



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

% Judgment delivered on: 30/04/2026

+ **CS(OS) 497/2004, I.A. 2994/2004, I.A. 6121/2004 & I.A. 9911/2005**

RAVI ARORA

.....Plaintiff

versus

J.S. MALIK

.....Defendant

Advocates who appeared in this case

For the Plaintiff : Mr. H.L. Tiku, Senior Advocate with Mrs. Bharti Kochhar, Ms. Yashmeet Kaur, Mr. Rahul Regmi and Mr. Munish Kochhar, Advocates.

For the Defendant : Ms. Prerana and Ms. Aditi Singh, Advocates.

**CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA**

JUDGMENT

TEJAS KARIA, J

INTRODUCTION:

1. The present Suit has been instituted by the Plaintiff seeking a decree of specific performance against the Defendant in respect of the Agreement to Sell dated 27.01.2003 (“ATS”), *inter alia*, directing the Defendant to perform his obligations / the obligations of Mrs. Joginder Malik (“Mrs. Malik”) under the ATS, including to execute the Sale Deed in favour of the Plaintiff in respect of the built-up residential property No. C-4/49, Safdarjung



Development Area, New Delhi, measuring 445 square yards (“**Suit Property**”) coupled with handing over of vacant peaceful possession and original title deeds against receipt of the balance sale consideration.

2. *Vide* order dated 09.08.2005, this Court framed the following Issues:
 - i. Whether the Plaintiff was willing and ready to perform his obligations under the contract between the Parties in relation to the Suit Property? OPP
 - ii. Whether the Plaintiff committed any breach of the terms of the agreement? If so, to what effect? OPD
 - iii. Whether the Defendant was justified in rescinding the contract as pleaded in the Written Statement? OPD
 - iv. Whether the Defendant is entitled to forfeit the sum of Rs. 40 Lacs received from the Plaintiff? OPD
 - v. Whether the Plaintiff is entitled to the relief of specific performance? If so, on what terms? OPP

SUBMISSIONS ON BEHALF OF THE PLAINTIFF:

3. The learned Senior Counsel for the Plaintiff made the following submissions:

- 3.1. Mrs. Malik, w/o late S. Kripal Singh Malik was the owner and in actual physical possession of the Suit Property having acquired the same *vide* Perpetual Lease Deed dated 27.07.1966. Mrs. Malik died intestate on 02.03.2004 leaving behind the Defendant as her only and sole surviving legal heir. Mrs. Malik *vide* the ATS had agreed to sell the Suit Property to the Plaintiff for a total consideration of ₹2,35,00,000/- and subject to other terms and conditions as were agreed and incorporated in the ATS.



3.2. At the time of execution of the ATS, the Plaintiff paid an amount of ₹40,00,000/- as a part sale consideration, which included ₹35,00,000/- by Pay Order and ₹5,00,000/- in cash, the receipt of which was acknowledged by Mrs. Malik under the ATS. The balance sale consideration of ₹1,95,00,000/- was agreed to be paid by the Plaintiff to Mrs. Malik by 15.05.2003 or within 45 days from the date of conversion of the Suit Property to freehold, whichever is later, simultaneous to handing over of possession and execution of the Sale Deed and other necessary documents including General Power of Attorney (“GPA”), Will, etc.

3.3. The relevant clauses of the ATS are reproduced below:

“Clause-2(a):- That out of the total consideration of Rs. 2,35,00,000/— (Rupees Two crores and thirty five lacs only), the vendee has paid to the Vendor a sum of Rs. 40,00,000/- (Rupees forty lacs only), as part sale consideration, at the time of execution of this Agreement to Sell in the following manner:-

Rs, 35,00,000/- vide P.O. No. 001765 dated 27.01.2003 drawn on Standard Chartered Bank, Malcha Marg, New Delhi.

Rs, 5,00,000/- by cash

Clause-2(b):- The payment of the balance sale consideration of Rs. 1,95,00,000/- (Rupees One Crore ninety five lakhs only), will be paid by the Vendee to the Vendor upto 15.05.2003, or within 45 days from the date of conversion of the said property into freehold, whichever is later, simultaneously when the vacant physical possession of the entire said property will be delivered by the Vendor to the Vendee and also all the deeds and documents as may be required by the Vendee for the conveyance, transfer and sale of the said property Viz. Sale Agreements, General Power of Attorney, Will Deeds etc. will also be executed and registered by the Vendor in favour of the Vendee or his nominee.

Clause – 5:- That after getting the said property converted into freehold the Vendor will inform the Vendee by Registered Post.

Clause-6(a):- If the Vendee delays the balance payment beyond 15th May 03 as stipulated above then the Vendor will be entitled to 12% interest p.a.



Clause – 10:- That pending completion of the sale, the Vendor shall not enter into any agreement of sale in respect of the said property or any part thereof nor the Vendor will in any manner create any charge, mortgage and or deal with the said property in any manner or enter into any arrangement in respect of the said property.

Clause – 11:- That the house tax, property tax, water, electricity charges, lease money, ground rent, mis-use charges, and other dues and demands of whatsoever nature if any payable in respect of the said property shall be paid and borne by the vendor upto the date of handing over the possession to the Vendee and thereafter the Vendee will be responsible for the payment of the same. The Vendor will also obtain No Dues Certificate from the M.C.D. at her own cost and expenses.

Clause – 15:- That in case any of the parties hereto infringes any of the terms and conditions of this Agreement to Sell, then the other party shall be entitled to get this transaction enforced through the Court of Law by Specific Performance of the Contract, at the cost and expenses of the defaulting party.”

- 3.4. Mrs. Malik was under the following obligations against receipt of the balance sale consideration:
- i. to sign the plans for sanction of reconstruction / addition / alteration of the Suit Property;
 - ii. to hand over the original title deeds to the Plaintiff;
 - iii. to hand over the vacant peaceful possession of the Suit Property to the Plaintiff; and
 - iv. to execute the Sale Deed / Sale Purchase Document in favour of the Plaintiff simultaneous to receipt of the balance sale consideration.
- 3.5. As per the ATS, the Plaintiff was under obligations to pay the balance sale consideration of Rs. 1,95,00,000/- up to 15.05.2003 or within 45 days from the date of conversion of the Suit Property into freehold, whichever is later, simultaneously upon delivery of the



vacant physical possession of the entire Suit Property; and also simultaneously, all the deeds and documents for the conveyance, transfer and sale of the Suit Property namely Sale Agreements, GPA, Will Deeds etc. were to be executed.

- 3.6. When Mrs. Malik failed to discharge her part of obligations by the agreed date of 15.05.2003, the Plaintiff approached Mrs. Malik with a request to expedite the completion of deal and to discharge her part of obligations. At the same time, it was communicated to Mrs. Malik that the Plaintiff has all through been and was still ready and willing to perform his part of obligations. It was also further communicated to Mrs. Malik that the Plaintiff is ready with the balance sale consideration. Mrs. Malik reassured and again represented to the Plaintiff that she is doing her best and would obtain the conversion from leasehold to freehold at the earliest possible.
- 3.7. After about 15 days, the Plaintiff again enquired with Mrs. Malik and again Mrs. Malik repeated the same assurances and representations. When nothing was heard from Mrs. Joginder Malik even after expiry of about four months from the agreed tentative date of 15.05.2003, the Plaintiff send a written communication *vide* letter dated 20.09.2003, again requested Mrs. Joginder Malik to discharge her part of obligations with a further specific stipulation that the Plaintiff is ready with the balance sale consideration.
- 3.8. Mrs. Malik replied to the letter dated 20.09.2003 *vide* reply dated 07.10.2003 whereunder, *inter alia*, the plea was taken that the Suit Property was converted from leasehold to freehold on 09.08.2003



and that No Dues Certificates from Municipal Corporation of Delhi (“MCD”) would be obtained only on receipt of balance sale consideration. Mrs. Malik took such pleas in the reply dated 07.10.2003 only to avoid performance of execution of Sale Deed, *inter alia*, for the reasons as the Suit Property had considerably appreciated in the meanwhile.

- 3.9. When Mrs. Malik, failed to execute the Sale Deed against receipt of the balance sale consideration, the Plaintiff, through notice dated 22.10.2003, again called upon Mrs. Malik to execute the Sale Deed against receipt of the balance sale consideration. Again, the notice dated 22.10.2003 was replied to by Mrs. Malik through her Advocate’s reply dated 01.01.2004, raising the excuses to avoid the performance of her part of obligations under the ATS and trying to shift the blame on the Plaintiff. The *mala fide* of Mrs. Malik is also evident from the fact, that Mrs. Malik replied to the Plaintiff’s notice dated 22.10.2003 after a lapse of more than 65 days to avoid performance of her part of obligations.
- 3.10. Even after receipt of Mrs. Malik’s reply dated 01.01.2004 to the Plaintiff’s notice dated 22.10.2003, the Plaintiff again approached Mrs. Malik to impress upon her to abide by her contractual obligations and to not to compel the Plaintiff to approach the Court of law. Mrs. Malik first avoided but later came out with a plea to pay further sum of ₹50,00,000/-. Though the Plaintiff was under no obligation to make any further payment, still the Plaintiff made out a Pay Order of ₹50,00,000/- on 28.01.2004 and offered the same to Mrs. Malik, who even avoided to receive the same against receipt.



- 3.11. When nothing was heard from Mrs. Malik, the Plaintiff again approached Mrs. Malik, and Mrs. Malik again came out with a plea to make further payment of ₹75,00,000/- and not ₹50,00,000/-. The Plaintiff again made out another Pay Order of ₹75,00,000/- on 12.02.2004 and offered the same to Mrs. Malik who again avoided the receipt of the Pay Order against receipt on the plea that Mrs. Malik and the Defendant would like to show the sale of the Suit Property in the next financial year.
- 3.12. In the meanwhile, the Plaintiff made out another Pay Order for ₹65,00,000/- dated 08.04.2004 in the name of Mrs. Malik being not aware of her death and later when the Plaintiff approached the Defendant to complete the sale transaction, the Plaintiff was told by the Defendant about the demise of Mrs. Malik, at the same time representing that the Defendant is the only heir and is bound by the terms of the ATS and by promises of Mrs. Malik with a further request to give him some time to settle down and then to complete the sale in the last week of April, 2004. In spite of the Defendant's promises to execute the Sale Deed, the Defendant failed to complete the sale transaction.
- 3.13. There was no delay on the part of Plaintiff, but the delay was on part of Mrs. Malik / Defendant first in obtaining the conversion from leasehold to freehold. There was also the neglect on part of Mrs. Malik / Defendant in execution of the Sale Deed and as such, the Plaintiff carries no liability to pay interest. However, if the Court comes to the conclusion that the delay was on part of the Plaintiff,



the Plaintiff is also ready and willing to pay the interest as may be directed by this Court.

- 3.14. The Plaintiff at the time of execution of the ATS had paid nearly 17% of the total consideration upfront. Under the ATS, the Plaintiff's obligation to pay the balance sale consideration of ₹1,95,00,000/- was expressly conditional upon the occurrence of events, namely:
- a. Conversion of the Suit Property from leasehold to freehold by Mrs. Malik;
 - b. Intimation of such conversion to the Plaintiff by registered post;
 - c. clearance by Mrs. Malik of all municipal dues and obtain a No Dues Certificate from MCD; and
 - d. Delivery of vacant physical possession of the Suit Property; and execution of the Sale Deed and other necessary conveyance documents.
 - e. sign the plans for sanctioning of re-construction / additions / alterations of the Suit Property.
- 3.15. Thus, the Plaintiff's obligation to tender the balance consideration could arise only upon the Defendant's performance of her prior and concurrent contractual obligations and at the time of delivery of vacant physical possession of the Suit Property; and execution of the Sale Deed and other necessary conveyance documents.
- 3.16. The Defendant has relied upon the letter dated 06.08.2003 whereby the Defendant stated that the Defendant informed the Plaintiff that the Suit Property has been converted into freehold and asked the Plaintiff to arrange the balance sale consideration. However, the



letter dated 06.08.2003 is in handwriting of the Defendant perhaps prepared after the demise of Mrs. Malik, as Defendant admits during his cross-examination that he was not negotiating with the Plaintiff on behalf of Mrs. Malik and is claimed to be posted on 09.08.2003; a copy of the conveyance deed was also not enclosed with the letter dated 06.08.2003; when the conveyance deed itself was registered on 08.08.2003, then it is not believable for the letter to have been written on 06.08.2003; and also there is no proof of delivery of the letter dated 06.08.2003.

- 3.17. The Plaintiff was never in receipt of the letter dated 06.08.2003, which is stated to have been posted on 09.08.2003. Had Mrs. Malik actually sent the letter dated 06.08.2003, then she would not have maintained silence till 07.10.2003. The facts show that after letter dated 06.08.2003 there is no communication by Mrs. Malik till the Plaintiff, by letter dated 20.09.2003, expressly called upon Mrs. Malik to perform her contractual obligations under the ATS.
- 3.18. Mrs. Malik *vide* reply dated 07.10.2003 for the first time informed the Plaintiff that the Suit Property has been converted into freehold. Reference was made to letter dated 06.08.2003, but neither a copy of the letter dated 06.08.2003 nor a copy of conveyance deed was enclosed. Mrs. Malik demanded interest on balance sale consideration with interest @12% per annum. The ATS was also not cancelled by Mrs. Malik *vide* reply dated 07.10.2003, though, it was mentioned that earnest money shall be forfeited if balance sale consideration with interest is not paid within 7 days.



- 3.19. The reply dated 07.10.2003 was responded to by the Plaintiff through notice dated 22.10.2003, whereby Mrs. Malik was again called upon to perform her part of obligation and execute the Sale Deed, hand over possession and original title documents against receipt of balance sale consideration.
- 3.20. Mrs. Malik chose to respond to the Plaintiff's notice dated 22.10.2003 only on 01.01.2004, reiterating her pleas as were raised on 07.10.2003 including claim of interest of 12% per annum. Mrs. Malik instead of coming forward for accepting the balance sale consideration, executing the Sale Deed, handing over possession and the original title documents, maintained silence for more than two months. Such prolonged and unexplained silence clearly demonstrates Mrs. Malik's unwillingness to perform her part of the contract. It was mentioned in the reply dated 01.01.2004 that Mrs. Malik is prepared to consider her intent to revive the ATS if the Plaintiff is ready and willing to immediately and unconditionally pay the balance sale consideration with interest.
- 3.21. There is no communication on record whereby Mrs. Malik ever cancelled or terminated the ATS. All communications addressed by Mrs. Malik were confined solely to an unwarranted demand for interest. Therefore, when the ATS was never cancelled, the question of its revival does not arise. In fact, Mrs. Malik did not write any communication to the Plaintiff. There are only two letters written by Mrs. Malik through her counsel, and both were in response to the demand made by the Plaintiff calling upon her to perform her part of contract. Further, in none of her communications did Mrs. Malik



state that she was ready and willing to execute the Sale Deed, hand over possession of the Suit Property, or deliver the original title documents or mentioned any date or time frame for the same. Mrs. Malik's correspondence was limited exclusively to the demand of interest, thereby reinforcing the Plaintiff's case that Mrs. Malik herself was not ready and willing to perform her contractual obligations.

3.22. The present Suit was filed on 06.05.2004. During the pendency of the present Suit, on 16.09.2004, the Plaintiff filed an application being I.A. No. 6121 of 2004 and filed a copy of the Pay Orders for the balance sale consideration in the sum of ₹1,95,00,000/- and offered the same to the Defendant, the details whereof are as under:

Sr. No.	BANK	Pay Order No.	Amount in Rs.	Date
1	Standard Chartered	274793	15,00,000 (towards balance sale consideration)	14.09.2004
2	Canara Bank	119875	35,00,000 (towards balance sale consideration)	15.09.2004
3	HDFC BANK	000351	55,00,000 (towards balance sale consideration)	15.09.2004
4	Union Bank of India	065980	90,00,000 (towards balance sale consideration)	15.09.2004

3.23. Notice of I.A. No. 6121 of 2004 was issued to the Defendant on 17.09.2004 and the Defendant filed reply thereto. Even when the Issues were framed by this Court on 09.08.2005, the Plaintiff again reiterated that the Plaintiff was willing and ready to pay the entire balance sale consideration with interest on 09.08.2005 itself.



3.24. In addition, without prejudice, the Plaintiff also filed a copy of Pay Order towards interest up to that date amounting to ₹23,40,000/- in the name of Registrar as the issue of interest was to be decided, as under:

S. No.	BANK	Pay Order No.	Amount in Rs.	Date
1.	Union Bank of India	065981	23,40,000 (towards interest on balance sale consideration)	15.09.2004

3.25. The Plaintiff is not required to prove actual tender of the entire sale consideration in advance, but was to demonstrate that he had the means to arrange the requisite funds at the relevant time. In the present case, the Plaintiff has duly discharged this burden. The Plaintiff has placed on record Pay Orders evidencing availability of funds, which demonstrate the Plaintiff's financial capacity. Further, the oral evidence led through PW-2, PW-3 and PW-4 establishes that the Plaintiff had the necessary means and resources to arrange the balance sale consideration. The testimonies of these witnesses remain unshaken and corroborate the Plaintiff's consistent readiness and willingness.

3.26. The Plaintiff's readiness and financial ability to perform the ATS is further corroborated by the testimony of PW-1 in his cross examination dated 22.11.2010. The Plaintiff has pleaded and also proved continuous readiness and willingness to perform his part of the contract, as mandated under Section 16 (c) of the Specific Relief Act, 1963.



- 3.27. Thus, the Plaintiff has shown by placing on record cogent evidence that he had the means and the financial capacity to perform the contract and also was all throughout willing to fulfil his contractual obligations. Besides, the presence of an interest clause being Clause 6(a) of the ATS, clearly indicates that time for payment was not intended to be the essence of the contract.
- 3.28. The Defendant has failed to show that the Plaintiff committed any breach of the terms of the ATS. Thus, Issue Nos. 1 and 2 are liable to be decided in favour of the Plaintiff.
- 3.29. The two communications sent by Mrs. Malik sent through her Advocate are:
- a. Reply dated 07.10.2003 in response to Plaintiff's letter dated 20.09.2003.
 - b. Reply dated 01.01.2004 in response to Plaintiff's notice dated 22.10.2003.
- 3.30. Even by this letter the ATS is not cancelled / terminated. Thus, there is no document whereby the ATS is cancelled. Mere by pleading in the Written Statement, it cannot be concluded that the ATS stood cancelled. Thus, Issue No. 3 is liable to be decided in favour of the Plaintiff.
- 3.31. There is no clause in the ATS, which permit the Defendant to forfeit the part consideration.
- 3.32. The ATS does not contain any clause, express or implied, which authorises or entitles the Defendant to forfeit any part of the consideration paid by the Plaintiff. In the absence of a specific contractual provision permitting forfeiture, the Defendant cannot



unilaterally appropriate or retain any part of the consideration paid by the Plaintiff. In support of this submission, reliance was placed on decision of Division Bench of this Court in ***Mohinder Kumar Verma vs Vinod Rajoria***, Neutral Citation: 2025:DHC:9232-DB.

- 3.33. It is a settled principle of law that forfeiture of money is in the nature of a penalty and must be strictly construed. The Defendant has failed to lead any evidence that it has suffered any loss. The alleged forfeiture is therefore arbitrary, illegal, and contrary to the terms of the ATS. Thus, Issue No. 4 is liable to be decided in favour of the Plaintiff.
- 3.34. Accordingly, documentary evidence and uncontroverted oral testimony conclusively establish that the Plaintiff has at all material times been ready and willing to perform his part of the ATS in terms of Section 16(c) of the Specific Relief Act, 1963. The Plaintiff possessed the requisite financial capacity and repeatedly demonstrated his *bona fides* by arranging substantial funds, issuing Pay Orders, and persistently calling upon the Defendant and his predecessor-in-interest to perform their prior and concurrent obligations. The Plaintiff's obligation to tender the balance sale consideration was expressly contingent upon completion of the Defendant's contractual duties, which were admittedly never fulfilled. On the contrary, the Defendant's conduct reveals persistent default, unjustified demands for interest, and an unwillingness to complete the transaction.
- 3.35. Accordingly, the present Suit be decreed in favour of the Plaintiff by granting specific performance of the ATS.



SUBMISSIONS ON BEHALF OF THE DEFENDANT:

4. The learned Counsel for the Defendant made the following submissions:

- 4.1. Mrs. Malik was a doctor by profession and retired in 1971 after almost 20 years of service. Thereafter, Mrs. Malik continued her private practice in Delhi Cantonment and finally shifted to the Suit Property in 1984 after it was vacated by the tenant. Mrs. Malik became a widow in 1959 and brought up her only child, Jasjit Singh Malik, the Defendant in the Suit, who lived with Mrs. Malik and looked after her throughout her life.
- 4.2. After her retirement from service Mrs. Malik had no independent source of income as her service was not pensionable. She had no other immovable property and her bachelor son, the Defendant, was totally dependent on her.
- 4.3. Mrs. Malik was getting old and required regular medical attention and treatment. Due to mounting expenses and limited income, Mrs. Malik expressed her desire to sell off the Suit Property. She and the Defendant decided in 2001 to sell the Suit Property and shift to a smaller house in Delhi or Gurgaon and utilize the balance amount to meet her increasing day to day and medical expenses and pay off the loans taken from family and friends.
- 4.4. Earlier in 2001, Mrs. Malik advertised in the Hindustan Times, Delhi Edition, on 21.04.2001 and 22.04.2001; in the Times of India on 21.04.2001 and 22.04.2001; in the Navbharat Times on 22.04.2001; and in the Economic Times on 20.04.2001; for sale of the Suit Property. However, the response was not as expected, and



Mrs. Malik was advised to wait for some time as the demand was increasing in Delhi market.

- 4.5. In January 2003, one Yogesh Agarwal and Vinod Singhal, Directors of Lalaji Flatswale Pvt. Ltd., a real estate company having its office in New Delhi, offered to bring suitable buyers for the Suit Property and assured Mrs. Malik that full payment as agreed and suitable to her, would be made. Accordingly, the Plaintiff, was introduced to Mrs. Malik and the Defendant by Vinod Singhal and Yogesh Agarwal as a prospective buyer of the Suit Property. After negotiations, on 27.01.2003 the Plaintiff brought a draft ATS, which was filled in by hand at the places which were left blank and was signed by the Plaintiff and Mrs. Malik in the presence of Vinod Singhal and the Defendant.
- 4.6. The Plaintiff did not have money to discharge the consideration of the ATS. At the time of the execution of the ATS, the Plaintiff paid ₹35,00,000/- from his own account and ₹5,00,000/- as cash which was arranged from friends / associates. Thus, the Plaintiff did not have even 17% of the consideration amount. The Plaintiff's bank statements placed on record also do not show sufficient amount at any point of time.
- 4.7. Willingness and readiness to perform must exist throughout the period of execution of the contract till the finality to the contract. It should not just be pleaded but exhibited by having the money to discharge the contract, either on his own resources or by means he could arrange for.



- 4.8. The Plaintiff delayed the execution of the contract by delaying the process of conversion to freehold. The Plaintiff introduced to Mrs. Malik, one Deepak Agnihotri as an agent of the Plaintiff, who would get the Suit Property converted to freehold from Delhi Development Authority (“**DDA**”), as he had good contacts. Accordingly, all the required documents i.e., the application, affidavit, undertaking, indemnity bond, specimen signature, etc. were handed over to Deepak Agnihotri.
- 4.9. On 19.02.2003, Deepak Agnihotri informed Mrs. Malik that a sum of ₹3,31,245/- was required to be paid to the DDA towards conversion charges. The draft for the said amount was made by Mrs. Malik from her own account and handed over to Deepak Agnihotri, who deposited the application for conversion along with other documents with the DDA. Deepak Agnihotri did not give any specific information thereafter but on 22.04.2003 informed Mrs. Malik that further arrears of ground rent, amounting to ₹22,685/- were due and payable. The said amount of ₹22,685/- was also arranged by Mrs. Malik and deposited by the Defendant. In the meanwhile, Deepak Agnihotri refused to take any further steps delaying the conversion.
- 4.10. Thereafter, Deepak Agnihotri did not contact Mrs. Malik, despite his assurances that the application for conversion would be allowed within 30 days of filing. Mrs. Malik received a letter from the DDA dated 25.02.2003 calling upon Mrs. Malik to deposit a sum of ₹3,704/- as arrears of ground rent. However, Deepak Agnihotri was not available, and the money could not be deposited in his absence



- at an early date by Mrs. Malik. Deepak Agnihotri was traced later, and he deposited the said ground rent on 18.03.2003 with the DDA.
- 4.11. Mrs. Malik then realized that Deepak Agnihotri was only creating hindrances, and therefore, Mrs. Malik was forced to issue three letters all dated 29.04.2003 to DDA stating, *inter alia*, that the authority given to Deepak Agnihotri to deal with the DDA in respect of the Suit Property was cancelled and instead her son, the Defendant, would be corresponding with the DDA. Deepak Agnihotri not only refused to assist in the application for conversion, but also omitted intentionally to submit Annexure R, Undertaking, and D Form of MCD along with the application.
- 4.12. DDA issued letter dated 28.04.2003 calling upon Mrs. Malik to deposit ground rent of ₹20,258/- and interest of ₹2,427/-, to file copy of bank challan and copy of D Form and Annexure R i.e., Undertaking to the application. DDA further issued letter dated 24.06.2003 calling upon Mrs. Malik to Submit NOC from the mortgagee bank, to point out the errors in the copies of Conveyance Deed issued by the DDA, which were later corrected and letter dated 22.07.2003 further to execute the Conveyance Deed on 06.08.2003.
- 4.13. In response to the above letters, Mrs. Malik wrote letters dated 22.05.2003, 23.05.2003, 09.06.2003, 27.06.2003, 30.06.2003 and 10.07.2003 to the DDA furnishing all the information and documents required for conversion, in order to expedite and complete all the formalities for conversion. During this period the Plaintiff and his agent, Deepak Agnihotri, neglected their duties causing delay in the conversion of the Suit Property from leasehold to freehold.



- 4.14. Obtaining conversion of the Suit Property was not within the control of Mrs. Malik. Under the ATS, Mrs. Malik did not assume any absolute obligations in this regard. This fact is evident from the terms of the ATS. As Mrs. Malik was invited to complete the formalities on 06.08.2003, the letter of intimation as per Clause 5 of the ATS was drafted on 06.08.2003. However, the date of 06.08.2003 got cancelled and the registration was finally completed on 09.08.2003. Thus, the letter of intimation was issued on 09.08.2003 which was duly received by the brother of Plaintiff. The letter dated 06.08.2003 posted under Registered Speed Post AD on 09.08.2003 requested the Plaintiff to make the balance sale consideration and was duly received at the Plaintiff's notified address.
- 4.15. In the cross examination the Defendant was asked about the signatures on the acknowledgement card, which he stated to be of Arun Arora as it appeared to be containing the name of Arun, seeing the starting part of the signature. The Plaintiff did not put any suggestions that the said Arun Arora was not his brother or that there was no such person known to the Plaintiff. The Plaintiff has admitted that the address is correct. Moreover, receiving by an adult male member is also to be construed as duly served. No due authorization to accept service is required as it is not a constructive notice / service addressed to any other person other than the Plaintiff.
- 4.16. The Plaintiff never met Mrs. Malik after initially signing the ATS, till the end of August 2003 when he came to the Suit Property and



took inspection of the original Conveyance Deed dated 06.08.2003 with DDA, noted all the particulars of registration. No suggestion was put to the Defendant to counter this fact. Thus, the fact that the Plaintiff had the information about the conversion by the month of August 2003 stands proved. The Plaintiff also informed the Defendant that he had received the letter dated 06.08.2003 and would be making the balance sale consideration as required under the ATS within 45 days. Mrs. Malik was thus hopeful of getting the full balance sale consideration and took steps to acquire another alternate property in Gurgaon to shift immediately as the possession was to be handed over to the Plaintiff simultaneously, with payment by the Plaintiff. However, since only about 17.02 % of the money was paid by the Plaintiff, Mrs. Malik was in no position to enter into a separate agreement for purchase of any property in Gurgaon or elsewhere. Thus, Mrs. Malik and the Defendant were prevented from entering into any negotiation for the purchase of an alternate property. The Plaintiff ought to have paid the balance sale consideration within 45 days from the knowledge of the conversion which was duly received by letter dated 06.08.2003.

- 4.17. However, after around 40 days, the Plaintiff issued letter dated 20.09.2003 raising new demands such as to be provided with sanction plans, photocopy of the Conveyance Deed and to vacate the Suit Property without even executing the Sale Deed in favour of the Plaintiff without mentioning any date on which the payment of the balance sale consideration was to be made, demands which were not mentioned as precondition in the ATS and could have been done



simultaneously at the time of payment of the balance sale consideration. Thus, the Plaintiff never showed any willingness and readiness to perform his obligations as he did not mention the date on which the balance sale consideration would be paid. It is apparent that after having the knowledge of conversion of the Suit Property into freehold, the Plaintiff tried to buy time because he did not have money to pay the balance sale consideration.

- 4.18. The letter dated 20.09.2003 was duly replied by the Defendant *vide* reply dated 07.10.2003 containing the information about the conversion and further stated that the Plaintiff was shown the Original Conveyance Deed, and the Plaintiff had noted down the details to get the certified copy.
- 4.19. This fact of being shown the original Conveyance Deed and noting the details was never refuted by the Plaintiff in his subsequent letter / legal notice nor any suggestion was put to the Defendant to counter him during the cross examination of the Defendant. The Plaintiff was asked to pay the balance sale consideration with interest within 7 days of the receipt of the reply dated 07.10.2003. The Plaintiff was unable to comply with such requisition and therefore duly rescinded the contract.
- 4.20. Thus, the present Suit for specific performance is not maintainable. The interest amount @ 12% p.a. was demanded because the Plaintiff failed to make the payment of the balance sale consideration within 45 days from the knowledge of conversion after receiving the information *vide* letter dated 06.08.2003.



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- 4.21. Thereafter, the Plaintiff served notice dated 22.10.2003 upon the Defendant, which was a repetition of the letter dated 20.09.2003, wherein, once again, the Plaintiff failed to mention any date on which he was ready and willing to pay the balance sale consideration. The Plaintiff did not pay the balance sale consideration on any date from August to December 2003.
- 4.22. The notice dated 22.10.2003, was posted on 31.10.2003 at 11:00 hours from the Greater Kailash Post Office, New Delhi. It did not mention any date, time or place for payment of the balance sale consideration and / or for execution of the Sale Deed. It further mentioned that the Sale Deed / sale purchase document and vacant and peaceful possession and the original title documents should be done within 15 days from the date of the notice. The notice was posted on 31.10.2003 and was received by Mrs. Malik on 04.11.2003, after 15 days of the date of the notice. The Plaintiff thus did not give any time to Mrs. Malik to even act on the said notice. The reply of Mrs. Malik was sent through her Advocate after considering the entire facts and circumstances. The delay in sending the notice does not itself show that Mrs. Malik was in any manner avoiding performance of her part of the obligations. In fact, the said notice gave full particulars of the transaction between the Parties and also enclosed the following documents.
- (a) Copy of letter dated 20.09.2003.
 - (b) Copy of reply dated 07.10.2003.
 - (c) Copy of NOC obtained from MCD.
 - (d) Copy of letter dated 06.08.2003 sent by Mrs. Malik.



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- 4.23. The Defendant issued his reply dated 01.01.2004, demanding the payment of the balance sale consideration with interest within 7 days of the receipt of the reply dated 01.01.2004. The letter dated 06.08.2003 was enclosed along with the reply dated 01.01.2004 issued on behalf of Mrs. Malik. The interest amount @ 12% per annum was demanded because the Plaintiff failed to make the payment of the balance sale consideration within 45 days from the knowledge of conversion after receiving the information *vide* letter dated 06.08.2003. The Defendant had rescinded the ATS and forfeited the amount of ₹40,00,000/-, however, the Defendant still gave a gateway of 7 days to the Plaintiff to make the payment of the balance sale consideration with interest. The Plaintiff did not come forward in the period of 7 days. Thus, the ATS stood rescinded and the amount of ₹40,00,000/- stood forfeited. The Plaintiff has conveniently referred to and filed the reply dated 01.01.2004 but has not filed Enclosure Nos. 3 and 4 thereto. The Plaintiff has, thus, concealed the material documents and facts from this Court in the pleadings alleging that no such letter dated 06.08.2003 was sent to the Plaintiff.
- 4.24. Thereafter, the Plaintiff made the following payments after the passage of the stipulated time of 45 days and the gateway of 7 days as per Exhibit P4:
- i. Pay order for the amount of ₹50,00,000/- dated 28.01.2004, issued against the bank account of PW-4, Cancelled on 30.01.2004.



- ii. Pay order for the amount of ₹75,00,000/- dated 12.02.2004, issued against the bank account of PW-2, Cancelled on 08.03.2004.
- iii. Pay order for the amount of ₹65,00,000/- dated 08.04.2004, Cancelled on 15.04.2004.
- 4.25. The alleged payment by three Pay Orders of the balance sale consideration was never intended to be paid to Mrs. Malik, as the said amounts were never available with the Plaintiff at one point of time. On making enquiries it is learnt that three Pay Orders were made in succession after cancellation of the previous Pay Order and without offering the same to Mrs. Malik. Thus, the Plaintiff did not have the money to pay and discharge the amount even after 8 months of receiving the letter dated 06.08.2003 and the last gateway of 7 days provided *vide* reply of Mrs. Malik dated 01.01.2004.
- 4.26. Thus, the Plaintiff did not come with the entire balance amount at any point of time and came with only a paltry proportion from time to time when the balance sale consideration due was ₹1,95,00,000/- . Moreover, there was no clause in the ATS that the balance sale consideration could be paid in instalments in this manner. Hence, obviously the said amounts were rejected by Mrs. Malik.
- 4.27. Mrs. Malik had a brief illness in the last week of February 2004 and suddenly passed away on 02.03.2004. Obituary was published in the two local newspapers namely Hindustan Times and the Times of India on 05.03.2004. The Plaintiff thereafter contacted the Defendant and inquired from him if he was the sole surviving legal heir. The Defendant gave all the information and informed the



Plaintiff that under a Will dated 14.06.1996, the Defendant was the only legal heir and was also successor under the ATS and resist the Plaintiff's untenable demands that had been made by the Plaintiff personally and through his advocate.

- 4.28. The Plaintiff has submitted that he did not know about the demise of Mrs. Malik and thus, he had brought the Pay Order of ₹65,00,000/- favouring Mrs. Malik. However, the Plaintiff has not provided any explanation as to why did he bring only an amount of ₹65,00,000/- and why did he not approach the Defendant with a Pay Order of the entire balance sale consideration of ₹1,95,00,000/-.
- 4.29. The Demand drafts dated 15.09.2004 for the amounts of ₹55,00,000/ and ₹35,00,000/-, EX PW3/1 and EX PW 3/2 were got made by PW-3 himself from his bank account favouring the Defendant as deposed by PW-3. Apparently, these Pay Orders were issued during the pendency of the Suit. Such a transaction would have resulted in benami transaction.
- 4.30. Similarly, and in his cross examination, PW-2 had deposed that he became aware of the conversion in the month of February 2004 when the Plaintiff approached him for a loan. Despite having knowledge, the Plaintiff failed to make the payment of the entire balance sale consideration within 45 days and approached with an amount of only ₹75,00,000/-. Moreover, the draft was made against the account of one Andy Overseas. PW-2 also deposed that he was informed by the Plaintiff that the Suit for specific performance had already been filed. However, the Suit was filed only in May 2004.



- 4.31. Similarly, PW-4 deposed in his cross examination that he got the Pay Order for the amount of ₹50,00,000/- made against his own account. Thus, the Pay Orders made by the Plaintiff would lead to benami transactions. Thus, the Plaintiff has failed to prove Issue No. 1 as he neither had the money to pay nor did he show the willingness and readiness to pay as he got all the Pay Orders cancelled within days of issuance and returned them to the respective persons.
- 4.32. Time was made and became the essence of contract on 22.09.2003 or within a few days thereafter. It was not the intention of either or both the Parties to the ATS that irrespective of market fluctuations in the prices of the properties, the liability of the Plaintiff would endlessly remain limited or restricted endlessly to the payment of the balance sale consideration together with interest. The indicated rate of interest @ 12 % per annum refers to the rate of interest and does not entitle the Plaintiff to delay matters day after day or week after week or month after month or year after year.
- 4.33. Even in the present proceedings to enforce the ATS, the Plaintiff has conveniently chosen not to deposit in Court the balance consideration of at least ₹1,95,00,000/-. Even on the date of filing of the present Suit, the Plaintiff had no funds to pay the balance sale consideration.
- 4.34. During the pendency of the Suit, the Plaintiff showed a photocopy of the Pay order of the balance sale consideration. The Pay Order towards the interest amount was made in favour of the Registrar of this Court. Thus, applying the doctrine of preponderance of probabilities the Plaintiff would have shown the originals first and



not the photocopies. Moreover, the originals were never sent to the Defendant to show the *bona fide* of the Plaintiff.

- 4.35. The Plaintiff has also alleged that Mrs. Malik failed to discharge her part of the obligation by the agreed date of 15.05.2003, whereas there was no absolute obligation assumed under the ATS for Mrs. Malik to get the Suit Property converted into freehold on 15.05.2003. In Clause 6 of the ATS, it was clearly stated that on or before 15.05.2003 or within 45 days from the date of conversion of the Suit Property into freehold, whichever is later, the vendor, on receiving the balance sale consideration, will execute and get the sale documents of the Suit Property registered.
- 4.36. Despite the non-payment of the balance sale consideration by the Plaintiff, and failure to indicate any date for execution of the Sale Deed, Mrs. Malik obtained the No Dues Certificate from MCD on 06.11.2003 at her own cost.
- 4.37. The ATS *vide* Clause 11 provides that the taxes, charges, and dues / demands specified therein, payable in respect of the Suit Property shall be paid and borne by Mrs. Malik, up to the date of handing over possession of the Suit Property to the Plaintiff, and thereafter these liabilities, were those of the Plaintiff. The NOC was referable to the date of handing over the possession of the Suit Property to the Plaintiff. It was meaningless on the part of the Plaintiff to ask for NOC without committing himself to a date when he would take over physical possession after paying the balance sale consideration with interest.



- 4.38. The ATS *vide* Clause 3 thereof specifically provided that the possession of the Suit Property was to be delivered on receiving the balance sale consideration in full and final settlement. The Plaintiff could have tendered the balance sale consideration of ₹1,95,00,000/-, less the amount of taxes / dues / demands if unpaid. The Plaintiff has not stated that if any taxes / charges / dues / demands have remained unpaid.
- 4.39. The Plaintiff is also guilty of laches. Firstly, the Plaintiff has shown no cause for unreasonable delay in commencement of the present Suit, after receipt of the notice dated 06.08.2003; and secondly, the consequences thereof and by his conduct and neglect has waived his remedy and put the Defendant in a position in which the grant of relief of specific performance would be unreasonable and unjust.
- 4.40. Mrs. Malik was a senior citizen of 90 years of age, ailing and without any pension or other source of income. The Defendant also does not pay any income tax as he does not have a taxable income and is not gainfully employed or engaged or doing any business, to the knowledge of the Plaintiff. The receipt of payment in any financial year would not make any difference either to Mrs. Malik or to the Defendant and so to the knowledge of the Plaintiff.
- 4.41. Without prejudice to the rights of the Defendant and contentions made in the Written Statement, the Defendant has also pleaded in additional plea to show his readiness and willingness to execute the Sale Deed in favour of the Plaintiff in respect of the Suit Property provided the Plaintiff pays the balance sale consideration of ₹1,95,00,000/- and the amount equivalent to interest due @ 12% per



annum, from due date till date of payment or the market value of the Suit Property whichever is higher.

- 4.42. The amount of ₹40,00,000/- is in the nature of earnest money and the Defendant is entitled to forfeit the same. The terms 'earnest Money' and 'part payment' are used interchangeably and both the amounts are adjusted in the total sale consideration. Whatever be the nomenclature, the intention of the Parties determines the implications.
- 4.43. The ATS stipulated that the duty of the Plaintiff to pay the balance would be limited to the date of 15.05.2003 or within 45 days from the date of information of conversion from leasehold to freehold would be sent by registered post whichever is later. Thus, the duty of the Plaintiff to pay the balance sale consideration would commence only after the conversion of the Suit Property. Thus, the payment of ₹40,00,000/- was to cast upon Mrs. Malik, a duty to get the Suit Property converted into freehold. Only if it was done then the Plaintiff would pay the balance amount. It is nowhere stated in the ATS that in case Mrs. Malik failed to get the Suit Property converted into freehold within the stipulated or reasonable time, she would have to return the amount of ₹40,00,000/-. Only if such a clause had been incorporated in the ATS the amount would have been construed to be a part payment and, hence, refundable.
- 4.44. For earnest money, it is not required to be mentioned that the amount would be forfeited in case of breach of the terms. The ATS does not categorically state that it is earnest money and mentions the phrase part payment. However, the distinction is carved out between a



payment designated as deposit and one designated as part payment and can be ascertained by the intentions of the Parties. A deposit, in the event of the contract being performed goes in diminution of the purchase price, and in the interval between contract and completion operates as an earnest or guarantee that the contract shall be performed, i.e., acts as liquidated damages in the event of breach of contract. If the amount is determined as earnest money, then even in the absence of a forfeiture clause the amount deposited can be forfeited. Reliance was placed on *Entrepreneurs Co-Op Group Housing Society Ltd vs Schindler India Pvt Ltd* 2013 (137) DRJ 374, *Lalit Kumar Bagla vs Karam Chand Thapar & Bros (CS) Ltd*, (2013) 204 DLT 3992 and *Palm Art Apparels Pvt Ltd vs Enkay Builders Pvt Ltd*. 2017 LAWPACK(Del)75014.

- 4.45. In the absence of equities in favour of the Plaintiff, the Plaintiff is not entitled to any or the relief of specific performance. The Court under the circumstances, has no equitable or statutory jurisdiction to grant any relief by way of specific performance. The Plaintiff in equity must approach the Court with clean hands and the Plaintiff is guilty of fraud, misrepresentation, illegality, breach of contractual obligations, has a lack of readiness and willingness to perform his obligations. The Plaintiff has thus misled the Court and / or has abused its process and is not entitled to derive advantage from his own wrong. The Plaintiff has failed to prove Issues Nos. 1 to 4 in his favour and is not entitled to any relief in his favour.
- 4.46. Reliance was placed on *Saradamani Kandappan v. S. Rajalakshmi*, (2011) 12 SCC 18 to submit that steep increases in



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property prices would make it inequitable to grant specific performance where the purchaser did not take the necessary steps to complete the contract within the agreed time frame.

- 4.47. Reliance was further placed on *P. Daivasigamani vs S. Sambandan* 2022 (14) SCALE 708 to submit that readiness and willingness are not one, but two separate elements. Readiness means the capacity of the plaintiff to perform the contract which would include the financial position to pay the purchase price. Willingness refers to the intention of the plaintiff as a purchaser to perform his part of the contract. Willingness is inferred by scrutinising the conduct of the plaintiff / purchaser, including attending circumstances. Continuous readiness and willingness on the part of the Plaintiff from the date the balance sale consideration was payable in terms of the ATS, till the decision of the Suit is a condition precedent for grant of relief of specific performance. The Plaintiff did not have the capacity to pay within the time the balance sale consideration was payable as the Plaintiff never came forward with the entire balance sale consideration. Even during the pendency of the Suit, the Plaintiff neither had the capacity nor did he show his *bona fide* by handing over or even showing the original Pay Order / demand drafts or sending the same to the Defendant by post. The Plaintiff did not show his eagerness to pay. Moreover, the said Pay Orders were not made from a single account in the name of the Plaintiff but from the accounts of the witnesses and on different dates. Such a sale would have suffered the prohibitions of benami transaction. The Plaintiff had *mala fide* intentions to delay the completion of the terms and



conditions of the case so that he can get the Suit Property at a paltry sum as on date the market value of the Suit Property stands for more than ₹25,00,000,00/-. Thus, the Plaintiff has not proved Issue No. 5 in his favour.

4.48. Accordingly, the present Suit deserves to be dismissed.

ANALYSIS AND FINDINGS:

5. The material questions, which are required to be gone into for grant of the relief of specific performance, are:

- i. Whether there exists a valid and concluded contract between the parties for sale / purchase of the suit property?
- ii. Whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract?
- iii. Whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract?
- iv. Whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff?
- v. Lastly, whether the plaintiff is entitled for grant of any other alternative relief, namely, refund of earnest money, etc. and, if so, on what grounds.



6. The above requirements are required to be pleaded by the Parties in their respective pleadings and proved with the aid of evidence in accordance with law. Taking into account the principles of fairness and reasonableness as may be dictated by the peculiar facts of the given case, grant or refusal of the relief of specific performance has to be decided.

7. In the present case, the Issues were framed by this Court on 09.08.2005. After framing the Issues, the Parties were called upon to lead evidence. The following witnesses of the Plaintiff were examined:-

- (i) PW-1 Ravi Arora (Plaintiff)
- (ii) PW-2 Arvind Kalia. One of the Partners of M/s First Overseas and sole proprietor of M/s ANDY Overseas
- (iii) PW-3 Pramod Kumar, Director in Lala Ji Flats Vale Pvt. Ltd.
- (iv) PW-4 Dinesh Jaju, Director in Jaju Towers (P) Ltd.

The following witnesses of the Defendant were examined:-

- (i) DW-1 Mr. J.S. Malik (Defendant)

8. Considering the pleadings, evidence on record and the submissions made on behalf of the Parties, the Issues framed by this Court are decided as under:

Issue Nos. 1 and 2:

9. In order to obtain a decree for specific performance, Section 16(c) of the Specific Relief Act, 1963 mandates 'readiness and willingness' of the plaintiff to be averred and proved. The terms 'readiness' and 'willingness' are also distinct. 'Readiness' is the capacity of the plaintiff to perform the contract, which includes his financial position to pay the sale consideration. 'Willingness' is the conduct of the party.



10. The words 'ready and willing' imply that the plaintiff was prepared to carry out those parts of the contract to their logical end so far as they depend upon his performance. To aver and prove readiness and willingness to perform an obligation to pay money, in terms of a contract, the plaintiff would have to make specific statements in the plaint and adduce evidence to show availability of funds to make payment in terms of the contract in time. The plaintiff would have to plead that the plaintiff had sufficient funds or was in a position to raise funds in time to discharge his obligation under the contract and prove that all along and till the final decision of the suit, he was ready and willing to perform his part of the contract.

11. In the present case, the Plaintiff paid a sum of ₹40,00,000/- at the time of execution of the ATS. The Plaintiff has placed reliance, *inter alia*, on the letter dated 20.09.2003 and notice dated 22.10.2003 to submit that the Plaintiff was all through ready and willing to pay the balance sale consideration.

The letter dated 20.09.2003 states that:

"1. That with reference to our Agreement to Sell dated 27.01.2003, You had agreed to sell the subject property to me, I would like to inform that you were required to comply with the following requirements:-

- a) Get the said property converted into freehold.*
- b) Obtain No Dues Certificates regarding upto date payment of House Tax, Water and Electricity Charges.*
- c) Sign the plans for sanction of re-construction/additions/ alteration with respect to the said property.*

2. That till date I have received no documentary evidence regarding the compliance of the aforesaid formalities from your side.

3. That I hereby request you to kindly complete the formalities and provide the Certified True copy of Conveyance Deed and No Dues Certificates as aforesaid in respect of the said property to me.

4. That I have not yet received the plans sent to you for your signatures, through the brokers M/S Lalaji Flatswale Pvt. Ltd. for submitting to the M.C.D. for Sanctioning. This is causing us



unnecessary harassment, delay and loss. You are therefore, requested to kindly give the same to us at the earliest.

5. *That you are also requested to vacate the said property at the earliest and inform me so that there should be no inconvenience at the time of final payment.*

6. *That too much time has been utilised by you for the completion of the above formalities, despite your several verbal commitments. That I request you to kindly speed up the matter and conclude the transaction at the earliest.*

7. *That I am ready and willing to pay the balance Sale consideration to you, within 45 days, once the aforementioned formalities are complied by you and duly intimated to us by post.”*

The notice dated 22.10.2003 states that:

“4. The fact remains that my client has although been and is still ready and willing to perform his part of obligations. The breach/ non-performance lies on your part and consequently, my client is not liable to pay any interest at the same rate on the amount of Rs. 40,00,000/- paid as a part sale consideration for the period from the date of execution of the Agreement to Sell till the date of handing over of possession and to appropriate such interest amount towards the payment of the sale consideration, if the said interest amount is not paid by you otherwise.”

12. The Plaintiff has also placed reliance on a Pay Order dated 15.09.2004 in favour of the Registrar of this Court representing interest up to that date amounting to ₹23,40,000/-, to prove his readiness and willingness.

13. It is also relevant to consider the evidence of PW-2 to PW-4, from whom the Plaintiff is stated to have arranged funds for the payment of the balance sale consideration.

14. The evidence of PW-2 states that:

“Plaintiff approached me for the loan as mentioned in mark Ex. PW2/1 somewhere in the month Feb. 2004. At that moment, he asked me for Rs.75,00,000/- (Rs. Seventy Five Lakhs) after disclosing the purpose to raise the loan. I did not ask the plaintiff to show me documents for deal between the parties since my relations with the plaintiff was cordial. The plaintiff has apprised me that there was a deal of Rs.2,35,00,000/- (Two crores thirty five lakhs) between him



and the defendant and he has already paid a sum of Rs.40,00,000/- (Forty Lakhs) as initial payment and remaining sale consideration is yet to be paid.

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I got prepared the pay order amounting to Rs.75,00,000/- of the State Bank of Mysore, Nehru Place Branch, New Delhi from the account of ANDY Overseas, which is a proprietorship concern.

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It is correct that I was having amount of more than Rs.3,00,00,000/- (Rs. three crores) In my account along with the account of the proprietorship concern. No written agreement was executed in respect of the advancement of money to the plaintiff.”

15. The evidence of PW-3 also states that:

“Mr. Ravi Arora approached me around July-Aug. 2004 for advancing money stating that he has done some deal with the defendant. He asked for the soft loan so I gave the consent as he was having good reputation or I could have advanced more if the same is asked by the plaintiff. I did not see any document in respect of the deal between the parties. I did not see any agreement to sell, however plaintiff orally informed that there is a deal for a sum of Rs. 2,35,00000/- and Rs.40,00,000/- has already been paid and balance amount of Rs.1,9500000/- still to be paid. Plaintiff approached me somewhere in the month of July-Aug. 2004 submitting that he has to deposit balance amount of Rs. 1.95,00000/- in the Court.

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I did not charge any interest on the loan amount from the plaintiff since it was a very short period”.

16. The evidence of PW-4 further states that:

“The plaintiff had requested me for loan somewhere in the 3rd week of January 2004. He had asked for Rs. 50,00,000/- only. Had I been asked to pay more, I would have paid more amount also.”

17. It is the case of the Plaintiff that the Defendant did not get the Suit Property converted from leasehold to freehold by 15.05.2003 and that the communication dated 06.08.2003, informing the Plaintiff of such conversion, was not received by the Plaintiff. It is further the case of the Plaintiff that he



became aware of the conversion only on 07.10.2003 *vide* Mrs. Malik's reply dated 07.10.2003.

18. It has been contended on behalf of the Plaintiff that the delay in conversion of the Suit Property from leasehold to freehold was not attributable to the Plaintiff and, therefore, the Plaintiff cannot be faulted for non-performance within the initially contemplated period.

19. The Plaintiff has also contended that Mrs. Malik / Defendant failed to adhere to the terms of ATS by not fulfilling other formalities, namely furnishing a certified true copy of conveyance deed, signing of plans for reconstruction / alteration, clearance of municipal dues, or obtaining of No Dues Certificate.

20. Clause 2(b) of the ATS categorically stipulates that the balance sale consideration of ₹1,95,00,000/- was to be paid '*upto 15.05.2003, or within 45 days from the date of conversion of the said property into freehold, whichever is later*', simultaneously with delivery of possession and execution of documents. The Plaintiff has admitted in his cross-examination that the Plaintiff was informed about the conversion of the Suit Property on 07.10.2003, and further that the Plaintiff knew about such conversion by 22.10.2003. Despite the same, it is evident that the Plaintiff did not pay the balance sale consideration within 45 days thereof.

21. As regards the formalities namely furnishing a certified true copy of conveyance deed, signing of plans for reconstruction / alteration, clearance of municipal dues, or obtaining of No Dues Certificate, cannot be read as conditions precedent for payment of the balance sale consideration and are also not supported by the terms of the ATS. The Plaintiff has admitted that



there is no stipulation in the agreement i.e. Ex.P1 that Mrs. Joginder Malik has to send the certified copy of conveyance deed.

22. A plain reading of Clauses 3, 4, 5 and 6 of the ATS demonstrates that the trigger for the Plaintiff's obligation to pay the balance sale consideration was the conversion of the Suit Property into freehold.

23. The Plaintiff has failed to furnish any cogent explanation for not tendering the balance sale consideration within 45 days even after the communications dated 07.10.2003 and 22.10.2003, the dates on which the Plaintiff admittedly became aware of the conversion of the Suit Property, or subsequent to 06.11.2003, when the No Dues Certificate was obtained by the Defendant. This failure on part of the Plaintiff, in the absence of any justifiable cause, detracts from the Plaintiff's plea of readiness and willingness to perform his part of the contract.

24. Regarding the Plaintiff's assertion that the obligations under Clause 2(b) of the ATS were concurrent in nature, there is no cavil that the payment of the balance sale consideration was to occur simultaneously with the execution of the sale documents and the delivery of possession. In this case, following the conversion of the Suit Property into freehold, Mrs. Malik, by her letters dated 07.10.2003 and 01.01.2004, explicitly requested that the Plaintiff remit the balance sale consideration along with interest, in accordance with the terms of the ATS, and communicated her readiness to complete the transaction upon receipt of such payment. Therefore, the Plaintiff was fully informed that completion of the sale was being pursued. If the Plaintiff had been genuinely ready and willing, there was no impediment to remitting the required amount and requesting the Defendant to attend for execution of the Sale Deed on a specified date to finalize the transaction.



However, the Plaintiff repeatedly postponed payment of the balance sale consideration and sought to arrange funds in instalments at a much later stage. Under these circumstances, the argument that Mrs. Malik / the Defendant failed to first perform concurrent obligations cannot be accepted as the evidence indicates that the Plaintiff was not continuously ready and willing to fulfil his obligation to pay the balance sale consideration when called upon.

25. The testimony of PW-2 indicates that the Plaintiff sought a loan of ₹75,00,000/- from PW-2 in February 2004. Likewise, PW-4 has deposed that the Plaintiff approached him in the third week of January 2004 for an amount of ₹50,00,000/- and PW-3's evidence establishes that he was contacted in July-August 2004 to advance funds. Collectively, the evidence demonstrates that the Plaintiff began seeking financial assistance only from January 2004 onwards, well after the expiration of the 45-day period following the conversion of the Suit Property from leasehold to freehold, and certainly after 45 days from 07.10.2003, when the Plaintiff admittedly became aware of the conversion. Furthermore, the Plaintiff never tendered the entire balance sale consideration nor demonstrated readiness and willingness to do so; instead, only partial amounts were offered through Pay Orders, with new Pay Orders being issued after cancellation of the previous ones.

26. Accordingly, it is clear that the Plaintiff did not possess the balance sale consideration at all material times. The record also demonstrates that the Plaintiff was not prepared to pay the interest stipulated under the ATS, as evidenced by the absence of any such payment when subsequently offering the balance sale consideration in instalments through Pay Orders dated 28.01.2004, 12.02.2004, and 08.04.2004. The sole instance where interest was offered is through a Pay Order dated 15.09.2004 in favour of the Registrar of



this Court, which occurred at a much later stage. Depositing an amount with the Court after considerable delay does not suffice to establish that the Plaintiff was ready and willing to perform their contractual obligations at the relevant time. If the Plaintiff had indeed possessed the requisite funds at all relevant times, such amounts could have been tendered earlier, which is evidently not the situation in the current Suit.

27. Assuming the delay in conversion cannot be attributed to the Plaintiff, it is clear that the Plaintiff did not fulfil his obligations after becoming aware of the conversion. The requirement of demonstrating continuous readiness and willingness must be established throughout the relevant period. The Plaintiff failed to remit the entire balance sale consideration within the timeframe specified by Clause 2(b) of the ATS and subsequently refused to pay any interest for the delay in payment of the balance sale consideration.

28. As regards the contention that time was not essence of the contract, the observation of the Supreme Court in *Saradamani Kandappan* (*supra*) are relevant:

“...Normally in regard to contracts relating to sale of immovable properties, time is not considered to be the essence of the contract unless such an intention can be gathered either from the express terms of the contract or impliedly from the intention of the parties as expressed by the terms of the contract.

25. *The legal position is clear from the decision of a Constitution Bench of this Court in Chand Rani v. Kamal Rani (1993) 1 SCC 519 wherein this Court outlined the principle thus:*

“19. It is a well-accepted principle that in the case of sale of immovable property, time is never regarded as the essence of the contract. In fact, there is a presumption against time being the essence of the contract. This principle is not in any way different from that obtainable in England. Under the law of equity which governs the rights of the parties in the case of specific performance of contract to sell real estate, law looks not at the letter but at the substance of the agreement. It has to



be ascertained whether under the terms of the contract the parties named a specific time within which completion was to take place, really and in substance it was intended that it should be completed within a reasonable time. An intention to make time the essence of the contract must be expressed in unequivocal language.

26. Relying upon the earlier decisions of this Court in *Gomathinayagam Pillai v. Palaniswami Nadar* AIR 1967 SC 868, (1967) 1 SCR 227 and *Govind Prasad Chaturvedi v. Hari Dutt Shastri* (1977) 2 SCC 539, this Court further held that fixation of the period within which the contract has to be performed does not make the stipulation as to time the essence of the contract. Where the contract relates to sale of immovable property, it will normally be presumed that the time is not the essence of the contract. Thereafter this Court held that even if time is not the essence of the contract, the Court may infer that it is to be performed in a reasonable time: (i) from the express terms of the contract; (ii) from the nature of the property; and (iii) from the surrounding circumstances as, for example, the object of making the contract. The intention to treat time as the essence of the contract may however be evidenced by circumstances which are sufficiently strong to displace the normal presumption that time is not the essence in contract for sale of land.

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28. The intention to make time stipulated for payment of balance consideration will be considered to be essence of the contract where such intention is evident from the express terms or the circumstances necessitating the sale, set out in the agreement. If, for example, the vendor discloses in the agreement of sale, the reason for the sale and the reason for stipulating that time prescribed for payment to be the essence of the contract, that is, say, need to repay a particular loan before a particular date, or to meet an urgent time-bound need (say medical or educational expenses of a family member) time stipulated for payment will be considered to be the essence. Even if the urgent need for the money within the specified time is not set out, if the words used clearly show an intention of the parties to make time the essence of the contract, with reference to payment, time will be held to be the essence of the contract.

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35. It is of some interest to note that the distinction between contracts relating to immovable properties and other contracts was not drawn by Section 55 of the Contract Act (or any other provisions of the Contract Act or the Specific Relief Act, 1963). The courts in India



made the said distinction, by following the English law evolved during the nineteenth century. This Court held that time is not of the essence of the contracts relating to immovable properties; and that notwithstanding default in carrying out the contract within the specified period, specific performance will ordinarily be granted, if having regard to the express stipulation of the parties, nature of the property and surrounding circumstances, it is not inequitable to grant such relief. (Vide *Gomathinayagam Pillai* AIR 1967 SC 868, (1967) 1 SCR 227, *Govind Prasad Chaturvedi* (1977) 2 SCC 539, *Indira Kaur v. Sheo Lal Kapoor* (1988) 2 SCC 488 and *Chand Rani* (1993) 1 SCC 519 following the decision of the Privy Council in *Jamshed Khodaram Irani v. Burjorji Dhunjibhai* (1915-16) 43 IA 26, AIR 1915 PC 83 and other cases.) Of course, the Constitution Bench in *Chand Rani* (1993) 1 SCC 519 made a slight departure from the said view.

36. The principle that time is not of the essence of contracts relating to immovable properties took shape in an era when market values of immovable properties were stable and did not undergo any marked change even over a few years (followed mechanically, even when value ceased to be stable). As a consequence, time for performance, stipulated in the agreement was assumed to be not material, or at all events considered as merely indicating the reasonable period within which contract should be performed. The assumption was that grant of specific performance would not prejudice the vendor defendant financially as there would not be much difference in the market value of the property even if the contract was performed after a few months. This principle made sense during the first half of the twentieth century, when there was comparatively very little inflation, in India. The third quarter of the twentieth century saw a very slow but steady increase in prices. But a drastic change occurred from the beginning of the last quarter of the twentieth century. There has been a galloping inflation and prices of immovable properties have increased steeply, by leaps and bounds. Market values of properties are no longer stable or steady. We can take judicial notice of the comparative purchase power of a rupee in the year 1975 and now, as also the steep increase in the value of the immovable properties between then and now. It is no exaggeration to say that properties in cities, worth a lakh or so in or about 1975 to 1980, may cost a crore or more now.

37. The reality arising from this economic change cannot continue to be ignored in deciding cases relating to specific performance. The steep increase in prices is a circumstance which makes it inequitable to grant the relief of specific performance where the purchaser does not take steps to complete the sale within the agreed period, and the



vendor has not been responsible for any delay or non-performance. A purchaser can no longer take shelter under the principle that time is not of essence in performance of contracts relating to immovable property, to cover his delays, laches, breaches and “non-readiness”. The precedents from an era, when high inflation was unknown, holding that time is not of the essence of the contract in regard to immovable properties, may no longer apply, not because the principle laid down therein is unsound or erroneous, but the circumstances that existed when the said principle was evolved, no longer exist. In these days of galloping increases in prices of immovable properties, to hold that a vendor who took an earnest money of say about 10% of the sale price and agreed for three months or four months as the period for performance, did not intend that time should be the essence, will be a cruel joke on him, and will result in injustice. Adding to the misery is the delay in disposal of cases relating to specific performance, as suits and appeals therefrom routinely take two to three decades to attain finality. As a result, an owner agreeing to sell a property for rupees one lakh and received rupees ten thousand as advance may be required to execute a sale deed a quarter century later by receiving the remaining rupees ninety thousand, when the property value has risen to a crore of rupees.

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41. A correct perspective relating to the question whether time is not of the essence of the contract in contracts relating to immovable property, is given by this Court in *K.S Vidyanadam v. Vairavan* (1997) 3 SCC 1 (by Jeevan Reddy, J. who incidentally was a member of the Constitution Bench in *Chand Rani* (1993) 1 SCC 519). This Court observed: (& 9, paras 10-11)

“10. It has been consistently held by the courts in India, following certain early English decisions, that in the case of agreement of sale relating to immovable property, time is not of the essence of the contract unless specifically provided to that effect. ... in the case of urban properties in India, it is well-known that their prices have been going up sharply over the last few decades—particularly after 1973. ... 11. ... We cannot be oblivious to the reality—and the reality is constant and continuous rise in the values of urban properties—fuelled by large-scale migration of people from rural areas to urban centres and by inflation. ... Indeed, we are inclined to think that the rigor of the rule evolved by courts that time is not of the essence of the contract in the case of immovable properties—evolved in times when prices and values were



stable and inflation was unknown—requires to be relaxed, if not modified, particularly in the case of urban immovable properties. It is high time, we do so.” (emphasis supplied)”

[Emphasis Supplied]

29. In view of the above, the Plaintiff’s contention cannot be accepted that in absence of the time being designated as the essence of the contract renders the time-limits specified in the ATS irrelevant or allows them to be disregarded without consequence. Even if no explicit date for execution of the sale deed is provided, an agreement to sell is generally expected to be fulfilled within a reasonable timeframe. Given the current economic climate, characterised by rapidly increasing urban property prices, the Plaintiff may not indefinitely delay execution of the Sale Deed solely on the basis that the ATS does not specify a fixed deadline and that any prolonged postponement can simply be compensated with interest. Such an interpretation would undermine the equitable principles governing specific performance.

30. It is settled law that ordinarily the plaintiff alone cannot be allowed to reap the entire benefit of the phenomenal increase in the value of the property during the pendency of litigation and that while balancing the equities, one of the considerations to be kept in view is as to who is the defaulting party, which in the present case appears to be the Plaintiff who may have been willing to perform his part of contract, however, was not ready with funds and was trying to buy time to discharge his part of contract.

31. Accordingly, Issue Nos. 1 and 2 are decided against the Plaintiff and in favour of the Defendant.

Issue No. 3:

32. In the present case, the Defendant has contended that the ATS stood terminated on account of failure of the Plaintiff to make payment within time.



A perusal of the communications, placed on record, especially replies dated 07.10.2003, 01.01.2004 issued on behalf Mrs. Malik indicates that the Mrs. Malik / Defendant continued to call upon the Plaintiff to perform the contract by making payment of the balance sale consideration along with interest for the alleged delay.

33. Relevant part of Mrs. Malik's reply dated 07.10.2003, sent through her Advocate in response to Plaintiff's letter dated 20.09.2003 is reproduced as under:

"I hereby call upon you to:

a) forward the balance sale consideration amounting to a sum of Rs.1,95,00,000/= (Rupees One Crore Ninety Five Lakhs Only)

b) forward the interest @ 12% with effect from 22.09.2003 amounting to Rs. 96,164/= (Rupees Ninety Six Thousand One Hundred Sixty Four Only) till the date of this notice c) forward the interest @ 12% with effect from the date of this notice till the date of realisation.

In terms of the agreement to sell dated 27.01.2003 within a period of 7 days from the date of this notice failing which the amount advanced by you as earnest money shall stand forfeited and my client reserves her right to claim such damages in addition to the above as she may be so advised including a sum of Rs. 11,000/- being the cost of this reply to your notice."

34. The second reply dated 01.01.2004, again sent through her Advocate, in response to the Plaintiff's notice dated 22.10.2003 stated as under:

"However my client is prepared to consider her intent to revive the Agreement if your Client is ready and Willing to immediately and unconditionally: a) forward the balance sale consideration amounting to a sum of Rs.1,95,00,000/- (Rupees One Crore Ninety Five Lakhs Only)"

35. As the Plaintiff failed to comply with the demand for payment of balance sale consideration coupled with interest *vide* replies dated 07.10.2003 and 01.01.2004, the ATS stood rescinded by the Plaintiff upon expiry of the period stipulated therein.



36. In view of the above, the ATS was validly rescinded upon breach of the terms of the ATS by the Plaintiff. Accordingly, Issue No. 3 is decided in favour of the Defendant.

Issue No. 4:

37. Although the ATS was validly rescinded, the burden of proving that the Defendant was entitled to forfeit the sum of ₹40,00,000/- lies with the Defendant. The question of forfeiture must be evaluated in accordance with established law, the provisions of the ATS, the nature of the payment, the conduct of the parties, and prevailing principles governing the forfeiture of advance or earnest money. The evidence on record indicates that the Plaintiff paid ₹40,00,000/- at the time of executing the ATS, which was considered part of the total sale consideration. The primary issue to determine is whether, upon the Plaintiff's default, the Defendant is legally entitled to retain this amount as part of the sale consideration.

38. For the forfeiture of advance funds designated as earnest money to be justified, the contract terms must be explicit and unambiguous. Earnest money is provided at the inception of the contract as a pledge for its proper execution by the depositor, with the understanding that it may be forfeited in the event of non-performance by the depositor. Established legal precedents hold that any part-payment of the purchase price cannot be subject to forfeiture, unless it serves as a guarantee for the due performance of the contract. In other words, if a payment functions solely as a portion of the consideration and is not intended as earnest money, the forfeiture clause does not apply.

39. A party seeking forfeiture is required to demonstrate either (i) an express contractual right to forfeit the sum as earnest, or (ii) that the sum was unequivocally intended as earnest money or security, as evidenced by clear



terms and relevant circumstances. In the present case, there is no explicit contractual basis supporting forfeiture, a fact further substantiated by the testimony of DW-1. During cross-examination on 18.09.2018, DW-1, Mr. J.S. Malik (Defendant), made the following statement:

“Q. Kindly show from the agreement Ex.P-1 that Smt. Joginder Malik had to forfeit Rupees 40 lakhs received under the agreement?”

Ans. There is no forfeiture clause in the agreement. Vol. In all land dealings, the initial deposit is always forfeited.”

40. Therefore, it is acknowledged that the ATS lacks any explicit provision allowing for the forfeiture of the portion of sale consideration paid by the Plaintiff. Without a contractual clause permitting such forfeiture, and absent evidence demonstrating loss incurred by the Defendant, the claim for forfeiture is unsustainable.

41. Accordingly, Issue No. 4 is decided in favour of the Plaintiff.

Issue No. 5:

42. In view of the above discussion, the conduct of the Plaintiff, as borne out from the record, does not satisfy the essential requirement of continuous readiness and willingness to perform his obligations under the ATS.

43. Prior to instituting the Suit, the Plaintiff expressly denied any obligation to pay interest on the outstanding sale consideration. Following the initiation of the current Suit, the Plaintiff deposited an amount covering interest up to the date of the Pay Order dated 15.09.2004. This sequence of events shows that the Plaintiff did not demonstrate consistent readiness and willingness as he did not prove that he had adequate funds or resources to fulfil this requirement at all relevant times. The Plaintiff's subsequent arrangement regarding interest does not demonstrate continuous readiness and willingness throughout all material periods. Such post arrangements alone



cannot rectify non-performance of contractual obligations within the timeframe specified under the ATS or within a reasonable period thereafter.

44. It is also pertinent to observe that, during the intervening period, the value of the Suit Property has risen considerably. The mere presence of a clause providing for interest payments in the event of delay cannot be interpreted as authorizing indefinite postponement of performance, especially given that the property is located in an urban area where prices tend to experience significant and ongoing appreciation.

45. Under these circumstances, given that the Plaintiff has not established readiness and willingness to fulfil his contractual obligations pursuant to the terms of ATS, specifically enforcing the ATS would entail an outcome where the consequences of delay are unfairly imposed on one party.

46. In view of the above discussion, the Plaintiff has not satisfied the mandatory requirements stipulated under Section 16(c) of the Specific Relief Act, 1963. Given the Plaintiff's breach by inability to demonstrate continuous readiness and willingness at all relevant times, there exists no basis for granting the relief of specific performance in the present Suit.

47. Based on determination of Issue No. 4, the Defendant is not entitled to retain the sum of ₹40,00,000/- received from the Plaintiff as part sale consideration and should have refunded this amount upon termination of the ATS. In view of the prolonged period during which these funds were retained following the valid rescission of the ATS, it is both appropriate and equitable to direct the refund of ₹40,00,000/- with interest at 9% per annum. As per the evidence of the Plaintiff, he became aware of the conversion of the Suit Property from leasehold to freehold only on 07.10.2003, thereby commencing his obligation to pay the balance sale consideration within the 45 days as



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stipulated in the ATS. Consequently, the Plaintiff is entitled to a refund of ₹40,00,000/-, along with simple interest at 9% per annum calculated from 22.11.2003 i.e. the date of expiry of 45 days from 07.10.2003.

CONCLUSION:

48. Consequently, the relief for specific performance of the ATS is dismissed. However, the Defendant is hereby directed to refund to the Plaintiff the sum of ₹40,00,000/- together with simple interest at 9% per annum to be calculated from 22.11.2003 until the date of actual payment.

49. Accordingly, the present Suit is decreed to the aforesaid extent. Let the decree sheet be drawn up accordingly.

50. The Suit and the pending applications are disposed of.

TEJAS KARIA, J

APRIL 30, 2026

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