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

+ CS(OS) 131/2022 & I.As. 3607/2022, 2108/2023 6761/2023,  
6771/2023, 31220/2024, 5759/2025

VINOD RAJORIA .....Plaintiff  
Through: Mr. Dinesh Garg and Ms. Rachna  
Agrawal along with Mr. Vinod  
Rajoria, Plaintiff

versus

MOHINDER KUMAR VERMA .....Defendant

Through: Mr. Giriraj Subramaniam, Ms.  
Aadhya Khanna and Mr. Arun  
Kumar, Advocates  
Mr. Abhimanyu Bhandari, Sr.  
Advocate with Mr. Arjun Syal and Mr.  
Shreyan Das, Advocates for  
Applicants in I.A. No. 2108/2023,  
6771/2023, 6761/2023

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**CORAM:**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**ORDER**

**22.07.2025**

**MANMEET PRITAM SINGH ARORA, J :**

1. The present suit has been filed by the Plaintiff seeking specific performance of the Receipt-cum-Agreement to Sell dated 11.12.2019 ('ATS') executed between the Plaintiff and Defendant, with respect to land measuring 1 Bigha 12 Biswa comprised in Khasra No. 185/1 min East (1-03) and Khasra



No. 185/2 min East (0-09), situated in the Revenue Estate of Village Khanpur, Tehsil Mehrauli, Sainik Farms, New Delhi, along with the super-structure, tube-wells, boundary wall etc. built thereon and marked as 'Plot A' in the Site Plan annexed with the Sale Deed dated 16.04.1993 ('Subject Plot').

1.1. The Plaintiff in the alternative seeks refund of the part sale consideration paid under the ATS.

1.2. The Plaintiff *inter-alia* seeks relief of permanent injunction against the Defendant from selling, alienating or creating any third-party interest in any manner with respect to the title and possession of the Subject Plot.

2. This Court has heard the learned counsel for the parties and perused the record.

3. Vide order dated 26.05.2025, time for filing written submissions was granted to the parties but none of the parties have filed the written submissions.

**Facts germane for adjudication of the present suit**

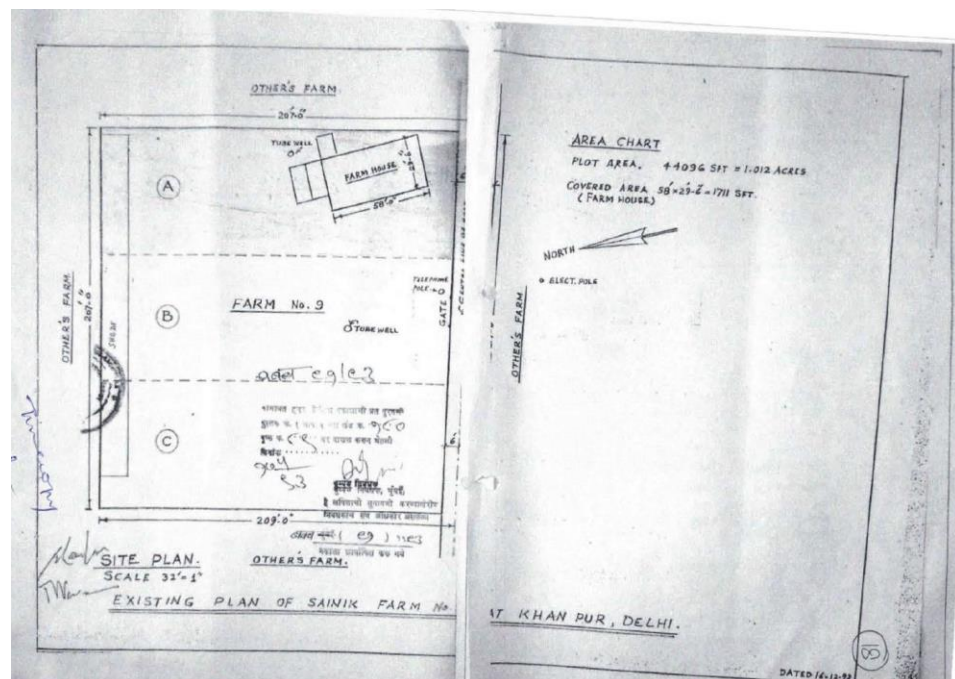
4. The captioned suit has been filed by the Plaintiff seeking specific performance of ATS and in the alternative the Plaintiff has prayed for recovery of Rs. 3.30 Crores towards refund, interest, losses and damages along with pendent-lite and future interest at 18% per annum.

4.1. The subject matter of the captioned suit is the Subject Plot. The ATS records that Plaintiff had agreed to purchase the Subject Plot for a sum of Rs. 3.30 Crores. As per the averment in the plaint an amount of Rs. 40 Lakh has been paid over to the Defendant by the Plaintiff on 11.12.2019 and balance amount of Rs. 2.90 Crores was to be paid by the Plaintiff to the Defendant at the time of handover of vacant possession of the Subject Plot.



4.2. It is stated in the plaint that a large tract of land admeasuring 4 Bighas and 16 Biswa was owned by one Lt. Col. S.S. Kamal. It is stated that he divided this large tract of land into three (3) parts, each measuring 1 Bigha and 12 Biswa. The three (3) parts were assigned a private number i.e., Plot A, Plot B and Plot C respectively.

4.3. Plot A (i.e., Subject Plot) was purchased by the Defendant from Lt. Col. S.S. Kamal *vide* registered sale deed dated 16.04.1993. Plot B and Plot C were purchased by Defendant's brother and Defendant's sister-in-law respectively. However, since Plots A, B and C were initially owned by a common individual (i.e., Lt. Col. S.S. Kamal), it is a large tract of land, which is bounded on all sides and there is only one (1) entry and exit gate from Plot B, which is owned by the Defendant's brother. The site plan of the larger tract depicting, Plot A, Plot B and Plot C with the boundary wall and the single entry and exit from Plot B is annexed to the Defendant's sale deed dated 16.04.1993. The said site plan is reproduced herein below for reference:





4.4. Summons in the captioned suit were issued to the Defendant vide order dated 07.03.2022 and the Defendant was directed to file written statement as well as affidavit of admission/denial of documents within four (4) weeks. However, since the Defendant elected to not file written statement, his right was foreclosed *vide* order dated 10.04.2024.

#### **Interim Applications**

5. **I.A. 31220/2024** is an application filed by the Defendant on 15.05.2024 seeking dismissal of the suit on the plea that the Plaintiff has failed to perform his part of the obligations under the ATS. The Defendant has referred to the order dated 07.03.2022, 23.05.2022 and 25.01.2023 as well as the report of the Local Commissioner dated 31.01.2023 to contend that there is no impediment in the performance of the ATS and it is the Plaintiff, who appears to be not interested in buying the Subject Plot, anymore. It is averred that since the time of the execution of the ATS on 11.12.2019, till today, the market rate of the Subject Plot has increased manifold and, therefore, grant of specific performance to the Plaintiff at this belated stage would cause grave prejudice to the Defendant. The relevant paragraphs of the application read as under:

“9. It is pertinent to note that the agreement to sell was executed on 11.12.2019 at the prevalent market rates of that time and that today the prices have increased considerably, and that selling the suit property in the year 2024 at the rates of the year 2019 not only causes undue and wrongful loss to the defendant but also brings undue and wrongful gain to the plaintiff, who gets to purchase the suit property at the rates of the year 2019.

10. That the non-execution of sale deed is solely attributable to the inaction on part of the plaintiff whose real intention, as it stands clear today, was to hold onto the property and wait for its market rates to rise to get criminal amounts of profit. That the conduct of the plaintiff puts the defendant at severe disadvantage as the defendant is now being forced to bear huge losses on the realizable sale proceeds qua suit property.



11. It is further humbly submitted that on a bare perusal of the order sheets in the matter, it is clear that the defendant has all through been willing to execute the sale deed at the already decided terms and conditions as per the agreement to sell dated 11.12.2019, however, the inordinate delay is gravely prejudicial to financial interests of the defendant, who has every right to sell his property at the prevailing market rates.”

(Emphasis supplied)

5.1. **I.A. 31220/2024** was partly heard on 07.01.2025, where after addressing arguments, Defendant agreed to refund the entire amount of Rs. 40 Lakh with 12% simple interest from the date of receipt of Rs. 40 Lakh i.e., 11.12.2019 to the Plaintiff in a time bound manner. The Plaintiff agreed to accept the refund with interest and have the suit disposed of in terms thereof. The relevant part of the order dated 07.01.2025 reads as under:

“1. Learned senior counsel for the defendant states that the defendant is ready and willing to refund the entire amount of Rs. 40 lakhs with interest to the plaintiff in a time bound manner. He states that the rate of interest may be determined by this Court.

2. Learned counsel for the plaintiff states on instructions that subject to the defendant refunding the entire amount of Rs. 40 lakhs with 12% interest in time bound manner, the plaintiff is willing to have the suit disposed of in terms thereof.

3. The defendant is hereby directed to refund the amount of Rs. 40 lakhs at the rate of 12% simple interest from the date of receipt of Rs. 40 lakhs till the date of refund.

4. The defendant is directed to bring the pay order on the next date of hearing or take instructions with respect to the time within which the said amount will be refunded.”

5. The matter will be treated as a part-heard.

6. At request of the defendant, list on 10.01.2025 at 02:30 P.M.”

(Emphasis supplied)

5.2. However, at the hearing held on 10.01.2025, learned counsel for the Defendant expressed Defendant’s inability to specify the timeline within which the amount of Rs. 40 Lakh along with interest would be refunded by



the Defendant to the Plaintiff. In these facts the order dated 07.01.2025 was recalled so as to not prejudice the rights of the Plaintiff. The order dated 10.01.2025 reads as under:

“1. The matter was called out at 02:15 p.m. Learned counsel for the defendant stated that since the defendant is currently abroad, he is unwilling to give the advocate instructions with respect to the timeframe within which he will refund the amount of Rs. 40 lakhs with 12% simple interest as submitted before this Court on 07.01.2025.

2. The matter was passed over to enable the counsel for the defendant to take instructions with respect to the specified period within which the abovementioned amount can be repaid.

3. At second call, learned counsel for the defendant reiterates that the defendant is unable to specify the time within which he will refund the amount.

4. In the considered opinion of this Court, the **defendant has exhibited lack of bonafide by not specifying time within which he will refund the amount of Rs. 40 lakhs admittedly received under the ATS.** The counsel for the defendant on 07.01.2025 had categorically stated that defendant is ready and willing to refund, the said amount with interest. On 07.01.2025, the plaintiff had stated that he remains ready and willing to perform the ATS; however, in view of the defendant's offer of refund with interest and defendant's, refusal to perform the ATS, plaintiff, had accepted the defendant's offer of refund to mitigate its loss.

5. **In these new circumstances, whereby the defendant has failed to abide by the offer of refund, the facts which formed the basis of the order dated 07.01.2025 do not survive.** The order dated 07.01.2025 is hereby recalled.

6. Parties are restored to their original position.”

(Emphasis supplied)

5.3. Subsequently, on 07.02.2025, **I.A. 5759/2025** was filed by the Defendant under Section 16(c) of the Specific Relief Act, 1963 (‘Act of 1963’) seeking a direction to the Plaintiff to deposit the balance sale consideration of Rs. 2.90 Crores, which remains to be paid by the Plaintiff to the Defendant as per the ATS in Court and that the money so deposited to be placed in Fixed Deposit Receipt (‘FDR’). In this application it is averred that



Defendant is ready and willing to execute the sale deed in pursuance to the ATS and, therefore, the balance consideration of Rs. 2.90 crores be placed in an interest-bearing FDR for the benefit of the Defendant and also to balance the equities. It is also averred in this application that the above said direction is necessary to give the Defendant benefit of price escalation of the Subject Plot. The relevant portion of the application reads as under:

“9. In these circumstances, it would be fair, expedient and in the interest of justice that the Hon'ble Court in order to balance the equities of the parties directs the Plaintiff to deposit the balance sale consideration of Rs. (2,90,00,000/- (Rupees Two Crores and Ninety Lakhs) under the Receipt cum Agreement to Sell dated 11.12.2019 in Court. So that, the money so deposited in Court by the Plaintiff is kept in a FDR and can earn interest as the time being taken in completion of statutory requirements in the present case is depriving the Defendant from the benefit of price enhancement of the Suit Property despite the Defendant being ready and willing to execute the Sale Deed under the Receipt cum Agreement to Sell dated 11.12.2019 with the Plaintiff.

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11. It is respectfully submitted that directing the Plaintiff to deposit the balance sale consideration amount of Rs. (2,90,00,000/- (Rupees Two Crores and Ninety Lakhs) in Court and having it placed in an FDR to earn interest pending the disposal of the present Suit will balance the equities and place the parties on equal footing.”

(Emphasis supplied)

5.4. It is pertinent to note that the **I.A. 5759/2025** filed by the Defendant makes no reference to his previous **I.A. 31220/2024** (seeking dismissal of the suit). It also makes no reference to the orders dated 07.01.2025 and 10.01.2025, wherein the Defendant earlier agreed to refund to the Plaintiff advance amount of Rs. 40 Lakh with interest, which was paid by the Plaintiff in pursuance to the ATS and later, resiled from the said statement by not giving timeline for the said refund.



5.5. The Plaintiff has filed its reply to both these applications and has pleaded that the Subject Plot forms part of a larger tract of land and before it can be handed over to the Plaintiff, it has to be demarcated and granted an independent access by the Defendant. The Plaintiff relies upon the order dated 25.01.2023, whereby a Local Commissioner was appointed by the Court to visit and identify the Subject Plot in order to ascertain whether there is an independent access to the Subject Plot. The Plaintiff further relies upon the report dated 31.01.2023 filed by the Local Commissioner confirming that there is no existing independent entry and exit gate for the Subject Plot.

5.6. *Secondly*, the Plaintiff states that there is a cloud on the title of the Defendant to the Subject Plot as Defendant's brother and sister-in-law are claiming co-ownership rights in the said plot. Plaintiff refers to the applications (I.A. Nos. 2108/2023, 6771/2023 and 6761/2023) filed before this Court by third-parties i.e., Ms. Madhu Verma and Ms. Shaina Verma (wife and daughter of the Defendant's brother respectively) claiming title rights in the Subject Plot. Plaintiff also refers to the pendency of National Company Law Tribunal ('NCLT') proceedings pending (i.e., C.P. 41/241-242/PB/2019) against the Defendant, wherein the said third parties are claiming that the Subject Plot is the asset of M/s Magistic Holding Pvt. Ltd. and is duly reflected as an asset in the balance sheet of the said company.

5.7. *Thirdly*, it is stated that since adjoining Plot B and Plot C are owned by Defendant's brother and sister-in-law and with the disputes between Defendant and his family members, the Plaintiff has apprehension that the Subject Plot (i.e., Plot A) would not have any independent access and unhindered enjoyment/occupation.

#### **Arguments of the Plaintiff**



6. Mr. Garg, learned counsel for the Plaintiff stated that considering the facts that there is cloud over the title of the Defendant, the Subject Plot does not have an independent entry and exit gate and the Subject Plot is yet to be demarcated, the Plaintiff is not willing to purchase the Subject Plot without Defendant sorting out the said issues.

6.1. He stated that Defendant did not disclose to the Plaintiff about the pendency of the NCLT disputes before entering into the ATS.

6.2. He stated that in these facts the allegation of the Defendant in **I.A. 31220/2024** that Plaintiff is not ready and willing to perform his part of the ATS is without any merit.

6.3. He stated that as per the Clause '4' of the ATS the Defendant had undertaken to handover vacant, peaceful physical possession of the Subject Plot to the Plaintiff but in view of the Defendant's dispute with his brother and sister-in-law as well as the pending NCLT proceedings, performance of the said undertaking is no more possible.

6.4. He stated that Plaintiff was liable to pay Rs. 2.90 Crores to the Defendant only upon receiving the vacant and unencumbered possession of the Subject Plot. He states that in these facts the Defendant's prayer in **I.A. 5759/2025** seeking deposit of balance amount of Rs. 2.90 Crores is without any basis.

6.5. He stated that the existing entry to the Subject Plot is only through Plot B. He stated that prior to executing the ATS, the Plaintiff had inspected the Subject Plot and understood that independent entry to Plot A will be given by the Defendant.

6.6. He stated on instruction from the Plaintiff, who is present in Court, that the Plaintiff prays for refund of the advance payment of Rs. 40 Lakh along



with interest and also prays for a restraint against Defendant from disposing of the Subject Plot until the refund is affected.

6.7. He stated that in the facts and circumstance as they exist today, the Plaintiff is unwilling to purchase the Subject Plot. He states that Plaintiff is not willing to purchase the Subject Plot on as is where is basis. He states that the Plaintiff does not want to be stuck in between the rival claims of Defendant's brother and sister-in-law.

#### **Arguments of the Defendant**

7. Mr. Alag, learned Senior Counsel for the Defendant states that Defendant's readiness and willingness to execute the sale deed in pursuance to the ATS is recorded in the orders dated 07.03.2022, 23.05.2022 and 25.01.2023.

7.1. He states that the Local Commissioner appointed by this Court vide order dated 25.01.2023 has in his report dated 31.01.2023 identified the particular point, where a gate can be constructed for granting independent entry and exit to Plot A (i.e., Subject Plot). He states that the Court can appoint a Local Commissioner to ensure that independent entry and exit to Plot A (i.e., Subject Plot) is constructed.

7.2. He states that Defendant is the absolute owner of the Subject Plot and there is no cloud over the title of the Defendant qua the Subject Plot. He states that the sale deed of the Subject Plot admittedly stands in favour of the Defendant.

7.3. He states that M/s Majestic Holding Pvt. Ltd. has no right or title in the Subject Plot and, therefore, the NCLT order dated 19.03.2019 restraining the Defendant to deal with the properties of the firm i.e., M/s Majestic Holding



Pvt. Ltd. would not be applicable to the ATS executed between the Plaintiff and the Defendant.

7.4. He states that Plaintiff's legal notice dated 04.01.2022 calling upon the Defendant to have the Subject Plot demarcated, fenced and installed with an independent gate for entry and exit is extraneous to the ATS. He states that Plaintiff is not ready and willing to perform his part of the ATS as he has not filed any documents to show his capacity to pay the balance sale consideration as per the ATS.

8. Mr. Bhandari, learned Senior Counsel appearing on behalf of Applicants in I.A. No. 2108/2023, 6771/2023 and 6761/2023 states that he represents Defendant's brother (i.e., Chander Verma), sister-in-law (i.e., Madhu Verma) and M/s Majestic Holding Pvt. Ltd. He states that it is the case of the Applicants that the Subject Plot is the asset of M/s Majestic Holding Pvt. Ltd. and is duly reflected in the assets of the said company since 2004.

8.1. He states that disputes pertaining to illegal share transfers in M/s Majestic Holding Pvt. Ltd. and its assets is pending before NCLT in C.P. 41/241-242/PB/2019 petition.

8.2. He states that vide order dated 19.03.2019, NCLT has restrained the Defendant herein from dealing with the immovable property of M/s Majestic Holding Pvt. Ltd. He states that therefore, the sale of the Subject Plot would be in contravention of the said order.

### **Findings**

9. The Plaintiff and Defendant have entered into an ATS for purchase of the Subject Plot.

10. The Plaintiff has at the hearing dated 26.05.2025 taken a categorical stand that he is unwilling to purchase the Subject Plot in its existing physical



state of lack of independent entry and exit gate from the main road as well as during the pendency of the rival claims of Defendant's brother and sister-in-law on the Subject Plot. The Plaintiff has stated that he would be satisfied if the advance of Rs. 40 Lakh along with interest is directed to be refunded to the Plaintiff.

Defendant has opposed the said prayer of the Plaintiff.

11. Defendant in **I.A. 31220/2024** has prayed for dismissal of the suit on the plea that the Plaintiff is not ready and willing to perform the ATS. However, in contradiction Defendant himself in a subsequent application **I.A. 5759/2025** seeks direction to the Plaintiff to deposit the balance consideration of Rs. 2.90 Crores qua the ATS with the registry of this Court in an interest-bearing FDR to insulate it against escalation of prices of the Subject Plot. This relief shows that the Defendant wants the Plaintiff to perform the agreement.

12. The prayer of the Defendant in **I.A. 5759/2025** contradicts and is inconsistent to the relief prayed for in **I.A. 3122/2024**. During arguments, however the Defendant has pressed both these applications.

Having perused the record and in view of the orders dated 07.01.2025 and 10.01.2025, this Court is of the opinion that the intent of the Defendant in filing **I.A. 31220/2024** and seeking dismissal is that the Defendant is unwilling to refund the advance of Rs. 40 Lakh received under the ATS to the Plaintiff.

Similarly, having perused the record which includes the Local Commissioner's report, this Court is of the opinion that the intent of the Defendant in filing **I.A. 5759/2025** is that he wants a direction to the Plaintiff to purchase the Subject Plot on 'as is where is basis' in its existing physical position (without independent entry and exit to the plot) and with the



knowledge that Defendant's brother and sister-in-law are raising rival claims in the Subject Plot. Moreover, the Defendant wants the orders of this Court to ensure an independent entry and exit to Subject Plot is constructed through appointment of Local Commissioner.

13. To determine if the Plaintiff is entitled to its claim of refund, it would be relevant to examine the facts of this case on the touchstone of Section 55 (6)(b) of the Transfer of Property Act, 1882 ('Act of 1882') read with Section 22 (1) (b) of Act of 1963, which reads as under:

“Section 55 (6) (b) of the Act of 1882:

(b) **unless** he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, **when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.**

.....

Section 22 (1) (b) of Act of 1963:

(b) any other relief to which he may be entitled, **including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused.**”

(Emphasis supplied)

14. The exposition on Section 55(6) (b) of the Act of 1882 in the judgment of Supreme Court in **Videocon Properties Ltd. v. Dr. Bhalchandra Laboratories & Ors.**<sup>1</sup> is instructive for deciding this case. The relevant paragraph nos. 13 and 14 of the judgment read as under:

“13. The **buyer's charge** engrafted in clause (b) of sub-section (6) of Section 55 of the Transfer of Property Act **would extend and enure** to the **purchase money or earnest money paid before the title passes and**

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<sup>1</sup> (2004) 3 SCC 711.



**property has been delivered by the seller to the purchaser**, on the seller's interest in the property unless the purchaser has improperly declined to accept delivery of property or when he properly declines to accept delivery — including for the interest on purchase money and costs awarded to the purchaser of a suit to compel specific performance of the contract or to obtain a decree for its rescission. The principle underlying the above provision is a **trite principle of justice, equity and good conscience**. The charge would last until the conveyance is executed by the seller and possession is also given to the purchaser and ceases only thereafter. The charge will not be lost by merely accepting delivery of possession alone. This charge is a statutory charge in favour of a buyer and is different from contractual charge to which the buyer may become entitled to under the terms of the contract, and in substance a converse to the charge created in favour of the seller under Section 55(4)(b). Consequently, the buyer is entitled to enforce the said charge against the property and for that purpose trace the property even in the hands of third parties and even when the property is converted into another form by proceeding against the substituted security, since none claiming under the seller including a third-party purchaser can take advantage of any plea based even on want of notice of the charge. The said statutory charge gets attracted and attaches to the property for the benefit of the buyer the moment he pays any part of the purchase money and is only lost in case of the purchaser's own default or his improper refusal to accept delivery. So far as payment of interest is concerned, the section specifically envisages payment of interest upon the purchase money/price prepaid, though not so specifically on the earnest money deposit, apparently for the reason that an amount paid as earnest money simpliciter, as mere security for due performance does not become repayable till the contract or agreement gets terminated and it is shown that the purchaser has not failed to carry out his part of the contract, and the termination was brought about not due to his fault, the claim of the purchaser for refund of earnest money deposit will not arise for being asserted.

14. The further aspect that requires to be noticed is as to the nature and character of earnest money deposit and in that context the distinguishing features, which help to delineate the differences, if any. The matter is not, at any rate, res integra. In (Kunwar) Chiranjit Singh v. Har Swarup [AIR 1926 PC 1: 24 All LJ 248] **it was held that the earnest money is part of the purchase price when the transaction goes forward and it is forfeited when the transaction falls through, by reason of the fault or failure of the purchaser**. This statement of law had the approval of this Court in Maula Bux v. Union of India [(1969) 2 SCC 554: AIR 1970 SC



1955]. Further, it is not the description by words used in the agreement only that would be determinative of the character of the sum **but really the intention of parties and surrounding circumstances as well, that have to be looked into and what may be called an advance may really be a deposit or earnest money and what is termed as “a deposit or earnest money” may ultimately turn out to be really an advance or part of purchase price.** Earnest money or deposit also, thus, serves two purposes of being part-payment of the purchase money and security for the performances of the contract by the party concerned, who paid it.”

(Emphasis Supplied)

15. In the facts of this case, as is evident from the pleadings of I.A. No. 2108/2023, 6771/2023 and 6761/2023 that Defendant’s brother and sister-in-law are seeking to stake a claim in the Subject Plot on the plea that the said plot is the asset of M/s Majestic Holdings Pvt. Ltd. The said third parties claim to be shareholders and alleged illegal ouster from the said company is pending adjudication in NCLT. The said third parties have filed applications seeking their impleadment in the captioned suit and for objecting to the sale of the Subject Plot by Defendant to their exclusion. The said third parties claim that their assertion that the Subject Plot is the asset of M/s Magistic Holdings Pvt. Ltd. is sub-judice before NCLT. The Defendant has denied the claims of the said third parties and submitted that the claims of these third parties are pending adjudication in NCLT which does not have bearing on the title of the Defendant on the Subject Plot and/or the execution of the ATS between the Defendant and the Plaintiff.

16. The Defendant’s brother is the owner of the adjacent Plot B and Defendant’s sister-in-law is the owner of Plot C. In the facts of this case, Subject Plot, Plot B and Plot C are all bounded by a common boundary wall. The said Plots have not been demarcated and fenced. There is one single entry



and exit to these plots through Plot B. The Defendant admits this position and this is also borne out from Local Commissioner's report dated 31.01.2023.

17. The Defendant has referred to orders dated 07.03.2022, 27.05.2022 and 25.01.2023 to contend that Defendant had agreed to execute the sale deeds on the aforesaid dates and it was the Plaintiff who failed to act on the said offer. However, the record of order dated 25.01.2023 shows that the issue of lack of independent entry and exit to Subject Plot was raised by the Plaintiff leading to the appointment of Local Commissioner by the Court and the issue of lack of independent entry and exit to Plot A was established by the Local Commissioner's report dated 31.01.2023. This was immediately followed by **I.A. 2108/2023** being filed by Defendant's sister-in-law on 01.02.2023 seeking impleadment in these proceedings and opposing the same.

In these facts, this Court is unable to conclude that it is the Plaintiff, who was not ready and willing to perform the ATS.

18. During the hearing on 26.05.2025, the Plaintiff has categorically declined to accept delivery of the Subject Plot in its existing form on the site (without demarcation, fencing and independent entry and exit gate) as well as in view of the contentious claims of the Defendant's brother and sister-in-law to the Subject Plot. In the considered opinion of this Court, the Plaintiff's decision to not purchase the Subject Plot in light of the rival claims of Defendant's relatives to the Subject Plot, especially keeping in view the proximity of the location of the Subject Plot with Plot B and Plot C, which is admittedly owned by the same relatives is reasonable and is not opposed to common prudence. The fact that the Subject Plot presently does not have an independent entry and exit and further the fact that at the site there is no demarcation between Subject Plot, Plot A and Plot B is admitted. The inability



of the Defendant to provide the independent entry and exit gate to the Subject Plot as well as have the Subject Plot demarcated without the assistance of the Court is also a matter of record. In the considered opinion of this Court the expectation of the Plaintiff that the Subject Plot would be demarcated and an independent entry and exit gate will be provided for the Subject Plot (i.e., Plot A) is reasonable and in consonance with common prudence of a buyer of a plot.

19. The Plaintiff had issued a legal notice dated 04.01.2022 on the Defendant requesting for demarcation, fencing and construction of independent entry and exit gate for Subject Plot. The Defendant duly received the said legal notice, elected not to reply to the same and has even elected to not file any written statement in the captioned suit. The Plaintiff's request for demarcation, fencing and construction of independent gate is thus unrebutted on record.

This Court, therefore, finds that the Plaintiff's statement recorded first on 07.01.2025 and subsequently on 26.05.2025 to this effect that it does not want to proceed with the ATS and seeks to limit its claim to refund of the advance consideration of Rs. 40 Lakh with interest is merited.

20. The Defendant had readily agreed to refund the advance along with interest of 12% from the date of receipt at the hearing held on 07.01.2025; however, the Defendant's unwillingness on 10.01.2025 to specify the time period for making the refund exhibited lack of bona fide. With the passing of orders dated 07.01.2025 and 10.01.2025, the relief of dismissal of the suit sought by the Defendant in **I.A. 31220/2024** did not survive for consideration. Moreover, the Defendant's subsequent **I.A. 5759/2025** calling upon the



Plaintiff to perform the ATS also negates the relief of dismissal of suit sought for in **I.A. 31220/2024**.

21. Further, with the passing of the orders dated 07.01.2025 and 10.01.2025, the Plaintiff's relief for specific performance at prayer clause (a) and (b) also did not survive for consideration and it was only the alternate prayer clause to the extent of refund of the advance consideration of Rs. 40 Lakh and interest thereon, alone survived for consideration. This Court is of the opinion that the Plaintiff's surviving prayer for refund of advanced consideration of Rs. 40 Lakh with interest does not require any trial, as the receipt of Rs. 40 Lakh is admitted by the Defendant in **I.A. 5759/2025**.

22. As noted above, the Defendant in its pleading in **I.A. 31220/2024** has extensively pleaded that between 2019 and 2024 the market prices of the Subject Plot increased exponentially making it unviable for the Defendant to sell the Subject Plot to the Plaintiff at the sale price recorded in the ATS, which was executed in the year 2019. In fact, this is the ground on which the Defendant had sought dismissal of the relief of specific performance. The Defendant thus on his own showing has already gained financially from the market escalation of the value of the Subject Plot and has suffered no losses.

During, the hearing dated 26.05.2025 this Court had observed in Court that the seller/Defendant's conduct in opposing the buyer/Plaintiff's request for rescinding the ATS and refund of Rs. 40 Lakh was opposed to reasonable conduct, given that the market prices of the Subject Plot admittedly have escalated.

23. It is settled law that in contracts for sale and purchase of immovable properties, the advance amount paid to the seller cannot be forfeited unless the seller pleads loss on account of fall in the value of the immovable property.



In reaching the above said conclusion this Court relies on the Judgments of the Supreme Court in the **Fateh Chand v. Balkishan Dass**<sup>2</sup> and **Kailash Nath Associates v. Delhi Development Authority and Another**<sup>3</sup> and the Judgment of Single Judge of this Court in the case of **Pawan Kumar Jain v. Rajinder Kumar**<sup>4</sup>. In the facts of this case, the Defendant admits that market prices of the Subject Plot have increased exponentially.

24. At this juncture, it would be apposite to refer to the Order XV of CPC, which empowers the Court to pronounce judgment at once, upon finding that the parties are not at issue on any question of law or fact. A Co-ordinate Bench of this Court in **Meenakshi Manna v. Smt. Suriti Manna and Another**<sup>5</sup>, while allowing a revision petition filed against an order passed by the Trial Court, whereby the application under Order XV CPC was rejected, held as under: -

“5. It becomes pertinent to note that Order XV Rule 1 of the Code is a power conferred upon a court to pronounce judgement where it finds on the first hearing of the suit that parties do not appear to be at issue on any question of law or a fact. Order XII Rule 6 of the Code, on the other hand, contemplates the rendering of a judgement on admission. Insofar as the power conferred under Order XII Rule 6 is concerned, it is by now well-settled that a judgement of admission can be rendered only in case the Court discerns from the pleadings that a material fact which would warrant the suit being decreed has been unequivocally admitted. If the Order XV, on the other hand, places an obligation upon the Court to sift through the pleadings of parties and to consider whether a triable issue arises or whether the parties can be said to be at variance on a material question of law or fact which would warrant the suit being tried on merits. Trial Judge finds to the contrary, it may proceed to pronounce judgement forthwith.”

(Emphasis Supplied)

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<sup>2</sup> 1963 SCC OnLine SC 49 at para 16.

<sup>3</sup> (2015) 4 SCC 136 at para 42.

<sup>4</sup> 2011 SCC OnLine Del 777 at para 4.

<sup>5</sup> 2022: DHC:1877.



In the facts of this case having perused the pleading of the parties, this Court is satisfied that no triable issue arises for consideration.

25. Thus, keeping in view the statutory provisions of Section 55(6)(b) of Act of 1882 read with Section 22(1) (b) of the Act of 1963 and the law laid down by the Supreme Court and this Court in the judgments cited above, this Court is of the opinion that the Plaintiff has properly declined to accept the delivery of the Subject Plot and is, therefore, entitled to refund of Rs. 40 Lakh along with interest. Pertinently there is no provision in the ATS entitling the Defendant to forfeit Rs. 40 lakhs received as advance consideration. Keeping in view the fact that this is a commercial transaction between the parties this Court deems it appropriate to award interest at 12% with effect from the date of payment i.e., 11.12.2019 until the date of effectuation of refund.

26. It is further directed that the Plaintiff will have a charge on the Subject Plot as stipulated in Section 55(6)(b) of Act of 1882 until the payment of Rs. 40 Lakh with interest as directed above is not paid over by the Defendant to the Plaintiff. Thus, the Defendant is restrained from selling or alienating or creating any third-party interest in the Subject Plot as per prayer Clause (c) until the amount directed to be refunded is paid over to the Plaintiff with interest. It is clarified that upon payment of the refund amount with interest up-to-date, the Defendant will be at liberty to deal with the Subject Plot in accordance with law.

27. In view of the fact that the relief of specific performance stands abandoned by the Plaintiff, **I.A. No. 2108/2023, 6771/2023 and 6761/2023** filed by the third parties do not survive for consideration and are hereby disposed of as infructuous.



28. The suit stands decreed in the aforesaid terms and more specifically paragraphs '25' and '26'.
29. In view of the findings recorded by this Court above **I.A. No. 31220/2024** and **I.A. No. 5759/2025** filed by the Defendant stands dismissed.
30. Pending applications if any stand disposed of.
31. All future dates stand cancelled.

**MANMEET PRITAM SINGH ARORA, J**

**JULY 22, 2025/hp/sk**

*Click here to check corrigendum, if any*