

**MOOT COURT SOCIETY | SYMBIOSIS LAW SCHOOL, NOIDA**  
**Symbiosis International (Deemed University), Pune**

**13<sup>th</sup> NASCENT Moot Court Competition, 2023**

**Moot Proposition**

1. Sklodowska Builders Private Limited ("**Sklodowska**") is an infrastructure and construction company with its registered office in Gautam Buddha Nagar, Uttar Pradesh and functioning in the National Capital Region.
2. Ms. Vera Ruby, who works in the Noida branch of an MNC headquartered in London, enters into an agreement with Sklodowska in 2012 for purchasing an apartment complex that Sklodowska had begun constructing in 2011 in Sector 62 Noida.
3. One of the conditions of the agreement required Ms. Ruby to make payments in ten instalments on a construction-linked milestone basis depending on the progress made in building the apartment complex as per Annexure A appended to the agreement. The first two milestones had already been completed on the date of the agreement, and Ms. Ruby paid requisite instalments on the date of signing of the agreement. She was also issued a letter of allotment for the flat.
4. The agreement required Sklodowska to send an e-mail to Ms. Ruby as and when milestones were met, and she had 60 days from the e-mail to make payment of the respective instalment. All payments were to be made by way of deposit of cheque or by bank transfer to the bank account of Sklodowska, details of which were given in the agreement.
5. The agreement had an express condition that Ms. Ruby *must* make payments strictly in accordance with the schedule as provided. The agreement provided that if Ms. Ruby fails to make payment within sixty days, Sklodowska has a right to terminate the agreement and/or impose penal interest on the delayed payment. The agreement also provided that if Sklodowska terminated the agreement owing to Ms. Ruby's delay in making payment, the entire amount paid up to such date will be refunded without

any interest thereon, within 30 days of termination. It provided for a penal interest of 1% simple interest per month if the refund is not made within 30 days.

6. Though Ms. Ruby made the next three payments in a timely fashion, owing to the Brexit referendum in 2016, her company decided to shut down the Noida office, and Ms. Ruby was out of a job in July, 2016. This resulted in her missing the sixth milestone payment though she received the e-mail from Sklodowska on 1.8.2016. Sklodowska issued four reminder e-mails to Ms. Ruby, on 1.10.2016, 1.1.2017, 1.4.2017 and 1.6.2017, all of which Ms. Ruby left unanswered.
7. Since she was qualified and had significant experience, Ms. Ruby managed to obtain employment with another company, and began working again from 2.11.2017. However, as a condition of probation, her salary was only 50% of what she was earning in her previous job for the first 12 months.
8. Meanwhile, Sklodowska had finished the seventh, eighth and ninth milestone, and sent yet another e-mail to Ms. Ruby intimating her of the same on 1.3.2017, 1.5.2017 and 1.10.2017. Separately, Sklodowska issued a reminder e-mail to Ms. Ruby for the sixth, seventh and eight milestone payments on 1.10.2017. The e-mail warned Ms. Ruby that Sklodowska reserves its right to remedies under the agreement, including termination and imposition of penal interest if payments are not made in a timely fashion. Further reminders for all milestone payments were sent on 1.12.2017, 1.2.2018 and 15.4.2018.
9. Ms. Ruby paid her sixth and seventh milestone payments on 1.6.2018 and received no objections from Sklodowska in that regard. Sklodowska issued a reminder for the eighth and ninth milestone payments on 15.6.2018, claiming that the seventh milestone payment is also outstanding.
10. Ms. Ruby immediately wrote to Sklodowska on 16.6.2018 saying that she has already made the sixth milestone payment on 1.6.2018, and attached a proof of payment with the e-mail. However, she did not speak of the eighth milestone payment. She did not receive any response to this e-mail.

11. On 1.7.2018, Sklodowska sent a reminder e-mail to Ms. Ruby about the eighth and ninth milestone payment, which Ms. Ruby left unanswered.
12. On 1.10.2019, Sklodowska intimated Ms. Ruby of the tenth and last milestone being completed, and called upon Ms. Ruby to make the full payment within sixty days as required under the agreement. Ms. Ruby did not answer this e-mail.
13. To Ms. Ruby's shock, on 4.12.2019, Sklodowska sent an e-mail terminating the agreement for breach of agreement. Ms. Ruby immediately wrote to Sklodowska on 4.12.2018 itself informing them that she is ready and willing to make payment of the remaining dues within forty-eight hours, and calling upon Sklodowska to withdraw the notice. She submitted that strict adherence to timelines was never the intent of the parties. Sklodowska responded refusing the request and informing Ms. Ruby that because of her breach, the agreement has been terminated. Sklodowska informed Ms. Ruby that in terms of the agreement, it will refund monies paid so far by Ms. Ruby within a period of 30 days and requested Ms. Ruby to share her bank account details.
14. Ms. Ruby, left with no alternative, filed a suit for specific performance of the agreement before the Court of the District Judge, Gautam Buddha Nagar. She specifically submitted that she is ready and willing to pay the eight milestone payment as well as further payments in terms of milestones and the agreement. She contended that it was never the understanding of the parties that it is compulsory that Ms. Ruby makes payments in terms of the timelines specified in the agreement, and that the parties had given it a go-by. She submitted that she must necessarily be given specific performance since the agreement is of an immovable property.
15. Sklodowska opposed the suit and contended that time was of the essence under the agreement, and since Ms. Ruby failed to comply with the agreement and make payment of the ninth instalment within sixty days, Sklodowska was within its rights to terminate the agreement. It contended that it never condoned delayed payments under the agreement, and it still reserves its right to demand penal interest for the delayed payments. It submitted that it is ready and willing to refund the monies paid

as agreed under the agreement, and produced a demand draft for the amount paid and tendered it to the Court.

16. Sklodowska additionally argued that if Ms. Ruby requires the property now, Sklodowska is willing to sell it at market value, provided Ms. Ruby pays the remaining dues, as well as the difference between the consideration under the agreement and the current market value, which was over 60% more than the agreement value. Ms. Ruby strongly opposed this, contending that the same is nothing but an attempt at extortion, and insisting that specific performance be given at the contractually agreed upon value.
17. The Court has the matter to be heard finally. It directed the parties concerned to file their written submissions. It framed the following issues for the hearing, and directed that unless compelling reasons are shown, no further issues would be taken up for hearing:
  - 17.1. Whether time was of the essence under the agreement, and whether there was breach of agreement by Ms. Ruby?
  - 17.2. Assuming *arguendo* there was no breach of contract, whether Sklodowska is entitled to demand payment of market value?

**Notes:**

1. The names, characters and incidents in this proposition are fictitious, and are created for academic purposes.
2. The parties are at liberty to re-arrange the issues, and to create sub-issues. Sub-issues have to be wholly capable of being subsumed in the issues as formulated by the District Judge.
3. The jurisdiction of the Court, the maintainability of the suit, and the *locus standi* of the Plaintiff are not disputed.
4. The parties agree that the provisions of the agreement, except to the extent as are delineated herein, are not relevant for any of the issues.
5. Annexure A to the agreement contains only the following table:

<b>S No</b>	<b>Construction stage</b>	<b>Payment schedule (In Rs)</b>
1.	On start of excavation	45,00,000
2.	On completion of ground floor roof slab	65,00,000
3.	On completion of 2 <sup>nd</sup> floor roof slab	10,00,000
4.	On completion of 4 <sup>th</sup> floor roof slab	10,00,000
5.	On completion of 6 <sup>th</sup> floor roof slab	10,00,000
6.	On completion of final roof slab	10,00,000
7.	On completion of brick work	10,00,000
8.	On completion of services	10,00,000
9.	On completion of Interiors	10,00,000
10.	On completion of exterior finishing	20,00,000

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