

**RSA-2255-2023(O&M)****131 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****RSA-2255-2023(O&M)
Date of decision: 20.03.2025****Mohinder Kaur (since deceased) through his LRs and others****..Appellants****Versus****Balbir Singh and another****..Respondents****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL****Present: Mr. G.S.Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate for the appellants****Mr. Satbir Rathore, Advocate
Ms. Jyotica Behl, Advocate for the respondents****ANIL KSHETARPAL, JUDGE**

1. The defendants assail the correctness of the concurrent findings of fact arrived at by both the courts below, while granting alternative relief of refund of earnest money to the plaintiff.

2. Undisputedly, on 17.06.2011, the defendants-appellants executed an agreement to sell in favour of the plaintiff with respect to 17 kanals 3 marlas land on receipt of Rs.15 lakhs as earnest money out of the total sale consideration of Rs. 2,06,24,375/-. As per the agreement to sell, the sale deed was to be registered in two parts. Sale deed with respect to 10 acres of land was to be registered up to 25.08.2011, on payment of sale consideration at the rate of Rs. 13 lakhs per acre. Thus, the plaintiff was required to pay Rs. 1,30,00,000/- on 25.08.2011. With respect to the remaining land the sale deed was to be executed on 07.03.2012 on adjustment of the amount of earnest money.

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3. Both the courts have found that the plaintiff was not ready and willing to perform his part of the agreement/contract on 25.08.2011. However, the court has ordered refund on the ground that defendants have failed to prove that they were ready and willing to perform their part of the contract.

4. Heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

5. It was for the plaintiff to prove his readiness and willingness on or before 25.08.2011. He was to pay Rs.1,30,00,000/- to the defendants at the time of registration of the sale deed of 10 acres of land. He neither visited the office of the Sub-Registrar, nor produced any evidence to prove that he had funds to pay Rs. 1,30,00,000/-, on 25.08.2011. Moreover, it was for the plaintiff to prove his readiness and willingness. Both the courts have concurrently held that the plaintiff was not ready and willing. Additionally, the defendants have proved that on 25.08.2011, they visited the office of the Sub-Registrar and purchased stamp paper for execution of the affidavit. On 26.08.2011 the Sub-Registrar was on leave. 27.08.2011 and 28.08.2011 were holidays. On 29.08.2011 the defendants executed an affidavit that they were prepared to honour the agreement, which was attested on 30.08.2011. The plaintiff filed the suit only on 04.05.2012. He never served notice upon the defendant to come and execute the sale deed either before 25.08.2011 or thereafter.

6. Learned counsel representing the respondent submits that on 07.03.2012 the plaintiff was ready and willing to perform his part of the contract, because he visited the office of the Sub-Registrar. It is evident that



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the plaintiff has failed to honour the terms of the agreement. The first sale deed was to be executed on 25.08.2011 with respect to 10 acres of land. The remaining part of the agreement can come into operation only if the plaintiff proves that he is ready and willing to perform his part of the contract on 25.08.2011.

7. Learned counsel representing the respondent further submits that the courts have only ordered refund of the earnest money without interest. Hence, equity is in his favour.

8. This Court has considered the submissions made by the learned counsel representing the parties.

9. In an agreement to sell the amount of earnest money is liable to be forfeited if the plaintiff fails to perform his part of the contract. Hence, the equity is not in favour of the plaintiff. Both the courts and this Court have found that he has failed to honour the agreement. Hence, he is not entitled to refund. In fact, this aspect of the matter has been considered by the Supreme Court time and again. Initially, in **Shree Hanuman Cotton Mills and others vs. Tata Air Craft Limited, (1969) 3 SCC 522** the Court had explained the expression '*earnest money*'. Subsequently, in **Satish Batra vs. Sudhir Rawal (2013) 1 SCC 345**, the Supreme Court again held that the amount of earnest money is liable to be forfeited if the plaintiff commits default. Similar view was taken by the Larger Bench of the Supreme Court in **Maula Bux vs. Union of India 1969 (2) SCC 554**, it was held that such forfeiture of the earnest money does not fall within the scope of Section 74 of the Indian Contract Act, 1872.

10. Accordingly, the Regular Second Appeal stands allowed.



11. All the pending miscellaneous applications, if any, are also disposed of.

20.03. 2025	(ANIL KSHETARPAL)
<i>rekha</i>	JUDGE
<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>