

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

RSA No.97 of 2017 (O&M)  
Date of decision : 26.09.2017

Vivek Gupta and others

...Appellants

Versus

Rajiv Kumar and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Divanshu Jain, Advocate for the appellants.  
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**ANIL KSHETARPAL, J. (ORAL)**

Defendants are in Regular Second Appeal against the concurrent judgments passed by the Courts below.

The plaintiff had filed a suit for specific performance of the agreement to sell dated 01.01.2008. As per the agreement to sell, the sale deed was to be executed and registered on 15.02.2008.

In the written statement, the execution of the agreement to sell and receipt of earnest money was not disputed. However, it was pleaded that the plaintiff was never ready and willing to perform his part of the contract.

The Courts below have found that with respect to the part of the land agreed to be sold i.e. approximately 50 kanals, mutation had not been sanctioned in favour of the defendants. Keeping in view the aforesaid facts, the learned trial Court ordered the refund of the earnest money while refusing to grant a decree for specific performance of the agreement to sell.

Defendants had filed first appeal which has again been dismissed after re-appreciation of the evidence available on the file.

Learned counsel for the appellants has very vehemently argued

that the plaintiff was not ready and willing to perform his part of the contract and, therefore, as per the terms of the agreement, the earnest money could not be ordered to be refund as it was liable to be forfeited.

He has further submitted that the trial Court has committed error in ordering the refund of the amount alongwith interest @ 8% p.a..

I have considered the submission. However, I do not find any substance in the same.

In the present case, the Courts below have found that the defendants have failed to complete the formalities as required under the agreement to sell. Part of the land was not even transferred in the name of the defendants although they had entered into an agreement to sell.

Second submission of the learned counsel is that the trial Court had ordered the refund of the amount alongwith interest @ 8% p.a. The defendants had received the amount of ₹12,70,000/- on 01.01.2008. Once the defendants have enjoyed the earnest money and plaintiff has been held entitled to refund of the same, the amount of interest thereon is consequential.

In view of the aforesaid discussions, I do not find any good ground to interfere with the concurrent findings of fact arrived at by the Courts below.

Regular Second Appeal is dismissed.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

**26.09.2017**

*Pawan*

**(ANIL KSHETARPAL)  
JUDGE**

**Whether speaking/reasoned:- Yes/No**

**Whether reportable:- Yes/No**