



**RSA-2934-2025 (O&M) with
XOBJC-19-2025 (O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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XOBJC-19-2025 (O&M)
Reserved on:-19.12.2025
Pronounced on:- 08.01.2026
Uploaded on:-09.01.2026**

*Whether only operative part of the judgment is
Pronounced or the full judgment is pronounced:*

operative part/full judgment

Raghbir Singh and Others

....Appellants

VERSUS

Lalit and Others

....Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. R.Kartikeya, Advocate for the appellants.

Mr. Navjot Singh Wahniwal, Advocate
For the respondents (through V.C)

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MANDEEP PANNU, J.

1. The present Regular Second Appeal has been filed by the appellants Raghbir Singh and others, assailing the judgment and decree dated 30.04.2025 passed by the learned Additional District Judge, Faridkot in Civil Appeal No. CA-226/2019, whereby the lower appellate Court partly allowed the appeal preferred by the plaintiffs and directed the appellant-defendants to refund the amount received as advance, thereby modifying the findings of the trial Court.

2. The cross-objections have been filed by Lalit and others, who are the plaintiffs in the original suit and respondents in the present RSA, challenging the same judgment and decree dated 30.04.2025 to the extent it declines relief of



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declaration, permanent injunction, and seeking enhancement of relief granted by the lower appellate Court.

3. By this common judgment, this Court proposes to decide the RSA as well as the cross-objections.

Brief Facts

4. The plaintiffs filed the present suit for declaration, recovery of money and permanent injunction, seeking a declaration that the agreement to sell dated 29.09.2012 executed by defendants Rajpreet Singh and Raghbir Singh in relation to land measuring 165 kanals 3 marlas, in favour of the plaintiffs, stands valid and enforceable, further seeking recovery of the amount paid along with damages and interest, and also a decree of permanent injunction restraining the defendants from alienating the suit property in any manner to any third person other than the plaintiffs.

5. As per the plaint allegations, the defendants executed an agreement to sell the suit land on 29.09.2012 for a sale consideration of ₹58,80,000/- per acre, and received ₹16,00,000/- at the time of agreement as earnest money. Plaintiffs further paid ₹9,00,000/- on 04.10.2012, ₹30,00,000/- on 07.11.2012, ₹10,00,000/-, ₹13,00,000/-, ₹10,00,000/- by cheque and ₹23,00,000/- on different dates towards sale consideration. It was agreed that the remaining amount of ₹1,50,00,000/- would be paid on 31.03.2013, and another ₹1,50,00,000/- on 16.08.2013, whereafter the defendants would execute and register the sale deed by 31.07.2014. Possession was delivered after harvesting and the plaintiffs undertook development works for residential colony, spending around ₹50,60,000/-. Plaintiffs applied for PUDA approval, but the process halted when PUDA raised an objection since 83 kanals 6 marlas of land was under mortgage. Despite repeated requests, defendants



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did not clear loan or obtain 'No-Encumbrance' Certificate. Plaintiffs claimed that defendants avoided execution of sale deed, even on 01.08.2014, when plaintiffs were present before the Sub Registrar for payment of balance amount, defendants did not appear. A cheque issued by plaintiffs was later dishonoured, leading to issuance of legal notice by defendants forfeiting earnest money on 04.08.2014. On 05.04.2015, defendants allegedly demolished development work done by plaintiffs, compelling them to file the suit.

6. In the written statement, the defendants denied the allegations and asserted that the plaintiffs had failed to pay the balance sale consideration within the stipulated time and were never ready and willing to perform their part of the contract. They submitted that plaintiffs did not affix proper ad-valorem court fee and failed to get the sale deed executed on 29.09.2012 as agreed. It was pleaded that no significant development work was carried out by plaintiffs except construction of a gate, and due to non-payment, the defendants had the right to forfeit earnest money. The defendants further pleaded that they remained present before the Sub Registrar on 01.08.2014 from 9:00 AM to 5:00 PM and marked their presence by way of affidavit, hence the plaintiffs alone were defaulters. After repayment of loan, clearance certificate and consent letter were handed over to plaintiffs, but as plaintiffs failed to honour payment schedule, they were not entitled to relief.

7. From the pleadings of the parties, following issues were framed by the Trial Court:

1. Whether the plaintiffs are entitled to the relief of declaration, as prayed for? (OPP)



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2. Whether the plaintiffs are entitled for recovery of ₹2,09,88,500/- along with interest, as prayed for? (OPP)
3. Whether the plaintiffs are entitled to the relief of permanent injunction, as prayed for? (OPP)
4. Whether proper court fee has not been affixed on the plaint? (OPD)
5. Whether the plaintiffs have no cause of action to file the present suit? (OPD)
6. Relief.

Findings of the trial Court

8. The Trial Court, after considering the pleadings and evidence of the parties, held that the plaintiffs had failed to prove their readiness and willingness to perform their part of the agreement to sell dated 29.09.2012. It was observed that although part payments were made, the plaintiffs did not make further payments as per the schedule fixed in the agreement, and except for payments of ₹9 lakhs, ₹30 lakhs and ₹23 lakhs, no subsequent payment was made after 17.11.2012. The plaintiffs admitted that the cheque issued by them was dishonoured and no payment was thereafter tendered either in cash or by draft or cheque, nor did they issue any notice to the defendants. The evidence of PW1 and PW8 further reflected that plaintiffs themselves were in breach of the terms, and the agreement specifically provided that in case of default, the earnest money would stand forfeited and the agreement deemed cancelled.

9. The Court held that the plaintiffs were not entitled to seek declaration or recovery as the defendants had rightfully cancelled the agreement and forfeited the earnest money due to default of plaintiffs in payment within time and non-



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compliance of terms. Issues No.1 to 3 were decided against the plaintiffs. Issues No.4 and 5 were decided in favour of the plaintiffs. Consequently, the suit was dismissed on 04.10.2019 with costs.

Findings of the lower Appellate Court

10. Feeling aggrieved by the judgment and decree dated 04.10.2019 passed by the Trial Court dismissing the suit, the plaintiffs preferred an appeal before the Lower Appellate Court. The appellate court re-appraised the evidence and terms of the agreement to sell dated 29.09.2012, and observed that payment of ₹16 lakhs at the time of execution was admitted as earnest money, and further payments totalling ₹74 lakhs were proved to have been made by the plaintiffs on different dates. However, as per the agreement, plaintiffs were required to pay ₹75 lakhs on 15.11.2012, but they paid ₹65 lakhs only in cash and cheque of ₹10 lakhs got dishonoured. Further installments of ₹1.50 crores due on 31.03.2013, ₹1.50 crores due on 16.08.2013, and ₹50 lakhs due on 31.12.2013 were never paid. The appellate court held that plaintiffs were defaulters in payment schedule and thereby committed breach of terms of agreement.

11. The court further held that the earnest money of ₹16 lakhs was liable to be forfeited in view of default clause in Ex.P1, but the balance amount of ₹74 lakhs, being part payment of sale consideration and not earnest money, could not be forfeited. Relying on Section 74 of the Indian Contract Act and precedents including *Satish Batra vs Sudhir Rawal 2012 AIR SCW 5869* and *Shri Hanuman Cotton Mills vs Tata Air Craft MANU/SC/0086/1969*, the appellate court concluded that plaintiffs were not entitled to declaration or specific performance, but were entitled to recovery of ₹74 lakhs along with interest @6% per annum,



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from date of notice 04.08.2014 till realization. Consequently, relief of injunction was declined.

12. Accordingly, the appeal was partly allowed, the judgment of the Trial Court was modified to the extent that defendants were directed to refund ₹74 lakhs with 6% interest, while the dismissal of suit for declaration and injunction was upheld.

13. Aggrieved by the findings of the lower Appellate Court, the appellants-defendants have preferred the present regular second appeal and respondents have filed the cross-objections.

Submissions of learned counsel for the appellants

14. The appellants contended that they are aggrieved by the judgment and decree dated 30.04.2025 whereby the learned Lower Appellate Court partly allowed the suit and directed the appellants to refund ₹74 lakhs to the plaintiffs. It was argued that the appellate court erred in ordering refund without appreciating that the plaintiffs themselves were in breach of the terms of the agreement to sell dated 29.09.2012 and had failed to prove their readiness and willingness to perform their part of the contract.

15. It was submitted that the plaintiffs were never financially capable to complete the payment schedule, nor did they ever show readiness to get the sale deed executed by the target date. There was no material to suggest that the plaintiffs were present or willing to complete the transaction with complete sale consideration on the stipulated date. Therefore, according to the appellants, no direction for refund of any amount except earnest money could have been passed, as the plaintiffs had committed breach.



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16. The appellants further argued that the plaintiffs had failed to fulfil contractual obligations and therefore the earnest money as well as additional amount received was liable to be forfeited. The doctrine of undue enrichment, according to the appellants, was wrongly applied against them when plaintiffs themselves failed to prove readiness and willingness except proving execution of the agreement. It was urged that legal notices calling upon the plaintiffs to perform their part were duly served, but no response was given nor extension of time was sought.

17. It was also argued that the conduct of the plaintiffs disentitled them to any equitable relief, particularly when they defaulted repeatedly and filed the suit at the fag end of limitation, which itself reflected absence of bona fides. It was further submitted that the impugned judgment is contrary to settled principles governing discretionary relief in specific performance, for such relief is available only to a party who is ready and willing to perform his part. Once the plaintiffs failed in this regard, no relief should have been granted to them.

18. It was further submitted that the plaintiffs did not challenge the termination of the agreement nor seek declaratory relief to nullify cancellation. In absence of such relief, the suit itself was not maintainable. The undisputed fact that the cheque issued by the plaintiffs was dishonoured and no subsequent payment was made was sufficient to treat the agreement as validly cancelled.

19. The appellants also argued that the lower appellate court erred in limiting the definition of earnest money only to the initial amount of ₹16 lakhs, ignoring the intent of parties reflected in the payment structure. The interpretation that only the first instalment constituted earnest money was termed unsustainable, as subsequent payments were also part of the security towards performance. It was



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contended that the appellate court failed to consider parties' intention while segregating payments and restricting forfeiture only to earnest amount.

20. The appellants maintained that the entire amount paid, including ₹16 lakhs + ₹74 lakhs, stood forfeited as per terms of the agreement owing to plaintiffs' breach, and therefore no direction for refund could have been issued. The cancellation was valid and plaintiffs had no right to seek recovery.

Submissions of learned counsel for the respondents

21. In reply, learned counsel for the respondents/plaintiffs argued that the present cross-objections have been preferred as the lower appellate court, while modifying the judgment of the trial court dated 30.04.2025, has failed to decree the suit in entirety as prayed for by the plaintiffs and only granted partial relief of refund of ₹74,00,000/-, thereby causing miscarriage of justice. It was contended that the agreement to sell dated 29.09.2012 for land measuring 165 Kanals 3 Marlas clearly records the payment of earnest money along with further substantial amounts exceeding ₹1,11,00,000/-, after which the plaintiffs also undertook major development activities on the land with the intention of forming a residential colony. The plaintiffs emphasised that they applied for CLU, constructed roads, gates and office rooms, and spent huge sums with bonafide intention to complete the contract, but the defendants did not cooperate.

22. It was further argued that there was a fundamental breach on part of the defendants as they failed to clear the encumbrances on the property and obtain the necessary "no-encumbrance certificate" required for PUDA approval. The plaintiffs contended that such failure constituted a prior breach under Sections 39 and 51 of the Indian Contract Act, which went to the root of the contract and frustrated its execution. It was argued that despite receiving and acknowledging



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payments, the defendants deliberately created hurdles, acted with mala fide intent, and even resorted to destruction of structures raised by plaintiffs, supported by police record and witness statements.

23. The respondents further submitted that the appellate court failed to appreciate the doctrine of waiver and acceptance of performance. Even if there was a shortfall of ₹10 lakh in one instalment, the defendants continued to accept payments, signed the consent letter and allowed performance to proceed, thereby waiving objection and being estopped from alleging breach later. The plaintiffs also asserted that they were always ready and willing to perform their part, and the payments and development activities clearly reflect investment of funds and bona fides, whereas defendants failed to meet reciprocal obligations and later raised technical objections only to escape their responsibility.

24. It was also argued that forfeiture of the entire amount paid over and above the earnest money could not be justified in law. They submitted that even forfeiture of earnest money requires proof of loss under Section 74 of the Contract Act and cited Supreme Court authorities *Kailash Nath Associates v. DDA (2015) 4 SCC 136* and *Fateh Chand v. Balkishan Dass (1964) 1 SCR 515* to state that penalty or forfeiture can only be enforced when loss is proved. They maintained that the lower appellate court rightly held that only ₹16 lakh could be treated as earnest money but erred in not granting full refund or further relief.

25. It was urged that the plaintiffs had suffered substantial financial loss due to development work, preparation for colony approval, construction and infrastructure investment, and thus were entitled to restitution and compensation for expectation loss and damages. It was further submitted that they deserved commercial rate of interest, not less than 12% per annum, for the deprivation of



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money from the dates of payment till realization. They also pleaded for exemplary costs on the ground that defendants had acted unfairly, obstructed the performance of contract and indulged in vexatious conduct.

26. To support their stand, learned counsel for the respondents relied upon *Brahm Dutt v. Sarabjit Singh, 2017 SCC Online P&H 5489*, wherein it was held that unilateral cancellation of agreement by the seller is impermissible and the plea of termination cannot be accepted unless established by evidence, and that once plaintiff proves readiness and willingness, the defendant cannot escape performance without valid justification. It was submitted that the ratio of the said judgment squarely applies to the present matter in favour of the plaintiffs and non-grant of full relief by the lower appellate court is unsustainable.

Findings of this Court

27. From the pleadings, evidence and admitted documents, it is not in dispute that the parties entered into an agreement to sell dated 29.09.2012 regarding agricultural land measuring 165 Kanals 3 Marlas at the rate of ₹58,80,000/- per acre and that plaintiffs made several payments from time to time. The execution of agreement Ex.P1 is admitted, as is the receipt of various instalments. The core factual matrix thus stands largely undisputed. What truly emerges for adjudication is who committed the breach, and what legal consequences flow from such breach, particularly with respect to cancellation of contract, forfeiture of earnest money and refund of subsequent deposits.

28. The defendants' case rests on the assertion that the plaintiffs defaulted in payment schedule. Plaintiffs admit that after the payments of ₹9 lakh, ₹30 lakh and ₹23 lakh, a further cheque of ₹10 lakh was dishonoured and no subsequent payment was tendered. On the other hand, the plaintiffs allege that failure of



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defendants to clear mortgage and provide 'No-Encumbrance Certificate' frustrated their ability to proceed. The record reveals that defendants redeemed the mortgage on 28.10.2013, prior to the stipulated date of execution of the sale deed i.e. 31.07.2014. The obligation to clear encumbrance was performed within time and there is no material to suggest that plaintiffs were prevented from further performance due to defect in title. The payments stopped at a stage much prior to mortgage clearance schedule. Therefore, default in successive instalments, beginning November 2012, is attributable to the plaintiffs.

29. Once it is held that plaintiffs committed breach, the next question arises whether the defendants could unilaterally rescind the agreement and whether plaintiffs retain right to restitution of amount paid. In the agreement Ex.P1, the clause stipulates that in case the purchaser fails to get the sale deed registered as per schedule, the earnest money would stand forfeited, whereas if the seller defaults, double earnest money would be refunded. The agreement does not expressly authorise forfeiture of further instalments constituting part sale consideration. Therefore, the treatment of payments beyond earnest money must be examined under Section 74 of the Contract Act.

30. Section 74 of the Indian Contract Act, 1872 provides that when a contract contains a stipulation for payment of a sum by way of penalty or forfeiture in case of breach, the Court is empowered to award reasonable compensation not exceeding the amount so named, even if actual damage is not proved. However, judicial interpretation has consistently distinguished earnest money from part-payment of consideration.

31. The Hon'ble Supreme Court in *Fateh Chand's case (supra)* held that earnest money can be forfeited only if breach is proved, but further amounts paid



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towards the contract cannot automatically be forfeited unless the party claiming forfeiture proves loss or damage suffered.

32. Similarly, in *Kailash Nath Associates (supra)*, the Supreme Court reiterated that forfeiture of earnest money is permissible when the contract is breached by the buyer, however, unless loss is shown, forfeiture of additional amounts beyond earnest money would be contrary to Section 74.

33. Applying the above principles to present case, ₹16,00,000/- paid at execution clearly answers the description of earnest money, while ₹74,00,000/- thereafter forms part-payment of sale consideration. Earnest money, being security for performance, can lawfully be forfeited where breach is proved on part of purchaser, and breach stands established here. But the remaining amount, being payment toward price of property, cannot be forfeited without proof of corresponding loss. The defendants continued to have possession and title of the property and have not shown quantifiable loss caused to them due to plaintiffs' default. Therefore, retention of the whole amount would amount to enrichment without legal basis, contrary to Section 73 & 74.

34. Unilateral cancellation, even when breach is by purchaser, does not by itself authorise forfeiture of entire consideration. The defendants could rescind the agreement, but rescission does not convert part-consideration into penalty. The lower appellate court, therefore, rightly directed refund of ₹74,00,000/-, while permitting forfeiture of earnest money. The trial court erred in completely dismissing the suit without addressing the statutory limitation imposed by Section 74.

35. The reliance of learned counsel for respondents on the judgment of *Brahm Dutt's case (supra)* also supports the principle that unilateral cancellation



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cannot result in forfeiture beyond what the law allows, though on facts of this case the breach stands against plaintiffs, the legal ratio regarding limits of forfeiture remains relevant.

Conclusion

36 In view of the above discussion, and for the reasons recorded hereinbefore, this Court finds no infirmity in the well-reasoned judgment and decree passed by the learned First Appellate Court. The finding returning that the defendants are entitled to forfeit only the earnest money of ₹16,00,000/- and that the plaintiffs are entitled to refund of the balance amount of ₹74,00,000/- along with interest, does not warrant interference in Regular Second Appeal. Consequently, the RSA is hereby dismissed. The decree of the Lower Appellate Court is hereby affirmed in toto. The cross-objections also stand dismissed in the same terms.

37. Pending application(s), if any, also stands disposed of.

January 08, 2026
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No.