

**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

Present:

The Hon'ble Justice Sugato Majumdar

**CS/215/2024
[OLD NO. CS/171/2021]**

KAJAL BANERJEE AND ANR.

VS

GREENTECH IT CITY PVT LTD. AND ORS

For the Plaintiffs : Mr. Dhruva Ghosh, Sr. Adv.
Mr. Saumyajit Ghosh, Adv.
Mr. Kaushik Mandal, Adv.
Ms. Ajeyaa Chowdhury, Adv.

Hearing concluded on : 11/06/2026

Judgment on : 24/06/2026

Sugato Majumdar, J.:

This is a suit for money decree.

The Plaintiffs are the daughters of late Shashikant Shanghvi and Smt. Niranjana Shanghvi. Shashikant Shanghvi died intestate on November 28, 2016 whereas their mother expired on 11th May, 2010.

Defendant No.3 is the son of the Defendant No.4 and both are engaged in the business of real estate and carry on business through various partnership firms and companies from their office at 1/1B Upper Wood Street, Kolkata-700017. The Defendant No.3 is the director of Defendant No.1 and Defendant No.2 company. Defendant Nos. 3 and 4 are also partners of Defendant No.5 partnership firm.

Defendant Nos. 3 and 4 offered the Plaintiff No.1 and their deceased father, sale of one unit/flat in a project known as Sanjeeva Town Duplex Estate at Kolkata for a consideration of Rs.47 lakhs with assurance that formalities of sale would be

complete within 24 months. Pursuant to that a total consideration of Rs.47,61,000/- had been paid by the Plaintiff No. 1 and her father on 15th November, 2010 against receipts issued by the Defendants. Thereafter, the Defendant Nos. 3 and 4 through their partnership firm, namely, Defendant No.5 issued a letter on 27th November, 2010 informing the Plaintiff No.1 and her father that the unit which had been allotted to them was renumbered and also the requested to Plaintiff No.1 and her father to enter into written agreement for sale with the defendant No.5. Monies paid by the Plaintiff to the Defendants were treated as a transfer to the credit of the Defendant No.5 on or about 27th July, 2011. Then the Defendants approached the Plaintiff No.1 offering to sell another unit for a consideration of Rs.1,05,00,000/- through the Defendant No.2 company where the Defendant Nos. 3 and 4 are the directors. Accepting the same, a further payment was made and the Defendant No.2 issued receipts of such payment on 27th January, 2014, another payment of Rs.10 lakhs was made by the father of the Plaintiffs on 20/11/2013. From the pleading, it is clear that within 2014 various payments were made. In spite of making payments, the agreement fell through and the Defendant No. 1 refused to hand over physical possession of property agreed upon; refund of payment was also refused. Accordingly, the Plaintiff instituted the suit for recovery for refund of money as follow:

- a) For the Defendant No.1 and/or alternatively by the Defendants jointly and severally, a sum of Rs.2,38,61,600/- as per the following particulars:

PARTICULARS

i)	Principal sum	Rs.1,07,00,000/-
ii)	Interest @ 18%	<u>Rs.1,31,61,600/-</u>
	Total:	<u>Rs.2,38,61,600/-</u>

b) From Defendant No.2 and/or alternatively by the Defendants jointly and severally, a sum of Rs.2,37,58,603/- as per the following particulars:

PARTICULARS		
i)	Principal Sum	Rs.1,05,00,000/-
ii)	Interest @ 18%	Rs.1,23,58,603/-
Total		Rs.2,37,58,603/-

The suit is filed for recovery of a sum of Rs.2,38,61,600/- against the Defendant No.1 or the Defendants jointly and severally.

The suit was contested by the Defendants denying each and every allegation. Among others, it was pleaded that the suit was barred by limitation, principal of estoppel, waiver and acquiescence. It was also contended that on or about September, 2016 Shashikant Shanghvi visited the office of the Defendant Nos. 1 and 2 regarding the progress of the project when the Defendant Nos. 1 and 2 informed him that those projects were in the preliminary stage of construction. The said Shashikant Shanghvi never had any intention to obtain possession of any suit, since he was only interested to invest. The said Mr. Shanghvi suddenly asked for possession. Both the Defendant Nos. 1 and 2 offered that he might take possession of any unit in a ready project but he refused to accede to such request and ask for refund. In those circumstances, the Defendant Nos. 1 and 2 agreed to refund and subsequently cancelled the two transactions. Admittedly, for certain reasons beyond control, money could not be refunded. It was further contended that the suit was misconceived and should be dismissed.

On the basis of rival pleadings, the following issues were framed:

1. *Is the suit barred by the laws of limitation?*

2. *Does this Hon'ble Court have jurisdiction to try and adjudicate the instant suit?*
3. *Whether there was any valid and enforceable agreement between the parties?*
4. *Whether the Defendants or any of them committed any breach of agreement?*
5. *Whether the Defendants or any of them derived any benefit under the agreement?*
6. *Whether the Defendants or any of them is bound to refund any money?*
7. *Whether the Plaintiffs are entitled to the decree prayed for? What other relief/reliefs, the Plaintiffs are entitled to?*

At a subsequent stage of the suit the Defendants fails to appear, for which it was marked as undefended.

The Plaintiffs adduced evidences. The Learned Senior Counsel for the Plaintiff Mr. Ghosh filed notes of arguments.

The first limb of argument of Mr. Ghosh was that the suit is not time barred. Payments were made between 2010 and 2015 pursuant to the agreement for sale entered into between the parties. Admittedly, despite receiving the entire consideration neither the Defendants conveyed title nor delivered the possession of properties agreed to be suit. On the contrary, they continued to assure the Plaintiff that the transaction would be complete soon. Only upon persistent failure of the Defendants to perform contractual obligation and refund of purchase money, the

Plaintiffs terminated the agreements unequivocally in terms of two notices dated 26th February, 2021 (Ext. K & Q) and called upon the Defendant to pay the consideration money along with interest within 15 days. Since the Defendant failed, the suit was instituted on 31st August, 2021 within the period of limitation. It was further argued that the Defendant never pleaded that the agreement for sale suit cancelled, they terminated at any point of time, prior to February 2021. In absence of such pleading, it is established by the evidence of Plaintiff that the evidence came to an end by way of termination on 26th February, 2021 after which money is payable. Mr. Ghosh also pressed for application of Section 55 (6)(b) of the Transfer of Property Act, 1882.

I have heard the contention of the Learned Counsel.

Article 54 of the Limitation Act, 1963 provides that the limitation for specific performance of a contract is three years which starts running from the date fix for performance or if no such date is fixed when the Plaintiff has noticed that the performance is refused. In terms of Ext. K & Q being notice dated 26th February, 2021, the Plaintiff terminated the agreement and asked to refund the money within 15 days. Article 47 of the Limitation Act, 1963 has a relevancy to consider the situation. Article 47 provides limitation of three years for money paid upon an existing consideration which afterwards fails. Limitation starts from the date of failure. The Defendant was asked to pay within 15 days, namely, on or about 13th March, 2021 but they failed to refund the consideration money. Within three years the suit was filed. Therefore, this Court is of opinion that the suit is not time barred.

Next, it was argued by Mr. Ghosh that the payment of money is admitted in the written statement. Inviting attention of this Court to this admission Mr. Ghosh submitted that no further evidence, in fact, is not needed to pass a decree.

In other words, the instant suit succeeds.

In Para 10 of the written statement, it is pleaded that both the Defendant Nos. 1 & 2 agreed to refund and subsequently cancelled the two transactions were terminated. Oral and documentary evidence were adduced by the Plaintiff in support of the plaint case.

In view of admission and in view of an appreciation of evidence so adduced this Court is of opinion that the Defendant admitted their liability to pay the principal sum with interest.

The Defendant No. 1 is liable to pay a sum of Rs.2,38,00,600/- to the Plaintiffs and the Defendant No. 2 shall pay to the Plaintiffs a sum of Rs.2,37,00,603/-.

The Defendants shall pay the decretal amount within 90 days of date of drawing up of the decree in case of failure of which the Plaintiff shall be at liberty to draw up the execution proceeding. The Defendants shall also be liable to pay interest jointly or severally at a rate 5% per annum on the expiry of 90th day on the decretal amount.

Let the decree be drawn up.

The instant suit is disposed of along with all the pending applications, if any.

(Sugato Majumdar, J.)