



2026:DHC:4734-DB



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

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Reserved on: 20.02.2026

Date of decision: 26.05.2026

+ RFA(OS) 13/2020 & CM APPL. 19523/2023

AKM ENTERPRISES PRIVATE LIMITEDAppellant

Through: Mr. Dayan Krishnan, Sr. Adv.
with Mr. Aman Nandrajog, Mr.
Sumeer Sodhi, Mr. Harshit Joshi,
Mr. Shreedhar Kale, Mr. Sukrit
Seth and Mr. Shiv Shankar,
Adv.

versus

VESTA HOLDING PRIVATE LIMITED & ANR.

.....Respondents

Through: Mr. Suhail Dutt, Sr. Adv. with
Mr. Sankalp Goswami and Mr.
Azhar Alam, Adv.

+ RFA(OS) 14/2020 & CM APPL. 4224/2020

AKM ENTERPRISES PRIVATE LIMITEDAppellant

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CORAM:

HON'BLE MR. JUSTICE VIVEK CHAUDHARY

HON'BLE MS. JUSTICE RENU BHATNAGAR



J U D G M E N T

1. The present appeals assail a common Judgment and Decree dated 03.12.2019 passed by the learned Single Judge of this Court in CS (OS) 1020/2009 and CS (OS) 1016/2010 in favour of Vesta Holding Private Limited (“Vesta”) for refund of advance of Rs. 25 crores along with interest from AKM Enterprises Private Limited (“AKM”). Since both the present appeals assail the same impugned judgment, they are heard and decided by this common judgment.

2. The relevant facts are that AKM was developing a commercial project namely “MBD Neopolis Mall” at Ludhiana. The parties entered into a Memorandum of Understanding dated 03.12.2007 (“MOU”), whereby Vesta agreed to purchase an area measuring 50,055 sq. mtrs. in the said mall for a total consideration of Rs. 340.28 crores. The payments were to be made at different stages as per the payment schedule in paragraph 5 of the MOU. At the time of signing of the MOU, i.e., Stage-I, Vesta paid AKM an advance of Rs. 25 crores out of total agreed consideration of 340.28 crores. Subsequently, an addendum dated 08.12.2007 was signed between the parties reducing the sale area by 5000 sq. mtrs., and correspondingly consideration was revised to Rs. 327.73 crores.

3. As per AKM, the Stage-II installment of Rs. 112.04 crores was payable on 01.02.2008 as per clause 5 of the MOU. On the other hand, as per Vesta, it was represented by AKM that several well-known anchor brands, namely Home Centre, Debenhams, Odyssey, Gigabite, and Fame-Shingar were to be inducted as lessees in the said mall (“Anchor Tenants”), which would be major crowd-pullers and,



2026:DHC:4734-DB



thus, key to the commercial viability of the project. Such condition was also agreed upon and incorporated in the MOU. The Stage-II installment of Rs. 112.04 crores payable by 01.02.2008 was conditional upon completion of the relevant constructions, execution of lease agreements with the Anchor Tenants and handing over of the premises to them for fit-outs. Since, Anchor Tenants were not inducted, therefore, they did not pay the Stage-II installment.

4. AKM by its letter dated 17.03.2008 threatened to forfeit the advance of Rs. 25 crores as Vesta failed to make the second installment due at Stage-II; and on 21.08.2008, in terms of clause 13, it forfeited the advance.

5. In these circumstances, AKM filed a suit claiming damages on account of alleged breach by Vesta in failing to act as per the MOU, contending that it was deprived of selling the property to other intending purchasers and suffered losses due to subsequent decline in market prices. On the other hand, Vesta filed a suit seeking recovery of the advance of Rs 25 crores forfeited along with interest. Both suits were consolidated with the consent of parties and were decided by the learned Single Judge *vide* the common impugned judgment.

6. The learned Single Judge held that AKM was not entitled to forfeit the advance as Vesta was not liable to make the payment of Stage-II without AKM first having binding leases with Anchor Tenants. Thus, he passed a decree for refund of advance of Rs. 25 crores by 31.01.2020 with interest at 9% per annum with effect from 01.02.2008, being the date of Stage-II payment, and if the same is not paid by 31.01.2020, thereafter, at commercial rate of 15% per annum



2026:DHC:4734-DB



till the date of payment/realization. The same is under challenge before us.

7. We have heard learned Senior Counsel for the parties at length and have perused the record.

8. The main issue between the parties is of interpretation of the MOU. Learned Senior Counsel appearing for AKM contends that the terms of the MOU are not clear and, therefore, external aids ought to be considered for proper interpretation of the agreement. He submits that the MOU must be construed in the backdrop of the emails exchanged between the parties from May 2008 to February 2009 and that these clarify the understanding of the parties with regard to the obligations at Stage-II. In support of the said submission, reliance is placed upon the judgment of the Supreme Court in *Anglo American Metallurgical Coal Pty. Ltd. v. MMTC Ltd.*, (2021) 3 SCC 308.

9. On the other hand, learned Senior Counsel appearing for Vesta submits that the terms of the MOU are clear and unambiguous and, therefore, the same must be interpreted on the basis of the language employed therein itself. It is submitted that no external aid can be looked into for construing the obligations of the parties under the MOU and further submits that the email communications relied upon by AKM are subsequent to 01.02.2008, i.e., the stipulated date for Stage-II payment, and therefore are not relevant for determination of the controversy in the present case. In support of the above said submission, reliance is placed upon the judgment of the Supreme Court in *Bank of India v. K. Mohandas*, (2009) 5 SCC 313 and *Nathulal v. Phoolchand*, (1969) 3 SCC 120.



2026:DHC:4734-DB



10. Relevant portion of Clause 4 and 5 of the MOU dated 03.12.2007, relating to Purchase Consideration and Payment Schedule, reads as follows: -

“4. Purchase Consideration:

The Purchase Consideration payable to the Seller by the Purchaser shall be approximately Rs. 340.28 Crores (Rupees Three Hundred Forty Crores and Twenty Eight Lac Only) towards the following:

A. On Area for Outright Sale

*On Retail & Entertainment
(Excluding the Area Sold) -226.62 Crores approx.*

*On Parking
(Excluding the Area Leased
out to the Seller) - 38.09 Crores*

On Common Area Revenue -25.96 Crores approx.

On Signage Revenue -37.06 Crores approx.

Total - 327.73 Crores approx.

*Total in words: Approx. Rupees Three
Hundred Twenty Seven
Crore and Seventy
Three Lac Only.*

*B. On Area for Outright Sale to be leased out to the Seller
for three years and sold back immediately thereafter to the
Seller only.*

Parking Area: - 9.54 Crores

*Engineering Services &
Back of the House Area: - 3.01 Crores*

Total - 12.55 Crores



2026:DHC:4734-DB



*Total in words: Rupees Twelve Crores Fifty
Five lacs Only*

Total (A + B) - 340.28 Crores

*Total in words: Rs. Three Hundred Forty
Crores And Twenty Eight
Lac Only*

The Purchase Consideration for A is flexible and is subject to the actual Gross Rent receivable by the Purchaser whereas the Purchase Consideration for B is final.

The Seller on receipt of 100% (One Hundred Percent) Purchase Consideration as contained in clause 5 below inform the tenants that the Purchaser has purchased the Leased out Demised Premises (hereinafter referred to as “Symbolic Possession”).

The Seller shall handover the leased out Retail & Entertainment Area to the tenants for fit outs and the Parking Area, Common Area and Signage Area shall directly be handed over to the Purchaser.

“5. Payment Schedule:

The Purchaser will pay the Purchase Consideration in the following stages:

Stage I- On signing of the MOU:

Rs. 25 Crores (Rs. Twenty Five Crores Only) has been paid to the Seller as Earnest Money, vide Pay Order no. 065660 dated 28th November, 2007 drawn on Standard Chartered Bank, Greater Kailash 1, New Delhi which shall be adjusted on prorata basis from the payment due to the Seller by the Purchaser at Stage III & Stage IV of the payment schedule. This payment of Earnest Money does not grant any ownership or possession, rights to the Purchaser.



Stage II - By February 1, 2008

Rs. 112.04 Crores (Rs. One Hundred and Twelve Crores and Four Lac Only) of the Purchase Consideration for the following shall be payable at this stage:

a. Rs. 95.44 Crores (Rs. Ninety Five Crores and Forty Four Lac Only) as 100% (One Hundred Percent) of the Purchase Consideration shall be paid by the Purchaser to the Seller on the Retail and Entertainment areas leased out for the brands 'Home Centre' (on the Lower Ground Floor), 'Debenhams'. (on the Ground Floor), 'Odyssey'. (on the First Floor), 'Gigabite' (on the Third Floor), Fame - Shringar' (on the Third & Fourth Floor) which forms part of Area mentioned in Clause 2A and Purchase Consideration mentioned in Clause 4A of this MOU and that the Seller delivers the symbolic possession of such areas to the Purchaser.

b. Rs. 16.60 Crores (Rs Sixteen Crores and Sixty Lac Only) as 100% (One Hundred Percent) of the Purchase Consideration for Common Area shall be paid to the Seller on pro-rata basis on the above areas for which the Purchase Consideration is receivable as per clause (a) above."

(emphasis added)

11. A perusal of clauses shows that Vesta agreed to purchase an area measuring 50,055 sq. mtrs. in the said mall for a total consideration of Rs. 340.28 crores, computed tentatively. At the time of signing of the MOU i.e. Stage-I, Vesta paid advance of Rs. 25 crores out of total agreed consideration to AKM, with the balance consideration agreed to be paid at various stages.

12. As per clause 5 of the MOU, the second installment of Rs. 112.04 crores (95.44 crores + 16.60 crores) was payable by Vesta at Stage-II. Out of the same, Rs. 95.44 crores was payable on the Retail and Entertainment areas leased out and handed over to the Anchor



Tenants and further on delivery of symbolic possession of such areas to Vesta; and Rs. 16.60 Crores was payable for Common area on pro-rata basis on the above areas. The highlighted portion shows that the Retail and Entertainment areas were first required to be leased out to the Anchor Tenants and possession of such areas were to be handed over to them. Thereafter, AKM was to deliver symbolic possession of those leased-out areas to Vesta, i.e., recognition of Vesta's rights in respect of the said premises while the tenants remained in physical possession. This clearly shows that the intention under the MOU was that the areas would first be leased out to the Anchor Tenants, possession would be handed over to them, symbolic possession would thereafter be delivered to Vesta and only thereafter the Stage-II payment became payable.

13. The Supreme Court in *Annaya Kocha Shetty (Dead) through LRs v. Laxmibai Narayan Satose Since Deceased through LRs & Ors.*, 2025 SCC OnLine SC 758, held that: -

“16. ...

At the outset, let us refer to the ratio of this Court in Provash Chandra Dalui [1989 Supp (1) SCC 487] on the construction of the basic agreement between the plaintiff and the defendant. This Court held that the court must look at the words used in the contract unless they are such that one may suspect that they do not convey the intention correctly. If the words are clear, there is very little the court can do about it. In constructing a deed, looking at the surrounding circumstances and subject matter is legitimate only if the words used are doubtful.

17. The guide to the construction of deeds and tools adopted can broadly be summarised as follows:



17.1 The contract is first constructed in its plain, ordinary and literal meaning. This is also known as the literal rule of construction.

17.2 If there is an absurdity created by literally reading the contract, a shift from literal rule may be allowed. This construction is generally called the golden rule of construction.

17.3 Lastly, the contract may be purposively constructed in light of its object and context to determine the purpose of the contract. This approach must be used cautiously.”

(emphasis added)

14. In ***Bank of India v. K. Mohandas*** (supra), the Supreme Court held: -

“28. The true construction of a contract must depend upon the import of the words used and not upon what the parties choose to say afterwards. Nor does subsequent conduct of the parties in the performance of the contract affect the true effect of the clear and unambiguous words used in the contract. The intention of the parties must be ascertained from the language they have used, considered in the light of the surrounding circumstances and the object of the contract. The nature and purpose of the contract is an important guide in ascertaining the intention of the parties.

29. In Ottoman Bank of Nicosia v. Ohanes Chakarian [AIR 1938 PC 26] , Lord Wright made these weighty observations: (AIR p. 29)

“... that if the contract is clear and unambiguous, its true effect cannot be changed merely by the course of conduct adopted by the parties in acting under it.”

30. In Ganga Saran v. Firm Ram Charan Ram Gopal [1951 SCC 1053 : AIR 1952 SC 9] a four-Judge Bench of this Court stated: (AIR p. 11, para 6)



“6. ... Since the true construction of an agreement must depend upon the import of the words used and not upon what the parties choose to say afterwards, it is unnecessary to refer to what the parties have said about it.”

(emphasis added)

15. In *Nathulal v. Phoolchand* (supra), the Supreme Court held that if under the terms of the contract the obligations of the parties have to be performed in a certain sequence, one of the parties to the contract cannot require compliance with the obligations by the other party without in the first instance performing his own part of the contract which in the sequence of obligations is performable by him earlier. Also, in *Shree Hanuman Cotton Mills v. Tata Air Craft Ltd.*, (1969) 3 SCC 522, the Supreme Court held that the advance amount is forfeited when transaction falls through due to default or failure of the purchaser.

16. So far as the reliance placed by learned Senior Counsel appearing for AKM on the email communications exchanged between the parties from May 2008 to February 2009 is concerned, in support of the same, reliance is placed upon *Anglo American Metallurgical Coal Pty. Ltd. v. MMTC Ltd.* (supra), wherein it was held as under: -

“38. The approach of the Singapore Court of Appeal has our broad approval, being in line with the modern contextual approach to the interpretation of contracts. When Proviso (6) and Illustration (f) to Section 92, Section 94 and Section 95 of the Evidence Act are read together, the picture that emerges is that when there are a number of documents exchanged between the parties in the performance of a contract, all of them must be



*read as a connected whole, relating each particular document to “existing facts”, which include how particular words are used in a particular sense, given the entirety of correspondence between the parties. Thus, after the application of Proviso (6) to Section 92 of the Evidence Act, **the adjudicating authority must be very careful when it applies provisions dealing with patent ambiguity, as it must first ascertain whether the plain language of a particular document applies accurately to existing facts. If, however, it is ambiguous or unmeaning in reference to existing facts, evidence may then be given to show that the words used in a particular document were used in a sense that would make the aforesaid words meaningful in the context of the entirety of the correspondence between the parties.**”*

(emphasis added)

17. In the present case, however, the relevant clauses of the MOU are clear and unambiguous and do not suffer from any ambiguity warranting recourse to subsequent correspondence for interpretative purposes. As already found above, a conjoint reading of Clause 4 and Clause 5 of the MOU shows that the obligations of the parties were reciprocal and structured in a defined sequence. Clause 5 stipulates that Stage-II payment was payable on the Retail and Entertainment areas leased out and handed over to the specified Anchor Tenants, coupled with delivery of symbolic possession. Thus, the Stage-II payment was not a simplicitor payment but intrinsically linked to the project attaining this defined commercial stage.

18. The MOU clearly embodies reciprocal promises within the meaning of Sections 37 read with Section 51 and 52 of the Indian Contract Act, 1872 (“Contract Act”). AKM was required to bring the project to a stage where the specified areas stood leased out with



2026:DHC:4734-DB



possession to Anchor Tenants and symbolic possession could be delivered, while Vesta was obliged to make Stage-II payment upon such occurrence. Where reciprocal promises are to be performed in a particular sequence, Section 52 of the Contract Act mandates adherence to such order. Further, as per Section 51 of the Contract Act, a party cannot insist on performance of the reciprocal promise unless it is ready and willing to perform its own corresponding obligation. In this backdrop, the question whether Vesta was in breach must be examined on the touchstone of whether AKM had performed, or was in a position to perform, its corresponding obligation. If the same, as understood from the MOU, had not been fulfilled by AKM, Vesta could not be compelled to perform its reciprocal promise of making Stage-II payment. In such a situation, Section 54 of the Contract Act would also come into play, disentitling the party in default from claiming performance of the reciprocal promise.

19. In view of the aforesaid, this Court finds that the material on record does not establish that AKM had fulfilled, or was in a position to fulfil, such obligation. Even the learned Single Judge records in the impugned judgment that despite opportunity granted, AKM failed to produce any binding lease deeds executed with the Anchor Tenants and only photocopies of certain documents were handed over on 11.10.2019, i.e., immediately prior to correction and release of the impugned judgment, and even the same did not establish existence of any binding lease arrangement with the Anchor Tenants. Even before this Court, no material establishing execution of binding lease deeds with the Anchor Tenants is produced. Vesta, thus, cannot be held to be



2026:DHC:4734-DB



in breach of terms of MOU, while, AKM having failed to perform its corresponding obligation, could neither insist upon Stage-II payment by Vesta, nor could it lawfully forfeit the advance.

20. In view of the aforesaid discussion, we do not find any illegality in the impugned Judgment and Decree dated 03.12.2019 passed by the learned Single Judge and same is upheld.

21. The present appeals are dismissed. Pending application(s), if any, also stand(s) disposed of.

**VIVEK CHAUDHARY
(JUDGE)**

**RENU BHATNAGAR
(JUDGE)**

MAY 26, 2026/nc