**Suit for Specific Performance format under Code of Civil Procedure Suit with alternate prayer for Recovery of Money**.

 Format of Suit for recovery of money in case of builder or contractor failed to honour agreement with the buyer.

This format can be used to file Suit for Specific performance of contract entered by the Plaintiff and Defendant, when the Defendant failed to execute the contract or honour the conditions in the Contract or Memorandum of Understanding. Sufficient court fee needs to be paid to file the suit. Separate prayer for refund of money is included if the Defendants failed to execute the contract.

IN THE COURT OF

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

C.S. (OS) NO\_\_\_\_\_\_\_\_\_\_\_\_\_\_ OF 20\_\_\_

IN THE MATTER OF:

ABC & ANR                         ...PLAINTIFFS

VERSUS

XUZ & ORS                         ...DEFENDANTS

**SUIT FOR SPECIFIC PERFORMANCE OF AGREEMENT TO SELL COMMERCIAL UNIT ADMEASURING \_\_\_ SQ FT.**

MOST RESPECTFULLY SHOWETH:

1. Plaintiff No. 1 is house wife residing at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Plaintiff No. 2 is \_\_\_\_\_\_and daughter in law of Plaintiff No. 1 residing at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The present Suit is being filed through Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the authorised Signatory of the Plaintiffs who has been duly authorised vide Special Power of Attorney dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_issued by Plaintiffs, to file the present Suit on behalf of the Plaintiffs.

2. The Defendant No.1 is a Limited Company having its registered office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, India.

3. That the Defendant No.2 is the Authorised signatory of Defendant No. 1 Company and has jointly signed agreement to sell dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and Memorandum of understanding dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_ on behalf of Defendant No. 1.

4. That the Defendant No.3 is also the Authorised signatory of Defendant No. 1 Company and has jointly signed agreement to sell dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and Memorandum of understanding dated \_\_\_\_\_\_\_\_\_\_\_ on behalf of Defendant No. 1.

5. That in \_\_\_\_\_\_ Defendant No. 1 had come up with a public offer to sell Commercial Unit being constructed in a Commercial Complex under the name and style "\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with assurance to complete the construction of the commercial space within 36 months.

6. That by believing their offer as genuine and trusting on the Management of the company, the Plaintiffs have applied to purchase a Commercial Unit admeasuring \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ vide Customer Code \_\_\_\_\_\_\_\_\_\_\_\_, for a price of Rs. \_\_\_\_\_\_\_\_\_\_\_\_\_\_/- (Rupees \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ only).

7. That the Defendants have issued allotment letter Ref: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_addressed to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, confirming the allotment of Shop No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in favour of Plaintiffs for a total consideration of Rs. \_\_\_\_\_\_\_\_\_\_\_\_. Copy of Allotment letter and payment schedule dated \_\_\_\_\_\_\_\_\_\_\_ issued by the Defendants is annexed hereto as Annexure P1.

8. That the Defendants have demanded an amount of Rs. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(Rupees \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ only) from the Plaintiffs towards 85% of the cost of the property and taxes. The plaintiffs have paid to the Defendants the said amount as per the payment details given below.

Copies of the aforementioned receipts dated \_\_\_\_\_\_\_\_\_\_\_\_\_ issued by the Defendants are annexed hereto as Annexure P2 (Colly).

9. That the Plaintiffs and Defendants have entered into Agreement to sell dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Defendant No. 2 and Defendant No. 3 have signed the agreement to sell on behalf of Defendant No. 1 in the capacity of authorized signatories. Copy of Agreement to sell dated \_\_\_\_\_\_\_\_\_ is annexed as Annexure P3.

10. That clause 4.1 of Article 4 of the agreement to sell dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ read as follows "That the possession of the Unit shall be delivered to the Purchaser within 36 months from the date of signing this agreement..." As per the agreement to sell the Defendants have assured to the Plaintiffs to give possession of the property by \_\_\_\_\_\_\_\_\_\_.

11. That the plaintiffs and defendants have also signed Memorandum of Understanding dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_. Defendant No. 2 and Defendant No. 3 have signed the agreement to sell on behalf of Defendant No. 1 in the capacity of authorized signatories. Copy of Memorandum of Understanding dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_ is annexed hereto as Annexure P4.

12. That Clause 5 of the MoU read as follows "That from \_\_\_\_\_\_\_\_\_\_\_\_\_\_, however subject to receipt of 85% of the sale consideration, the Developer assures a monthly return ("Assured Return") of Rs. 51/- (Rupees Fifty One only) per square feet per month of the super area being purchased by the purchaser,.."

13. That the Plaintiffs have waited for 36 months to get possession of the property. Till date no communication regarding possession of the property has been received from the defendants.

14. That the Plaintiffs enquired about progress of the construction and shocked to know that the Defendants have not started any construction in the site. The Defendants have just collected money from customers and not done any work to develop the project.

15. That till date the Defendants has not started construction of the building or refunded the amount to the Plaintiffs. It shows the malafide intension to of Defendants to cheat the Plaintiffs by giving false promises.

16. That the Plaintiffs have issued a legal notice dated October \_\_\_\_\_\_\_\_\_\_\_, vide postal receipt No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_through their advocates demanding refund of Rs. \_\_\_\_\_\_\_\_\_\_\_\_\_\_(Rupees \_\_\_\_\_\_\_\_\_\_\_\_\_\_ only) along with interest @ 18% for the period from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to till date and assured return of Rs. 51 per square feet as per clause 5 of Memorandum of Understanding till payment date, which was not replied by the Defendants. Copy of the Legal Notice dated \_\_\_\_\_\_\_\_\_\_\_ along with postal receipt is annexed here as Annexure P-5.

17. Since the Defendants have not responded to the legal notice dated \_\_\_\_\_\_\_\_\_\_\_\_, the Plaintiffs have again send another legal notice dated \_\_\_\_\_\_\_\_\_\_\_, to the Defendants addressed to Registered office of the Defendants at New Delhi and office of the Defendants at \_\_\_\_\_\_\_\_\_\_\_posted on the same date vide postal receipt \_\_\_\_\_\_\_\_\_\_ through their advocates demanding refund of Rs. \_\_\_\_\_\_\_\_\_\_\_\_\_\_(Rupees \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ only) along with interest @ 18% for the period from \_\_\_\_\_\_\_\_\_\_\_\_\_ to till date and assured return of Rs. 51 per square feet as per clause 5 of Memorandum of Understanding till payment date, which was not replied by the Defendants. Copy of the Legal Notices dated \_\_\_\_\_\_\_\_\_\_\_ along with postal receipt No. \_\_\_\_\_\_\_\_\_\_\_\_\_ and acknowledgement are annexed here as Annexure P-6.

18. That the Defendants have created unnecessary financial loss and mental pressure to the Plaintiffs and committed cheating, fraud and breach of trust by giving false promises.

19. That the Suit is within the period of limitation.

20. That the cause of action arose in favour of the Plaintiff and against the Defendants. The cause of action arose on \_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_, when the Defendants accepted Rs. \_\_\_\_\_\_\_\_\_\_\_ (Rupees \_\_\_\_\_\_\_\_\_\_\_\_) and acknowledged the receipts of the amount. The Cause of action arose when agreement to sell dated \_\_\_\_\_\_\_\_\_\_ and Memorandum of Understanding dated \_\_\_\_\_\_\_\_\_\_\_\_\_ signed by the Plaintiffs and defendants. The cause of action arose on \_\_\_\_\_\_\_\_\_\_\_\_\_ when the defendants failed to give possession of the property as per the Agreement to Sell. The cause of action arose when the first Legal Notice dated \_\_\_\_\_\_\_\_\_\_\_\_ was send upon the Defendants. The cause of action arose when the second legal notice send to the Defendants on \_\_\_\_\_\_\_\_\_\_\_, which was duly received by the defendants.

21. That this Hon'ble Court is competent to try the present Suit as the Plaintiffs are Residents/ Permanent address are of its territorial jurisdiction, The Agreement to Sell and Memorandum of Understanding are signed in its territorial jurisdiction, the registered office of the Defendant Company is in its territorial jurisdiction and the transactions are done its territorial jurisdiction.

22. In the facts and circumstances of case mentioned herein above this Hon'ble Court may graciously be pleased to:

P R A Y E R

23. That the Plaintiff, therefore, pray that-

a) A decree for specific performance of the agreements to sell dated \_\_\_\_\_\_\_\_\_\_\_\_ be passed in favour of the Plaintiff and against the defendant thereby directing the defendants to execute the sale deed and get the same registered in favour of the plaintiff in respect convey the suit property, and do all other acts, deeds and things as may be necessary in this regard;

b) A decree for specific performance of the Memorandum of Understanding dated \_\_\_\_\_\_\_\_\_\_ vide which Defendants agreed that from \_\_\_\_\_\_\_\_\_\_\_, however subject to receipt of 85% of the sale consideration, the Developer assures a monthly return ("Assured Return") of Rs. 51/- (Rupees Fifty One only) per square feet per month of the super area being purchased by the purchaser.

c) If the Hon'ble court finds that the plaintiff is not entitled to the relief of specific performance of agreement to sell dated \_\_\_\_\_\_\_\_\_\_\_ then the suit be decreed for the alternative relief by way of decree for recovery of Rs. \_\_\_\_\_\_\_\_\_ and damages \_\_\_\_\_\_ against the defendants with interest @ 18% from the date of the agreement till realization of the decree amount, with future interest @ 18% till realization.

c) The Plaintiff be paid their cost from the defendants.

d) Any other relief, which the Hon'ble court deems fit, may please be granted to the plaintiff in the interest of justice.

Plaintiffs

Through
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Advocates for the Plaintiffs

Dated: