. In other cases it may be possible to say with confidence before trial that the factual basis for the claim is fanciful because it is entirely without substance. It may be clear beyond question that the statement of facts is contradicted by all the documents or other material on which it is based. The simpler the case the easier it is likely to take that view and resort to what is properly called summary judgment. **But more complex cases are unlikely to be capable of being resolved in that way without conducting a mini-trial on the documents without discovery and without oral evidence.** As Lord Woolf said in Swain v. Hillman, at p 95, that is not the object of the rule. It is designed to deal with cases that are not fit for trial at all."*

55. *Closer to the home, various High Courts have rendered their opinions primarily on a cautionary note in adjudicating summary judgments, which have been held to be applicable in exceptional cases. Reference in this regard can be made to Bright Enterprises Pvt. Ltd. v. MJ Bizcraft LLP, 2017 SCC OnLine Del 6394 and Su-kam Power Systems Ltd. v. Mr. Kunwer Sachdev, 2019 SCC OnLine Del 10764.*

56. *If a case before the Court gives rise to a neat point of law or construction, and if the Court is satisfied that it has all evidences*

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necessary for the proper determination of the question and that the parties have had an adequate opportunity to address their arguments; it should grasp the nettle and decide the same. While it is simply not enough for the defendant to argue that something may come up in trial, at the same time the defendant has to show from the documents available on record, or portray that such evidence likely exists and can be expected to be made available during the trial.

57. *There is no gainsaying that the Court ought not to conduct a mini-trial in this regard, rather take the statements and facts on the face, until any contemporaneous document indicates otherwise. In doing so, the Court ought to not only take into account the evidence actually available on the record, but also the evidence that can be reasonably be expected to be available in the process of trial.*

58. *It may not be out of context to note that the use of summary judgment will not be against the interest of justice if it will lead to a fair and just result, and serve the goals of timeliness, affordability and proportionality in light of the litigation as a whole.*

59. *Therefore, while considering an application for summary judgment under Order XIII-A of the CPC, the following non-exhaustive guidelines have to be complied-*

(i) That the procedural mandate under Order XIII-A, CPC be strictly complied.

(ii) The Court should consider,

(a) Whether Plaintiff has no real prospect of succeeding on the claim or issue; or

(b) Whether the defendant has no real prospect of successfully defending the claim or issue; and

(iii) The Court should also consider whether there is no other reason why the case or issue(s) should be allowed to go to trial.

(iv) While ascertaining above, the Court does not have to take everything on the face value, but it must also not conduct a mini trial at the same time.

(v) That the Court has to differentiate between a cause of action/defence respectively, which is real as opposed to fanciful prospect.

(vi) That the Court ought to grasp the nettle, when dealing with the summary judgment applications to decide short points of law and interpretations.

(vii) The Court must take into account not only the evidence before it but also the evidence that can reasonably be expected to be led/available at the trial.

(viii) That the Court's usage of power under Order XIII-A, CPC is exceptional as it cuts short the process of trial and ought to be

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exercised where oral evidence and full trial is not required.

(ix) In order to ascertain the need for full trial over summary judgment, the Court has to see whether, in the interest of justice, it is more suited to conduct trial to -

(a) Weigh the evidence,

(b) Evaluate the credibility of a deponents,

(c) Draw reasonable inferences from the evidence."

21. The learned Division Bench of this Court in ***Bright Enterprises Pvt. Ltd. vs. M.J. Bizraft, 2017 SCC Online Del 6394*** had enumerated the procedural stipulations to be followed in an application seeking summary judgement and the reply thereto. The learned Division Bench stated that the decision to pass a summary judgement without recording oral evidence are exceptional in nature to the ordinary course of a suit, and thus, the stipulations must be strictly construed. The relevant paragraphs i.e. paras 22 and 23 are extracted hereunder:

"22. The provisions relating to summary judgment which enables courts to decide claims pertaining to commercial disputes without recording oral evidence are exceptional in nature and out of the ordinary course which a normal suit has to follow. In such an eventuality, it is essential that the stipulations are followed scrupulously otherwise it may result in gross injustice. As pointed out above, a specific period of time has been provided during which an application for summary judgment can be made. That period begins upon the service of summons on the defendant and ends upon the court framing issues in the suit. Even if we were to accept, which we do not, the argument of the respondents that the Court had suo moto powers to deliver summary judgment without there being any application, those powers also would have to be exercised during this window, that is, after service of summons on the defendant and prior to framing of issues. In addition to this, we also reiterate that, in our view, a summary judgment under Order XIIIA CPC is not permissible without there being an appropriate application for summary judgment. The contents of an application for summary judgment are also stipulated in Rule 4 of Order XIIIA. The application is required to precisely disclose all material facts and identify the point of law, if any. In the event, the applicant seeks to rely on any documentary evidence, the applicant must include such documentary evidence in its application and identify the relevant content of such documentary evidence on which the applicant relies. The application must also state the reason why there are

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no real prospects of succeeding or defending the claim, as the case may be.

23. Rule 4(2) of Order XIIIA also requires that where a hearing for summary judgment is fixed, the respondent must be given at least thirty days' notice of the date fixed for the hearing and the claim that is proposed to be decided by the Court at such hearing. Rule 4(3) of Order XIIIA makes provision which enables the respondents to file a reply within the stipulated time addressing the matters set forth in clauses (a) to (f) of the said sub-rule. In particular, the reply of the respondent ought to precisely disclose all the material facts and identify the point of law, if any, and the reasons why the relief sought by the applicant for summary judgment should not be granted. Just as in the case of the applicant, the respondent is also given the opportunity to rely upon documentary evidence in its reply which must be included in the reply and the relevant content identified. The respondent's reply is also required to give reason as to why there are real prospects of succeeding on the claim or defending the claim, as the case may be. Importantly, the reply must also concisely state the issues that should be framed for trial and that it must identify what further evidence would be brought on record at trial that could not be brought on record at the stage of summary judgment. The reply should also state as to why in the light of the evidence or material on record, if any, the Court should not proceed to summary judgment."

22. It is in the aforesaid principle of law that has been succinctly laid down that this Court would now proceed to examine the issue on merits.

23. The plaintiff has instituted the present suit for recovery of a sum of Rs.4,07,81,000/- alongwith *pendente lite* and future interest @ 12% p.a. predicated on the Settlement Agreement dated 18.07.2023. It may also be noted that the parties do not dispute that the settlement agreement was executed on account of failure of the defendant to handover six (6) units which were to be constructed by the defendant. The defendant also does not dispute that a sum of Rs.4,07,81,000/- was also paid by the plaintiff towards the said six (6) units of commercial space. It is also not disputed that a BBA was executed between the parties for the purposes of construction of commercial space by the defendant out of which six (6) units were to be handed over to the plaintiff within twenty-four (24)

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months from the date of the BBA i.e. or approval of completion building plans by the Competent Authority, whichever is later.

24. Clause 62 of the BBA confers exclusive jurisdiction to the Courts at Gurugram. This position is not disputed by the plaintiff. The Supreme Court in ***Swastik Gases*** *(supra)* had authoritatively pronounced that in case a contract between parties refers/mentions a particular place for jurisdiction, axiomatically, that place alone, to the exclusion of others, would have the necessary territorial jurisdiction to decide and adjudicate a dispute which may arise out of the said contract. Clearly, there is no quarrel with the said proposition.

25. Though learned counsel for the defendant made a valiant effort to emphasize that BBA being the principal document would govern the jurisdiction clause between the parties as encapsulated in Clause 62 of the BBA, what is fundamental to be examined is the relief sought by the plaintiff. It is nobody's case that the plaintiff is seeking specific performance of the BBA in which case the jurisdiction of this Court would stand excluded. Undoubtedly, the settlement agreement, no doubt, is on account of frustration of the plaintiff of not being handed over the six (6) units as assured in the BBA, yet it is the terms of the settlement agreement i.e., the recovery of Rs.4,07,81,000/- that too, without interest as stipulated therein, is what the plaintiff seeks in the present suit.

26. To the assertion of the plaintiff in para 4(o) of the plaint regarding the execution of the settlement agreement, the defendant in its corresponding para 4(o) of the written statement has not denied the execution of the said settlement agreement. In fact, the defendant has concocted a story that in case the defendant is unable to arrange for the funds for the refund of the aforesaid sum, the plaintiff would take

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possession of the units booked by it. Two things precisely fall from the aforesaid statement. One, that the execution of the settlement agreement is admitted, and two, the submission of an alternate arrangement of the plaintiff accepting six (6) units in default of refund is completely contrary to the recitals of the settlement agreement itself.

27. So far as the issue of territorial jurisdiction is concerned, having regard to the fact that the settlement agreement is admitted, it can be safely inferred that the same was executed in Delhi, which too, is not denied. Undeniably, the plaintiff is only seeking recovery of the money as stipulated and contemplated in the settlement agreement independent of the BBA. Thus, the submission that BBA is the principal document and Clause 62 of the BBA would govern the jurisdiction, may not be entirely correct. Resultantly, having regard to the fact that a part of cause of action i.e., the execution of the Settlement Agreement dated 18.07.2023 in Delhi as also the fact that the defendant itself is located in Delhi, would clearly, under the provisions of Section 20 (c) of the CPC, confer requisite territorial jurisdiction upon this Court to adjudicate the suit.

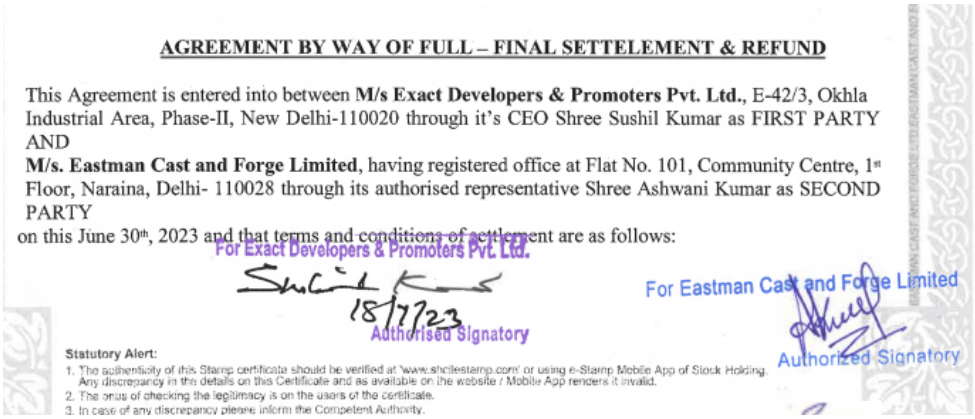
28. The defendant has, in its written statement, particularly para 4(o) stated that it was the understanding between the parties at the time of signing of the agreement that in the event the defendant is not in a position to arrange for the funds, the plaintiff would take possession of the units booked by them. This stand was emphatically urged by the learned counsel for the defendant as an alternate to the refund of the sum of Rs.4,07,81,000/- to substantiate the stand that the matter would require trial.

29. Ordinarily, the aforesaid submission, possibly could have propelled the Court to deem it fit that the suit proceed to trial rather than pass a

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summary judgement. However, in the present case, it does not appear so.

30. This is for the reason that the stand taken by the defendant as noted above in para 4(o) of its written statement is clearly contrary to the written document admitted by the parties and is on record. It would be appropriate to extract the Settlement Agreement dated 18.07.2023 in its entirety including the handwritten note at the end of such document, hereunder:



AGREEMENT BY WAY OF FULL – FINAL SETTELEMENT & REFUND

This Agreement is entered into between **M/s Exact Developers & Promoters Pvt. Ltd.**, E-42/3, Okhla Industrial Area, Phase-II, New Delhi-110020 through it's CEO Shree Sushil Kumar as FIRST PARTY AND
M/s. Eastman Cast and Forge Limited, having registered office at Flat No. 101, Community Centre, 1st Floor, Naraina, Delhi- 110028 through its authorised representative Shree Ashwani Kumar as SECOND PARTY
on this June 30th, 2023 and that terms and conditions of settlement are as follows:

For Exact Developers & Promoters Pvt. Ltd.
18/7/23
Authorised Signatory

For Eastman Cast and Forge Limited
Authorized Signatory

Statutory Alert:
1. The authenticity of this Stamp certificate should be verified at 'www.shcilestamp.com' or using e-Stamp Mobile App of Stock Holding. Any discrepancy in the details on this Certificate and as available on the website / Mobile App renders it invalid.
2. The onus of checking the legitimacy is on the users of the certificate.
3. In case of any discrepancy please inform the Competent Authority.

1. That First Party had launched its Commercial Integrated Project for Commercial office space and second party booked an office space at the total cumulative consideration price of Rs. 4,07,81,000/- (Rupees Four Crores Seven Lakhs Eighty one thousand).

2. That First party allotted 06 units bearing **Unit Nos. 703, 704, 705, 710, 711, 712 at 7th Floor, Tower A, The Ace, Khasra No. 50/2/2,3,4,5, 45/8/2/1, 13/2, 14/1, 16, 17, 18/1, 25/1, 23/1, 23/2, 23/3, 24/1, 24/2, 25/2, 25/3, 12/2, 3/1/2 min, 8/2/2, 18/2, 13/1, Village Lakhnaula, Gurgaon, Haryana** in favour of Second Party at the above stated Commercial Integrated Project.

2. That Second Party had made payment of total Rs. 4,07,81,000/- (Rupees Four Crores Seven Lakhs Eighty one thousand).

3. That due to certain reasons beyond the control of First Party there has been delay in completion of units and delayed in offer of possession was made that second party has not taken the Possession of said unit numbers 703, 704, 705, 710, 711, 712 in Tower A, The Ace, Khasra No. 50/2/2,3,4,5, 45/8/2/1, 13/2, 14/1, 16, 17, 18/1, 25/1, 23/1, 23/2, 23/3, 24/1, 24/2, 25/2, 25/3, 12/2, 3/1/2 min, 8/2/2, 18/2, 13/1, Village Lakhnaula, Gurgaon, Haryana which was offered by First Party.

4. That as due to change of circumstances the Second Party had not been willing to continue with project and had asked the first party to refund the deposited amount without interest in 6 interest free installments (the first installment being 10% at time of signing of this agreement).

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5. That in order to have an amicable and harmonious relation first party has offered to refund to second party total deposited amount without any interest. That first party has agreed to pay 10% of total amount of Rs. 4,07,81,000/-, i.e. INR 40,78,100/- (Forty Lakhs Seventy Eight Thousand One Hundred) at the time of signing of this agreement and remaining balance amount shall be refunded in 5 equal monthly installments within a period of 5 months maximum extendable to 6 months.

6. That towards signing of the Agreement by way of Full & Final Settlement the Second Party has received INR 40,78,100/- (Forty Lakhs Seventy Eight Thousand One Hundred) which is 10% of total deposited amount, that First party has also agreed to refund balance amount in Five 5 equal monthly installments within a period of 5 months maximum extendable to 6 months. The schedule for the payment has been agreed hereby the first 10% will be paid on signing of agreement by 30th June 2023 and balance in 5 equal installments on or before 7th August 2023; 14th September 2023 ; 21st October 2023; 28th November 2023 and 30th December 2023.

7. That after receipt of the last installment the second party shall not have any claim/right over the allotted unit and first party shall be at liberty to deal with the unit the way it want. That Second Party agrees that it shall not raise/file any claim/suit petition before any court/tribunal/commission/forum related to allotment of Commercial Unit and in the event of any suit/Petition filed by the Second Party shall withdraw the same. However, the second party reserves the right to take legal recourse incase of non-fullfillment/default of the clauses mentioned above and agreed upon.

8. That Second Party also agrees to refund all original documents pertaining to the above units at the time of receipt of final installment of payment i.e., the original ownership papers shall be provided to the First Party on exchange of Demand/ Draft / Pay-order for the last installment.

For Exact Developers & Promoters Pvt. Ltd.

18/7/23

Authorised Signatory

For Eastman Cast and Forge Limited

9. That instant agreement has been signed in the presence of witnesses without any undue influence, pressure or coercion.

For Exact Developers & Promoters Pvt. Ltd.

FIRST PARTY Authorised Signatory

18/7/23

For Eastman Cast and Forge Limited

Authorized Signatory

SECOND PARTY

Witnesses:

1.

2.

Basis the representation made by first Party, both the parties agree that the first installment towards this Agreement by way of full-final Settlement & Refund shall be made on or before July 31, 2023, i.e. the amount of INR 40,78,100/-

This clause shall supersede clause 6 of this Agreement.

For Eastman Cast and Forge Limited

- First Party

18/7/23

Authorised Signatory

- Authorized Signatory - Second Party.

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Signature Not Verified

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31. Manifestly, there is no clause in the settlement agreement which refers to any alternate arrangement other than the stipulation mentioned in Clauses 2, 4 and 5 of the settlement agreement. It is trite that the documentary evidence excludes the oral. In view of the settled proposition of law, the submission of an alternate arrangement, that too oral, cannot be considered and is rejected.

32. As to whether the plaintiff has any real prospects of succeeding on the claim; whether the defendant has any real prospects of successfully defending the claim or that there is no other reason why the case or issue should be allowed to go to trial, the aforesaid analysis and observations impel this Court to rule on the affirmative on the first and third issues noted above and equally hold that in the given circumstances, the defendant has no real prospects of successfully defending the claim.

33. The only issue which arises in this case is in respect of whether the plaintiff is entitled to recovery of sum of Rs.4,07,81,000/- from the defendant as contemplated in the Settlement Agreement dated 18.07.2023. That the plaintiff has paid a sum of Rs.4,07,81,000/- is not denied by the defendant rather admitted in para 4(i) of the written statement; that the parties had entered into and executed a Settlement Agreement dated 18.07.2023 is admitted; that the terms and conditions of the settlement agreement too are not denied except for a concocted alternative arrangement which has been rejected above.

34. In view of the above findings of facts, it is the considered opinion of this Court that the principles governing an application under Order XIII-A of the CPC as laid down by the Supreme Court in ***Reliance Eminent Trading*** *(supra)* and the learned Division Bench of this Court in ***Bright Enterprises Pvt. Ltd.*** *(supra)*, are fully met in the present case.

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By:YASHRAJ
Signing Date:18.12.2025
19:34:50

35. Clearly, the parties need not be put to trial since the only issue arising between them has been found to be in favour of the plaintiff. Moreover, the cumulative and harmonious consideration of the defence set up by the defendant, propels this Court to form an opinion that the defence is moonshine or a mirage.

36. In that view of the matter, the application under Order XIII-A is allowed and a summary judgement in favour of the plaintiff and against the defendant for a sum of Rs.4,07,81,000/- is passed alongwith *pendente lite* and future interest with effect from 18.07.2023 @ 9% p.a. in favour of the plaintiff.

37. Decree sheet be drawn up.

38. The present suit is disposed of alongwith all the pending applications, if any.

TUSHAR RAO GEDELA
(JUDGE)

NOVEMBER 18, 2026
rl

Signature Not Verified
Digitally Signed
By:YASHRAJ
Signing Date:18.11.2026
19:34:50