



2026:DHC:3380



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

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*Reserved on: 12th February, 2026
Pronounced on: 23rd April, 2026*

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RFA 666/2022, CM APPL. 55516/2022(Stay)

- 1. Sh. Sarjeet Sharma**
 - 2. Sh. Jagdish Sharma**
 - 3. Sh. Vijay Kumar**
 - 4. Sh. Krishan Kumar**
 - 5. Sh. Virender**
- All Sons of Late Sh. Mange Ram**

All Residents of:

Village & P.O. Pandwala Kalan,
New Delhi

.....Appellants

Through: Mr. B.D. Sharma, Advocate

versus

Sh. Jagdev Sharma (Since Deceased)

Through His Legal Representatives

1. Smt. Chanderwati
W/O Late Sh. Jagdev Sharma

2. Sh. Sanjeev Kumar
S/O Late Sh. Jagdev Sharma

3. Smt. Beena Devi
W/O Late Sh. Rajesh Vats
S/O Late Sh. Jagdev Sharma

4. Sh. Mohit Vats
S/O Late Sh. Rajesh Vats
S/O Late Sh. Jagdev Sharma

5. Sh. Rohit Vats
S/O Late Sh. Rajesh Vats
S/O Late Sh. Jagdev Sharma



All Residents Of:
Village Samalkha, New Delhi

6. Smt. Deepika Sharma
W/O Late Sh. Rajesh Sharma
D/O Late Sh. Rajesh Vats
S/O Late Sh. Jagdev Sharma
R/O Village & P.O. Dera Fatehpur, New Delhi

7. Smt. Monica
D/O Late Sh. Rajesh Vats
S/O Late Sh. Jagdev Sharma
R/O Village Samalkha, New Delhi

8. Smt. Kanta Bhardwaj
W/O Sh. Dinesh Bhardwaj
D/O Late Sh. Jagdev Sharma
R/O H.No.1549, Sector-15, Part-Ii,
Gurgaon, Haryana.

9. Smt. Manju
W/O Sh. Ramesh Chand
D/O Late Sh. Jagdev Sharma
R/O Village Tajpur Khurd,
P.O. Chhawla, New Delhi

.....Respondents

Through: Mr. Pankaj Vivek, Mr. Suryansh
Jamwal, Mr. Tarun Kumar and
Mr. Hardeep Godhara, Advocates

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Regular First Appeal under Section 96 read with Order XLI of the Code of Civil Procedure, 1908 (*hereinafter referred to as 'CPC'*) has been



filed against the Judgment and Decree dated 24.09.2022 whereby *the Plaintiff filed a Suit for Recovery of Rs. 1,09,82,000/- along with pendente lite and future interest.*

2. *The brief facts as per Plaintiff are* that the Plaintiff is a landlord and agriculturist owning land in village Samalka and other villages and was interested to purchase more agricultural lands in Delhi. The Defendants offered to sell their 15 Bighas and 4 Biswas of land only situated in the revenue estate of village Pandawla Kalan, New Delhi, at the rate of Rs. 2,55,00,000/- per acre of 4840 sq. yds., thus the total of 15 Bighas and 4 Biswas value at Rs. 8,07,50,000/-, to the plaintiff.

3. One company M/s Raisina Villas Pvt. Ltd., through its director Sh. Rajeev Aggarwal, offered to join the Plaintiff in the purchase of the abovementioned land. Consequently, at the time of purchasing the land, M/s Raisina Villas Pvt. Ltd. handed over 05 Pay Orders bearing nos. 07767, 07768, 07766, 07765 and 53808 which were drawn on HDFC Bank, of Rs. 9,00,000/-, in favour of each Defendant, i.e. for a total sum of Rs. 45,00,000/-. The Plaintiff had given the remaining sum of 35,75,000/- to the Defendants at the time of entering into agreement. Accordingly, upon receiving the total amount of Rs. 80,75,000/-, the Defendant executed an Agreement to Sell and receipt dated 18.07.2007, in favour of the Plaintiff and M/s Raisina Villas Pvt. Ltd.

4. It is further submitted that as per the Agreement to Sell dated 18.07.2007, the seller was required to obtain a 'No Objection Certificate' from the Revenue Authorities and Land Acquisition Collector.



5. The Plaintiff claimed that on 18.07.2007, he handed over the duly filled and signed NOC Forms to the Defendants for obtaining the NOC from the Revenue Authorities and Land Acquisition Collector. However, the Defendants neither applied nor intimated the Plaintiff regarding the same.

6. Further, the Defendants sent a *Legal Notice Dated 06.06.2008*, called upon the Plaintiff to obtain the NOC and execute the Sale Deed or otherwise they would have to suffer the forfeiture of the advance amount, paid by the Plaintiff, i.e. Rs. 80,75,000/-. However, as per the Agreement, the Defendants were bound to obtain the NOC and other clearances. Moreover, the Defendants were facing difficulty in obtaining NOC, as they held other land in the same Village, and unless they sold or transferred the entire land, which was less than 08 standard acres, they could not obtain the NOC for the Agreement to Sell dated 18.07.2007, in terms of Section 33 of the Delhi Land Reforms Act, 1954.

7. Accordingly, the Plaintiff sent a *Reply on 30.06.2008*, wherein the Plaintiff made clear to the Defendants that he is willing to comply with the Agreement dated 18.07.2007 and he has sufficient finances for the same.

8. The Plaintiff also claimed that despite repeated requests, the Defendants neglected to obtain the NOC, because the prices of the land in that particular area were steadily rising and the Defendants hoped for finding some other buyer, at a higher price value.

9. In November 2009, the Plaintiff came to know that the Defendants were negotiating for the sale of land with some other buyers. The Plaintiff thus, contacted the Tehsildar and other authorities, requesting them to not



issue NOC in favour of anyone else, as the Plaintiff held a valid and subsisting Agreement with the Defendants.

10. Therefore, the Plaintiff in fear of not obtaining land without protracted litigation and also the violation of Section 33 of Delhi Land Reforms Act, 1954, sought refund of the advance amounts/ earnest money paid to the Defendants, in furtherance of the Agreement to Sell dated 18.07.2007.

11. In the meantime, the Plaintiff claimed that *he had settled with M/S Raisina Villas Pvt. Ltd. and refunded the contribution of Rs. 45,00,000/- in their joint purchase under Agreement to Sell dated 18.07.2007*, for obtaining the rights to purchase the entire aforementioned land. Thus, the Plaintiff is entitled to seek specific performance from the Defendants. Moreover, the Plaintiff being a joint-purchaser, is entitled to sue in his own right to recover the entire sum as the Agreement could be termed as a partnership for a particular transaction.

12. *Thus, the Plaintiff filed a Suit for Recovery of Rs. 1,09,82,000/- along with pendente lite and future interest till recovery @ 12 % per annum from 18.07.2007 till filing of the Suit, i.e. 16.07.2010.*

13. **The Defendants in their Written Statement** stated that the present suit is not maintainable, as the parties to the Suit are governed by the terms of the Agreement to Sell dated 18.07.2007, and the relief sought by the Plaintiff was beyond the terms of the contract. The contract did not confer any right upon the Plaintiff for recovery of money and as such, no right for recovery of the amount had arisen under this Agreement to Sell dated 18.07.2007. As per this Agreement, the earnest money was to stand forfeited



in case the Plaintiff did not perform his part of the contract. Further, the Defendant alleged that the Plaintiff had never shown any readiness and willingness to perform his part of the contract, at any point of time.

14. It was also submitted that the present Suit was *barred by limitation*, as the Plaintiff did not take the appropriate steps during the stipulated period of time, in terms of the Agreement to Sell dated 18.07.2007. Although, the Defendants admitted taking Rs. 80,00,000/- by way of cash and cheque, however, the receipt of Rs. 75,000/- in cash, was denied by the Defendants.

15. Further it was submitted, that as per para 7 of the Agreement to Sell, both the parties were required to obtain the NOC from the Tehsildar or other concerned authority at the cost of second party. The Agreement to Sell was a bilateral transaction and cooperation of both the parties was required in obtaining the NOC or any other permission. However, the Plaintiff neither approached the Defendants for obtaining the NOC, nor handed over the NOC Forms with his signatures to the Defendants, for the purpose of obtaining NOC. Moreover, the Plaintiff was required to pay the entire balance sale consideration amount within 03 months from the date of the Agreement to Sell; the insistence on obtaining the NOC without paying the entire balance consideration amount, was unjustified.

16. Further, it is alleged by the Defendant that the Plaintiff is a property dealer, and not a bonafide purchaser of the aforesaid land in question, and as such, avoided the completion of sale transaction. It was claimed that the Suit of the Plaintiff was liable to be dismissed.

17. The Plaintiff in his Replication, reiterated the averments made in the Plaint and stated that the NOC, as per law, needed to be acquired by



the seller from the Revenue Authorities and Land Acquisition Collector, before execution of the Sale Deed. The Plaintiff himself had handed over the duly filled and signed forms to the Defendants on the day of execution of the Agreement dated 18.07.2007. The Defendants, with a *malafide* intention, had sent the Legal Notice dated 06.06.2008, in order to avoid their responsibility by asserting that the Plaintiff had not signed the NOC forms for the execution of the agreement.

18. The *Issues on the pleadings were framed on 06.03.2012*, as under:

- 1) “Whether the suit is barred by time? *OPD*.”
- 2) *Whether the plaintiff had committed breach of his obligation as contained In Agreement to Sell dated 18.07.2007? OPD.*
- 3) *Whether the suit is without any cause of action? OPD*
- 4) *Whether the plaintiff has settled the matter with M/s Raisina Villas Pvt. Ltd.? If so, its effect? OPP.*
- 5) *Whether the plaintiff is entitled to suit amount? OPP.*
- 6) *Whether the plaintiff is entitled to interest? If so, its effect? OPP.*
- 7) *Relief.”*

19. The Plaintiff Jagdev Sharma expired on 25.05.2012, and *vide* order dated 04.03.2015, his LRs were impleaded as parties.

20. The Plaintiffs in support of their case, examined *PW1 Sh. Sanjeev Kumar*, who by way of evidence affidavit Ex. PW1/1, reiterated the assertions made in the Plaint.

21. *PW2 Sh. Rajesh Kumar*, was authorized *vide* the Board Resolution dated 06.11.2017, *who deposed that he was a witness* to the execution of Agreement dated 18.07.2007, and identified his signatures, as well as the



signatures of late Sh. Jagdev Sharma. He also deposed that Sh. Rajeev Aggarwal had made a handwritten acknowledgement of the Receipt of Rs. 45,00,000/-, wherein he settled his claim on the Agricultural land Ex. PW2/2.

22. *PW3 Sh. Rajeev Pandey, was also a witness* to the execution of Agreement dated 18.07.2007, on which he identified the signature of Sarjeet Sharma, Jagdish Sharma, Krishan Kumar, Virender and Vijay Kumar. Further, he also deposed that the Defendants had obtained sums of Rs. 35,00,000/- and Rs. 75,000/- in cash from Plaintiff and also obtained Pay Orders of Rs. 45,00,000/- before signing the receipt dated 18.07.2007 Ex. PW-3/2.

23. The Defendants in order to prove their case, examined **DW1 Sarjeet Sharma**, who tendered his evidence by way of affidavit Ex. DW1/A wherein he reiterated the averments made in the Written Statement.

24. *DW2 Sh. Raj Kumar* from the office of Sub-registrar, Dwarka, proved the Sale Deed dated 21.06.2012 and 25.02.2012 respectively, as Ex. DW1/1 and Ex. DW1/2.

25. *DW3 Ashok Kumar*, who was the broker between the parties, deposed that the Plaintiff first approached him in May 2007, at which point he introduced the Plaintiff to the Defendants regarding the purchase of the aforesaid agricultural land. Further, he confirmed the negotiations and the execution of the Agreement to Sell dated 18.07.2007. However, he further deposed that the Defendants' signatures were obtained on a combination of blank and partially typed papers. Additionally, he stated that while no cash



was exchanged on the day the Agreement was signed, the Plaintiff made partial payments at a later date.

26. The Learned District Judge after appreciating the evidence, observed that Defendants have miserably failed to prove any loss caused to them on account of failure of the execution of the Sale Agreement. DW1 Sh. Sarjeet Sharma in his cross examination, deposed as under:

“...We are still recorded owners of the suit property. I am not ready to sell the suit property at the rates mentioned in agreement Ex.P1. It is for the reason that now the rates have increased and today I have no need to sell the land. We are not concerned with rates now nor we are not in need of money. It is correct that at the time of execution of Ex.P1 we were in need of money.”

Therefore, the learned **Additional District Judge decreed the Suit of the Plaintiff for recovery of Rs. 80,75,000/- along with the interest @ 7% per annum from the date of filing of the Suit till its realization and pendente-lite, vide Judgment dated 24.09.2022.**

27. Aggrieved by the impugned Judgment dated 24.09.2022, the present Appeal has been preferred by the Defendants/Appellants **on the grounds** that the learned Trial Court has erred in holding that *the Suit is not barred by limitation*. The date of institution of Suit is 19.07.2010 whereas the Agreement to Sell is dated 18.07.2007, hence, the Suit is barred by limitation.

28. Secondly, the Plaintiff is the *dominis litis*; he had discretion and option to sue for the recovery of earnest money and not for Specific Performance of the Agreement to Sell dated 18.07.2007. However, the



Agreement to Sell, itself provided a remedy, which was to file a Suit for Specific Performance in the event of breach of the Agreement, and parties are bound by the terms of the contract.

29. *Thirdly*, the learned Additional District Judge erred in holding that the Plaintiff could not file the Suit for Specific Performance because of the bar envisaged in Section 33 of the Delhi Land Reforms Act, 1954. However, the bare perusal of the averments in the plaint, reveals that NOC could not be obtained due to violation of Section 33 of Delhi Land Reforms Act. Further, it was admitted that Section 33 can be avoided if the Defendants transfer the entire land, which reflects a contradiction in the pleadings.

30. Furthermore, the learned Additional District Judge erred in holding that the Defendants were not competent to execute the Sale Deed, to which effect no document is on record by the Plaintiff to prove otherwise.

31. *Fourthly*, learned Trial Court erred in holding that there was a breach of Agreement on the part of the Defendants, as they did not cooperate in obtaining the NOC. It was not the case of the Plaintiff that the Defendants refused to sign the papers, as and when presented by the Plaintiffs. Moreover, the PW-1 in his testimony has testified that "*I did not take any steps for obtaining the NOC*", and further testified that no written communication was made to the Defendants between the period 18.07.2007 to 06.06.2008, asking Defendants to come forward for the execution of the sale deed.

32. *Fifthly*, learned Trial Court perversely held that the if a Suit for Specific Performance would have been filed by the Plaintiff, no relief could have been granted to him, as he had to bear the consequences of Section 33



of Delhi Land Reforms Act. This finding is against the admission of the plaintiff/respondents as the bar of Section 33 of Delhi Land Reforms Act, 1954 could have been avoided, as stated by the plaintiff in his plaint, itself.

33. *Sixthly*, the learned Trial Court erred in holding that the Defendants had tried to confuse Court by taking the objection of *Section 69 of Indian Partnership Act* with reference to Agreement dated 07.11.2007, which was executed between the Plaintiff and M/s Raisina Villas Pvt. Ltd, and therefore, as per para no.17 of the plaint, it was admitted by the Plaintiff that this partnership was termed as a '*Partnership*' for this particular transaction and it has no reference to the Agreement to Sell and Receipts Ex. PW-3/1 and Ex. PW-3/2 respectively, and as such the finding of the learned Trial Court, *regarding the objection of section 69 of Indian Partnership Act, with reference to Agreement to Sell and receipt dated 18.07.2007, is contrary to the facts admitted by the Plaintiff in the plaint.*

34. *Seventhly*, learned Trial Court erred in its interpretation of *Section 5 of the Delhi Land (Restrictions on Transfer) Act, 1972*, by observing that the Defendants were required to obtain a NOC and that their failure to do so, constituted a breach of contract. However, a bare perusal of Sections 4 and 5 would reflect that Defendants were not required to obtain NOC.

35. *It is therefore, submitted that the impugned judgement, be set aside.*

Submissions heard and record perused.

36. The first objection taken by the Appellant is that the *Suit was barred by Limitation*. It is claimed that the parties entered into the *Agreement to Sell on 18.07.2007*, while the Suit for Recovery was instituted on 19.07.2010.



The period of limitation of three years, must be computed from the date of the Agreement to Sell and the Suit was time barred.

37. This contention, however, proceeds on an erroneous assumption that the cause of action for recovery of the advance amount, arose on the date of execution of the Agreement to Sell, i.e. 18.07.2007. *Article 58 of the Schedule of Limitation Act, 1963*, provides that the period of limitation is three years and it has to be reckoned from “*when the facts entitling the Plaintiff to have the instrument or decree cancelled or set aside for the contract rescinded first became known to him.*” Therefore, in a contract of sale, the right to sue for damages or refund of advance accrues, when the contract is repudiated or the promisor refuses or becomes unable to perform, and not on the date of the contract itself.

38. In the present case, the Agreement between parties for the completion of the sale was within a period of three months from the Agreement to Sell dated 18.07.2007, inter alia to obtain the requisite NOC from the Revenue Authorities and the Land Acquisition Collector.

39. The first clear assertion of forfeiture and denial of the Plaintiff's rights, is contained in the Legal Notice dated 06.06.2008, whereby the Defendants called upon the Plaintiff to execute the sale deed, failing which the amount of Rs. 80,75,000/- would stand forfeited. The plaintiff immediately repudiated the wrongful demand and forfeiture by Reply dated 30.06.2008 and called upon the Defendants to perform their obligations under the Agreement.

40. On these facts, the earliest possible date on which the Plaintiff's right to sue had first accrued, is the date when the Defendants refused or



failed to perform, that is, on or after the Legal Notice dated 06.06.2008. Therefore, even if the strictest possible view is taken and the cause of action is reckoned from the date of the Notice dated 06.06.2008, ***the Suit was filed on 19.07.2010, which is well within the period of Limitation.***

41. The next aspect which has been agitated by the Appellants/Defendants is that in terms of Agreement to Sell dated 18.07.2007, the Plaintiff had an option to seek specific performance of Agreement, but he has chosen to seek recovery of the money paid thereunder.

42. Reliance is being placed on Clause 8 of the Agreement to Sell which specified that in the event of breach of Agreement, the aggrieved party shall be entitled to seek specific performance and the earnest money may be forfeited if the purchaser fails to pay the balance consideration.

43. The pertinent questions, therefore, to be considered are whether the Plaintiffs should have exercised the remedy of seeking specific performance of the Agreement to Sell or whether the Plaintiffs were justified in seeking recover of the money paid under the Agreement to Sell on account of the non-compliance of the requisite pre-conditions by the Appellants. In order to appreciate this contention, it is pertinent to refer to the Agreement to Sell dated 18.07.2007, which was in respect of the agricultural land. It was undeniable that NOC was required for sale of the agricultural land. The Clause 7 of the Agreement to Sell reads as under:-

“7. That the first party and second party shall apply obtain the No Objection Certificate from the Tehsildar Notification, Delhi, or any other concerned authority



to sell the said land in favour of the second party or the nominee/s at the cost of the second party.”

44. This Clause reflects that both the parties were required to cooperate with each-other to ensure that the NOC was obtained. The Plaintiff in his testimony had deposed that NOC was required to be obtained by the Defendants before execution of the Sale Deed. The requisite duly filled and signed NOC forms were supplied to the Appellants/Defendants on 18.07.2007 itself for procuring the NOC. Though the Defendants neither applied nor intimated the Plaintiffs about having obtained the NOCs. Despite repeated reminders, the Defendants failed to obtain the NOC or furnish the copy of the same to the Plaintiffs.

45. The defence taken by the Appellants was that it was the Plaintiffs who had not provided the requisite forms and fault was with the on the Plaintiffs on account of which the Agreement to Sell could not be executed. To corroborate their defence, the Defendants/Appellants had relied upon a Legal Notice dated 06.06.2008 Ex.P-2 wherein it was admitted the execution of Agreement to Sell but claimed that the formalities of like NOC, ITCC, etc., was to be obtained within three months from July, 2007 but the Plaintiffs failed to approach the Defendants within the stipulated time for the reasons best know.

46. It was further asserted that the Defendants had gone to the office of Sub-Registrar on 30.07.2007 for execution of the Sale Deed, but none appeared on behalf of the Plaintiffs, which reflected that they were not willing to complete their part of the transaction. Hence, it was stated that



within one month, the sale transaction be completed, failing which the earnest money shall stand forfeited and the sale transaction cancelled.

47. The Plaintiffs had given a Reply dated 30.06.2008 wherein he had refuted all the averments made in the Legal Notice. It was further asserted that the formalities of obtaining NOC from the Revenue Department, ITCC, etc., was upon the Defendants which they had failed to complete despite repeated requests and it was re-affirmed that the Plaintiffs were ready and willing to perform their part of the Agreement.

48. The learned District Judge has referred to this evidence and concluded that as per Section 5 of Delhi Lands (Restriction on Transfer) Act, 1972, it was the obligation of the seller to obtain the requisite permission before sale of land. The learned Trial Court, therefore, noted that the responsibility of obtaining NOC was of the Defendants. In this context, it is also relevant to refer to Section 33 of Delhi Land Reforms Act, which reads as under:-

“Section 33. Restrictions on the transfers by a Bhumidhar .-

(1) No Bhumidhar shall have the right to transfer by sale or gift or otherwise any land to any person, other than a religious or charitable institution or any person in charge of any such Bhoodan movement, as the Chief Commissioner may, by notification in the Official Gazette, specify, where as a result of the transfer, the transferor shall be left with less than eight standard acres in the Union Territory of Delhi:

Provided that the Chief Commissioner may exempt from the operation of this section, the transfer of any land made before the 1st day of December, 1958, if the land covered by such transfer does not exceed one acre in area and is used or intended to be used for



purposes other than those mentioned in clause (13) of section 3.

(2) Nothing contained in sub section (1) shall preclude the transfer of land by a Bhumidhar who holds less than eight standard acres of land, if such transfer is of the entire land held by him;

Provided that such Bhumidhar may transfer a part of such land to any religious or charitable institution or other person referred to in sub section (1).

49. From the bare perusal of Section 33, it is evident that no Bhumidar could sell or transfer his land where as the result of transfer, the transferor would be left with less than 08 standard acres of land in Delhi. Section 33(2) further provided that this condition would not be applicable if the Bhumidar who holds less than 08 acres of land transfers the entire land held by him. It is, therefore, evident that there was an anticipated violation of Section 33 DLR Act, which has not been questioned in the pleadings or in the testimony of the PW1. Therefore, the obligation was on the Defendants/Appellants to obtain the NOC, which they have failed to obtain.

50. The specious contention has been raised by the Appellants that the bar of Section 33 could have been overcome by the sale of entire land holding as had been stated by the Plaintiffs/Respondents themselves. However, it is the Appellants who were the owners of the land and it was for them to overcome the restrictions of Section 33 DLR Act by having obliged to sell the entire land holding if it was less than 08 acres. It was not in the hands of the Plaintiffs to overcome this restriction without the land being offered by the Appellants for sale.



51. However, as held by this very Court in Umesh Gaur (Deceased) through LRs v. Shamsher Rana & Anr 2018:DHC:1161 and in M/s Shri Neelpadmaya Consumer Products Pvt. Ltd. v. Satyabir & Ors 2016:DHC:882, the bar under Section 33 operates at the stage of actual transfer of Bhumidhari rights and does not render an Agreement to Sell per se void or incapable of enforcement amongst the parties.

52. The learned Trial Court therefore, rightly concluded that there was nothing brought on evidence to reflect that it was the Plaintiffs who failed to perform his part of the Agreement rather the overwhelming evidence reflected that Appellants failed to produce any evidence to show that he ever applied for NOC before the concerned authorities or that he was unable to get the NOC on account of non-cooperation of the Plaintiffs.

53. In this context, it may also be relevant to refer to Legal Notice dated 06.06.2008 of the Appellants wherein while claiming that the Plaintiffs had not obtained the NOC, he in the same breath stated that he had gone to the office of Sub-Registrar, but Plaintiffs failed to appear for the purpose of execution of Sale Deed.

54. This Legal Notice dated 06.06.2008 clearly shows that it was the defence that was tried to be created by the Appellants despite being aware that without the NOC or without execution of the draft Sale Deed, no purpose would be served by going to the office of Sub-Registrar. Also pertinently, no date of visit to the office of Sub-Registrar has been mentioned. Additionally, there is no averment that a Notice was given to the Plaintiff, to come in the office of Sub-Registrar for the registration of the Sale Deed.



55. Clearly, from the contents of Legal Notice dated 06.06.2008 given by the Defendants, it is more than obvious that Defendants themselves had failed to perform their part of the obligation under the Agreement to Sell to get an NOC, but had tried to put the blame on the Plaintiffs.

56. The learned District Judge had rightly concluded that the breach of terms of Agreement to Sell was with the Defendants and not with the Plaintiffs.

57. Having so concluded, it is further pertinent to refer to the contentions of the Respondents that apprehending the restrictions of Section 33 as there was no NOC, he did not want to ahead with the transaction and be involved in the litigation and therefore, chose to return the money under the Agreement to Sell.

58. In the above scenario discussed in detail, the Plaintiff was not unjustified in seeking the refund of his earnest money.

59. The Plaintiffs had contended that in the Agreement to Sell, the mode of performance itself was provided wherein it stated that either party would have a right to seek specific performance for execution of Sale Deed or else the Defendants would have a right to forfeit the earnest money if the purchaser fails to pay the sale consideration.

60. It has been rightly submitted on behalf of the Plaintiff that this sale could not have gone ahead in the absence of NOC.

61. The case in hand is not of failure of the Plaintiff to fulfill his obligations or not pay the balance consideration but the pre-condition requirement of getting an NOC was not satisfied by the Appellants, and therefore, the Plaintiff was well justified in seeking the refund of money.



62. The Plaintiff was, therefore, justified in seeking the recovery of the earnest money paid under the Agreement to Sell dated 18.07.2007.

63. The Appellant made another attempt to avoid his liability under the Agreement to Sell by claiming that there existed a partnership between the Respondent and M/s Raisina Villas Pvt. Ltd., which was not registered and therefore, the bar of Section 69 Partnership Act was attracted and the Suit could not have been filed by the Plaintiffs. The argument may seem attractive, but it was completely misplaced. The Plaintiff had explained that for the purchase of land, he had made the payment of Rs.80,75,000/- while Rs.45,00,000/- were paid by M/s Raisina Villas Pvt. Ltd. and for the purpose of this deal of purchase of land, they had entered into an Agreement which was in the nature of partnership.

64. Clearly, from the averments made by the Plaintiffs, it is evident that there was no partnership as understood under the Partnership Act that was entered into between the parties, but they partnered together for the purchase of the Sale Deed. Once there was no formal partnership, there was no question of it being registered.

65. It may also be noted that while Rs.45,00,000/- had been paid by M/s Raisina Villas Pvt. Ltd., but *inter se* the Plaintiff and M/s Raisina Villas Pvt. Ltd. entered into an Agreement and the Plaintiff returned Rs.45,00,000/- to M/s Raisina Villas Pvt. Ltd., and therefore, the Plaintiff alone became entitled for the recovery of the entire amount.

66. This is a simpliciter case of recovery of the money paid by the Plaintiff under the Agreement to Sell dated 18.07.2007 and because it failed, the Plaintiff was rightly held to be entitled to the recovery of the amount.



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67. Hence, there is no infirmity in the Judgment and decree passed by learned Additional District Judge dated 24.09.2022, **and therefore the Appeal is hereby, dismissed.**

68. Pending Application(s), if any, also stand disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

APRIL 23, 2026

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