



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4519-2017 (O&M)

RAJEEV KUMAR

... APPELLANT

Vs.

PRABH SARAN SINGH CHADHA

... RESPONDENT

RSA-6121-2017 (O&M)

RAJEEV KUMAR

... APPELLANT

Vs.

PRABH SARAN SINGH CHADHA

... RESPONDENT

Reserved on: 29.05.2025

Pronounced on: 02.07.2025

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Amit Jain, Senior Advocate with
Mr. Anupam Mathur, Advocate for the appellant.

Mr. Hemant Bassi, Advocate,
Mr. Anil Mehta, Advocate and
Mr. Nishant Jindal, Advocate for the respondent.

DEEPAK GUPTA, J.

Both these regular second appeals have been filed by the defendant of the case - one against dismissal of his counter-claim; and the other against decreeing of the suit of the plaintiff-respondent.

2. In order to avoid confusion, parties shall be referred as per their status before the trial Court concerned.

3. **Subject matter of dispute** is Industrial plot No.317, Industrial Area, Phase II, Panchkula, admittedly owned and possessed by Plaintiff - Prabh Saran Singh Chadha (*respondent herein*). It is undisputed that vide an agreement to sell dated 15.12.2004, owner-plaintiff Prabh Saran Singh

Chadha agreed to sell the said plot to the defendant Rajiv Kumar (*appellant herein*) for total consideration of ₹70 lakh. An amount of ₹16.5 lakh was paid as earnest money in cash against a receipt executed on the back side of the agreement to sell. Later on, an amount of ₹50,000/- was paid. On 28.01.2005, another amount of ₹8 lakh was paid by the defendant to the plaintiff, thus making the total earnest amount as ₹25 lakh.

4.1 The plaintiff instituted the suit on 23.05.2005 seeking declaration that the agreement to sell executed between the parties had become null, void and inoperative upon expiry of the stipulated date, i.e., 31.03.2005. He further sought a declaration that the earnest money paid by the defendant stood forfeited in terms of the agreement. A decree of permanent injunction was also prayed for, restraining the defendant from seeking enforcement of the agreement after the said date.

Plaintiff's Case:

4.2 As per the plaintiff's pleaded case, clause 3 of the agreement to sell obligated him to obtain a No Due Certificate and requisite permission to transfer the suit property from the Estate Officer, HUDA, Panchkula. These documents were to be furnished to M/s New Sagar Estates, the property consultant, at least 10 days prior to the final date for execution of the transfer documents and final payment, which was fixed as 31.03.2005. Notably, both parties were required to appear before the said property consultant on that date, regardless of whether the permission to transfer had been granted or not.

4.3 It is the plaintiff's case that the defendant was under an unconditional obligation to pay the balance sale consideration by 31.03.2005. Plaintiff referred to correspondence sent by him to HUDA between 11.01.2005 and 08.05.2005, whereby he sought issuance of the No Due Certificate. However, despite repeated efforts, no response was received from HUDA, and the certificate could not be obtained within the stipulated time. The plaintiff averred that on 31.03.2005, both parties

presented themselves at the office of M/s New Sagar Estates, where he expressed readiness to execute the transfer documents, conditional upon receipt of the remaining sale consideration, which the defendant had not brought.

4.4 Thereafter, the plaintiff proceeded to the office of the Sub-Registrar, Panchkula, to mark his presence. He alleged that the Sub-Registrar, acting in collusion with the defendant, declined to record his appearance, prompting the plaintiff to lodge complaints with the competent authorities.

4.5 The plaintiff further contended that the grant of transfer permission was not a pre-condition for execution of the transfer documents. According to him, it was the defendant, who breached the terms of the agreement by failing to pay the balance amount and refusing to comply with his part of the obligations. Consequently, as time was of the essence of the contract, the agreement stood frustrated on 31.03.2005, and the earnest money paid by the defendant became liable to forfeiture in accordance with the contractual terms. Accordingly, the plaintiff sought the reliefs of declaration and injunction as prayed.

Defendant's Stand & Counter-claim:

5.1 In the written statement, the defendant contended that the plaintiff's obligation to obtain 'No Due Certificate' and transfer permission from the Estate Officer, HUDA, Panchkula was a condition precedent to the defendant's duty to pay the balance sale consideration. It was asserted that without compliance with this requirement, the defendant could not be called upon to make the final payment or complete the transaction.

5.2 The defendant pointed out that the plaintiff himself admitted to have written to HUDA even on 08.05.2005—after the contractual deadline of 31.03.2005—seeking the requisite certificate. This, according to the defendant, demonstrated the plaintiff's own understanding that the transfer permission was essential for execution of the transfer papers. The defendant maintained that he had always been ready and willing to perform his part of

the contract and make the balance payment, but the plaintiff's failure to secure the necessary permission frustrated the transaction. On this basis, and by denying the remaining averments in the plaint, the defendant sought dismissal of the suit.

5.3 In addition, the defendant filed a counter-claim seeking specific performance of the agreement to sell dated 15.12.2004. He reiterated his readiness and willingness to perform his contractual obligations and alleged that the plaintiff, by failing to obtain the required 'No Dues Certificate' and transfer permission, had wrongfully refused to execute the sale. Accordingly, the defendant prayed for a decree of specific performance on payment of the remaining sale consideration and further sought an injunction to restrain the plaintiff from alienating the suit property in favour of any third party.

Response of the Plaintiff to Counter-Claim:

6.1 In written statement to the counter-claim, the plaintiff, while modifying his earlier stand, asserted that the defendant was obligated to pay the balance sale consideration on or before 31.03.2005, irrespective of any other condition. He further stated that, at the time of paying the earnest money, the defendant had already obtained the plaintiff's signatures on the requisite documents, including the application for transfer permission. It was only after obtaining these signed papers that the earnest money was paid. The plaintiff also contended that certain documents—such as the application for change of project—were to be submitted by the defendant before any request for transfer permission could be processed. Additionally, the applicable transfer fee of ₹50 per square meter was to be borne by the defendant. It was pleaded that both parties had agreed to pay commission to the property dealer, who was entrusted with the responsibility of completing the documentation on behalf of both sides. However, despite obtaining the necessary documents from the plaintiff, the defendant failed to fulfil his contractual obligations, and the property dealer too neglected his duties under the agreement.

6.2 According to the plaintiff, his only remaining obligation was to deposit any dues as intimated by HUDA, but despite several communications addressed to the authority, no such information was provided, allegedly due to negligence or deliberate inaction on HUDA's part.

6.3 He further alleged that the defendant never had a genuine intention to complete the transaction by 31.03.2005 and, instead, sought to delay the matter under various pretexts with the motive of making an undue profit. The plaintiff reiterated that the agreement to sell stood terminated after 31.03.2005, time being the essence of the contract, and that the earnest money stood forfeited in accordance with the agreement.

6.4 Accordingly, the plaintiff prayed for dismissal of the counter-claim.

7. Necessary issues were framed. Evidence produced by the parties was taken on record.

Findings of Trial Court:

8. Learned Trial Court, in its judgment dated 13.01.2012, observed that the plaintiff, a retired defence personnel, was pitted against two property dealers i.e., the defendant and Mr. Ramesh Kakkar (DW2). The Court noted that two lines on the reverse of the agreement to sell (Ex.D1), purporting to be a receipt, were found to have been inserted subsequently by the defendant. It was also observed that the name and signature of Sohan Lal, as witness No. 2, appeared to have been added later on both in the agreement to sell (Ex.P8) as well as the receipt on the back of Ex.D1. The Trial Court further held that the statement of DW2 Ramesh Kakkar, and the SDM's report (Ex.P1) regarding the defendant's possession of the balance sale consideration on 31.03.2005 contradicted the defendant's own admission (as DW1), wherein he conceded that he neither carried cash nor any bank draft to the office of the Sub-Registrar on the said date. The Court also found that both parties failed to approach the Court with clean hands. Nevertheless, it

was held that the plaintiff, having failed to obtain the No Due Certificate and transfer permission from HUDA, could not justify forfeiture of the earnest money. Accordingly, while dismissing the plaintiff's suit, the trial Court directed him to refund the earnest money of ₹25 lakhs to the defendant within two months, failing which the amount would carry interest at the rate of 18% per annum. The defendant's counter-claim seeking specific performance was also dismissed.

First Appellate Court's findings:

9.1 Aggrieved by the above decision of the trial court, both parties preferred appeals. The First Appellate Court, vide judgment dated 06.10.2014, allowed the plaintiff's appeal and dismissed that of the defendant.

9.2 However, a Coordinate Bench of this Court, in RSA No. 6420 of 2014, found that an application for additional evidence had not been adjudicated. As a result, the appellate judgment dated 06.10.2014 was set aside, and the matter was remanded to the First Appellate Court with a direction to first decide the said application and thereafter, dispose of the appeals afresh.

10.1 Upon remand, the learned Additional District Judge, Panchkula vide judgment dated 22.03.2017 dismissed the defendant's application for additional evidence, by which he sought to examine a handwriting expert. The appellate court affirmed the Trial Court's finding that the two lines on the reverse of Ex.D1 had been interpolated later. It also held that the receipt dated 28.01.2005, although forming part of Ex.D1, was not proved through any admissible mode under the Evidence Act.

10.2 However, the Appellate Court held that the Trial Court erred in directing refund of the earnest money. It concluded that the agreement to sell became null & void after 31.03.2005 due to the defendant's failure to pay the balance sale consideration, which was a condition precedent under

the terms of the agreement. It was also found that the defendant was not ready and willing to perform his contractual obligations. Accordingly, the plaintiff's appeal was allowed, entitling him to forfeit the earnest money.

10.3 Simultaneously, the appeal filed by the defendant/ counter-claimant, seeking specific performance, was dismissed.

11. The common judgment dated 22.03.2017, whereby the First Appellate Court allowed the plaintiff's appeal and dismissed that of the defendant, is assailed in the present two regular second appeals filed by the defendant/ counter-claimant.

Present RSAs:

12.1 In RSA No. 6121 of 2017, the appellant-defendant has filed CM No. 7057-C-2022 under Order 41 Rule 27 CPC, seeking permission to place on record a handwriting expert's report dated 14.03.2020 (Annexure A1), which has been strongly opposed by the respondent.

12.2 In another appeal, RSA No. 4519 of 2019, the respondent-plaintiff has filed CM No. 9138-C-2022, seeking to bring on record the judgment dated 28.10.2022 passed by the learned JMIC, Panchkula, whereby the appellant-defendant Rajiv was convicted under Sections 193, 465, 467, 468, and 471 read with Sections 120 and 120-B IPC; and was sentenced vide separate order dated 05.11.2020.

13. This Court has considered submissions of both the sides and has perused the entire record including the trial Court record carefully. Written synopsis filed by both sides have also been considered.

Contentions raised for the appellant:

14. The contentions raised by Ld. Senior Advocate for the Appellant-Vendee are as under:

(A) Non-Fulfilment of Conditions Precedent by the Respondent-Plaintiff: It is contended by Ld. Senior advocate that Clause 3 of the Agreement to Sell (Ex.

P8/D1) casts a categorical obligation upon the seller (respondent-plaintiff) to clear all dues pertaining to the property and to obtain a "No Dues Certificate" (NDC) and transfer permission from HUDA, Panchkula, at least 10 days prior to the stipulated date for execution of transfer documents. However, PW1 (HUDA official) as well as PW3 (plaintiff himself) admitted that dues of approximately ₹19 lakhs remained unpaid and that no NDC or permission was ever obtained. Ex.P6 and P7, including a letter dated 08.05.2005 (after the purported forfeiture date of 31.03.2005), demonstrate continued attempts by the plaintiff to comply, thereby showing obtaining of NDC & transfer permission as condition precedent. In such circumstances, the plaintiff could neither seek forfeiture nor demand performance from the appellant - defendant. Reliance is placed on ***Basavaraj vs. Padmavathi 2023 LiveLaw (SC) 17***. It is urged that the trial court rightly upheld this contention; but, the First Appellate Court erred in reversing the finding.

(B) Time Not Being the Essence of the Contract: It is argued further that though Clause 4 fixed 31.03.2005 as the date for execution of transfer papers, but the said obligation was conditional upon the plaintiff's fulfilment of his prior obligations. Clause 5 clearly deferred the obligation to pay balance sale consideration until the stage of execution of transfer papers. Since no date was fixed for execution before the Sub-Registrar, and the essential pre-conditions were unmet, the time clause could not be deemed to have been of the essence. The plaintiff's own post-dated conduct—such as writing to HUDA on 08.05.2005—belies his assertion that the agreement stood automatically forfeited on 31.03.2005.

(C) Disputed Receipt dated 28.01.2005 and Allegations of Forgery: Ld. Counsel contends that the receipt dated 28.01.2005 on the reverse of Ex. D1, acknowledging an additional payment of ₹8 lakhs, also extended the performance date to 31.05.2005. The plaintiff disputed only the last two lines of this receipt, but admitted the receipt itself and his signature on it. Ld. Counsel submits that though the plaintiff introduced a different version (Ex.

P9) but it was only after the receipt was put to him in cross-examination, claiming forgery. However, the handwriting expert (PW4) conceded in cross-examination that Ex. D1 was in one handwriting and written with the same instrument. The material discrepancies between Ex.D1 and Ex.P9—especially that the latter was on a plain sheet—raise doubts about its authenticity. The refusal by the First Appellate Court to permit additional evidence, despite this Court's earlier remand order dated 24.01.2017 in RSA-6420-2014, is seriously prejudicial.

(D) Readiness and Willingness of the Appellant-Defendant: Ld. Senior advocate contends further that defendant - appellant remained ready and willing to perform his part and was present at the Sub-Registrar's office on 31.03.2005 with the sale consideration. The Enquiry Officer's report (Ex. P1), based on the plaintiff - respondent's own complaint, confirms the presence of both parties at the venue. However, the sale deed could not be registered solely due to the respondent's failure to produce NDC and HUDA's transfer permission. Ld. Counsel refers to Section 51 of the Indian Contract Act, which provides that in reciprocal promises to be performed simultaneously, neither party is bound to perform unless the other is ready and willing. However, the plaintiff became dishonest by claiming forfeiture of earnest money on 24.5.2004, compelling the defendant – appellant to file the counter-claim on 27.05.2005 within two months of 31.3.2005, which was well within limitation.

(E) Conduct and Mala Fides of the Respondent-Plaintiff: Ld. Senior advocate for the appellant also points out towards the conduct of the respondent, who received ₹25 lakhs from the appellant but failed to perform essential obligations, and instead initiated suit seeking forfeiture of the amount with nominal court fees of ₹200. In contrast, the appellant paid ad-valorem court fee on ₹70 lakhs on multiple occasions. It is argued that the plaintiff, was dominant in structuring the contract, made unilateral changes, and subsequently tried to shift his own obligations onto the appellant. His

deposition as PW3 falsely claimed that the obligation to obtain HUDA permissions lay on the appellant. Further, the plaintiff admitted to a prior dispute with another buyer (Mr. Chhabra) and admitted having entered into yet another agreement during the pendency of the current proceedings, refusing to disclose the details—suggesting a pattern of dishonest conduct. Besides, plaintiff's plea of forfeiture is contradicted by his conduct and correspondence post 31.03.2005. His failure to plead or prove readiness and willingness, as required under Section 16 of the Specific Relief Act, further disentitles him to any relief.

With all the above submissions, Ld. Senior advocate prays for allowing both the appeals and to decree the counter-claim of the defendant-appellant and to dismiss the suit.

Contentions raised by the Respondent-Vendor:

15. In response to the above contentions, it is pointed out by Ld. Counsel for the respondent – plaintiff that:

1) Regarding Forgery: The appellant-defendant has, for the first time, taken the plea that the time for performance under the agreement to sell was extended up to 31.05.2005. This plea was based on a forged and tampered receipt purportedly dated 28.01.2005, which had two additional lines inserted to create an impression that the last date for performance was extended from 31.03.2005 to 31.05.2005. However, this stand is wholly beyond the pleadings and is devoid of any merit for the following reasons:

- In the written statement as well as in the counter-claim, both filed on 27.05.2005, there is no mention whatsoever of any extension of time.
- No issue regarding the alleged extension was either framed by the trial court or pressed by the appellant. On the contrary, the issues as framed clearly treated 31.03.2005 as the final date for performance.

- If the time had indeed been extended to 31.05.2005, there would have been no occasion for the appellant to file a counter-claim on 27.05.2005—before the extended date had even expired.
- The plea of extension was taken for the first time during the cross-examination of the plaintiff on 17.02.2010, almost five years after the written statement and counter-claim were filed. It was at this stage that the appellant attempted to introduce a forged document marked as Mark X-1.
- The original receipt dated 28.01.2005 (Ex.P9) does not contain any such endorsement of extension. The document Mark X-1 was never pleaded nor included in the appellant's affidavit, and was merely referred to in his oral statement at the time of tender.
- Both the Trial Court and the first Appellate Court found clear evidence of tampering with the receipt, holding that the additional lines appeared to have been inserted later.
- The falsity of the appellant's version is further exposed by the fact that he claimed to have appeared before the Sub-Registrar on 31.03.2005 with the balance consideration. This contradicts his plea of extension, as there would be no reason to appear before the Sub-Registrar, if the performance date had been extended to 31.05.2005.
- Significantly, the appellant has been convicted on 28.10.2022 for offences under Sections 193, 465, 467, 468, 471, and 120-B IPC on the basis of the forged receipt, following a criminal complaint initiated by the Court itself. He was sentenced to undergo rigorous imprisonment up to three years vide order dated 05.11.2022.

II) Lack of Readiness and Willingness: It is urged that the appellant-vendee failed to establish his readiness and willingness to perform his part of the contract. He did not produce any evidence to show that he had the requisite funds to pay the balance consideration on 31.03.2005. In fact, he himself admitted that he did not possess the money on that date as, according to him, the deadline stood extended to 31.05.2005. This admission contradicts

his stand that he was present before the Sub-Registrar on 31.03.2005 with the required amount. Further, if the deadline was indeed 31.05.2005, there was no reason for the counter-claim to be filed on 27.05.2005. These inconsistencies reveal that the plea of readiness and willingness is a mere afterthought. The appellant failed to produce any statement of accounts, did not purchase any stamp papers, and did not obtain the requisite permissions. He himself failed to secure the NDC and permission from HUDA, which was his own responsibility. It is urged that in order to cover up his financial incapacity and inability to perform, the appellant resorted to forging the receipt (Mark X-1) and raised a false plea of extension during cross-examination—nearly five years after the initial pleadings. In the circumstances, the Trial Court rightly held that the appellant lacked the readiness and willingness required under Section 16(c) of the Specific Relief Act and the first Appellate Court concurred with this finding.

III) Responsibility to Obtain NOC Rested with the Appellant: It is argued further that the appellant himself admitted during cross-examination that he is a property dealer by profession. He further stated that he regularly keeps pre-typed, blank agreements to sell, which are later filled in with the consent of the parties. He categorically admitted that it is his usual responsibility to obtain the necessary permissions and NDCs from HUDA on behalf of the sellers. He also acknowledged that he usually prepares all related documents for the sellers. Therefore, having undertaken the obligation to obtain the necessary NOC and HUDA permission himself, the appellant cannot now escape liability for his own failure to perform this obligation. Thus, the appellant, being a seasoned property dealer, who had assumed responsibility for the necessary clearances, cannot now seek to shift the blame onto the seller. His own conduct shows a calculated attempt to mislead the Court, cover up his failure to arrange the balance consideration, and manipulate judicial proceedings through forgery and falsehood.

IV) With all the above submissions, Ld. advocate for the respondent – plaintiff concluded that the appellant’s conduct : his failure to obtain mandatory permissions, lack of readiness and willingness, reliance on forged documents, and attempt to mislead the Court, demonstrates that he is not entitled to any equitable relief. Both the Trial Court and the First Appellate Court have recorded concurrent findings on material aspects, and therefore, the present second appeal, raising no substantial question of law, is liable to be dismissed with costs.

Court Analysis and Findings:

16. It is not in dispute that the agreement to sell dated 15th December 2004 was executed between the parties and was drawn on a 4 page pre-printed, cyclostyled format typically maintained by property dealers. Irrelevant clauses were deleted, and certain new terms were inserted with pen or amended with the mutual consent of the parties, who duly signed the agreement. This position is consistently reflected in the testimonies of both plaintiff Prabh Saran Singh (PW3) and defendant Rajiv Kumar (DW1). As per their statements, after the agreement was finalized, a photocopy was made, and both the original and the copy were signed by the contracting parties. The original document was retained by the defendant (vendee) Rajiv Kumar, while the photocopy bearing original signatures was handed over to the plaintiff (vendor) Prabh Saran Singh. The plaintiff produced his copy as Ex.P8, while the defendant, during cross-examination of the plaintiff, confronted him with his own copy, which was put as Mark X-1, and subsequently, tendered the same as Ex.D1 along with his affidavit Ex.DW1/A in evidence.

17. Before considering the submissions of both the sides, it will be useful to reproduce the abovesaid agreement to sell (Ex.P8/Ex.D1), which is as under:

“AGREEMENT TO SELL/TRANSFER

This deed of agreement to sell/transfer is made **at Panchkula** on **15th** Day of **December** 2004.

BETWEEN

1. Prabh Saran Singh Chadha s/o Shri K.S. Chadha R/o House No.1858, Sector 34A, Chandigarh

(herein after referred to as the Seller/s/Transferor/s which term shall where the context so admits include his/her/their heirs, assigns, executors, successors, legal representatives, administrators) of the one part

AND

2. Sh. Rajiv Kapoor S/o Sh. A.K. Gupta, Resident of House No.339, Sector 11, Panchkula

(hereinafter referred to as the Purchaser/s/Transferee/s which term shall where the context so admits include his/her/their assigns, executors, legal representatives & administrators) of the other part of this Deed

WHEREAS the above said Seller/s/Transferor/s is/are the sole and absolute owner and allottee/s/GPA/ Agreement to sell holder in respect of one **Industrial** Plot No. **317** Sector **II**, Urban Estate, Panchkula measuring **2100** sq. meter duly allotted by the Estate Officer, HUDA, Panchkula and the said **Industrial** Plot is free from all sorts of encumbrances i.e. sale/ gift/ mortgage/will, claim deemed ,charges, litigation etc.

AND WHEREAS the said seller/s/transferor/s is/are interested in the sale of his/her/their abovesaid plot and the said purchaser/s is/are also interested in purchase/accept the transfer of the abovesaid plot and both the parties have agreed with each other on the following terms and conditions: -

Now this deed further witnesses as follows: -

1. That the total sale price of the abovesaid residential plot size has been fixed at Rs.**70,00,000/-** (Rupees **Seventy Lakh only**).

2. That the said purchaser/s/transferee/s have paid to the said seller/s a sum of Rs.**16,50,000/-** (Rupees **Sixteen Lakh Fifty Thousand only**) vide **CASH** as an earnest money, for which amount the said seller/s hereby acknowledges the receipt in the presence of the marginal witnesses.

3. That the said seller/s/transferor/s will bear all the outstanding dues against the said property (i.e. towards price, increased price, enhanced compensation, interest/penalty, extension fee) and will get No due certificate and the permission to sell/transfer the said property from the Estate Office, HUDA, Panchkula and handover the same to M/s **New Sagar Estate, SCO 48, Sector 8, Panchkula**, 10 days before the last day of execution of transfer papers/final payment. **The seller will have full rights to claim refund for above charges from HUDA.**

4. That the last day for execution of transfer papers has been fixed on or before **31.03.2005** and both the parties shall present themselves in the office of the said property consultants as per the time fixed through them, **irrespective of whether permission to transfer is received or not.**

5. That the balance payment after deducting the earnest money from the abovesaid total sale price will be paid by the purchaser/s to the said seller/s at the time of execution of transfer papers.

6. That the purchaser/s can get the said **industrial** plot transferred in his/her/their own name/s or in the name/s of his/her/their nominee/s or any other person/s whomsoever and the said Seller/s shall have no objection for the same. That the said Purchaser/s or his/her/their nominee/s shall hereinafter be responsible and entitled for all type of loss or profit arising of said deal/bargain and said purchaser/s is authorized by the said Seller/s to receive any amount of earnest money/advance from any other person/s by virtue of this Agreement to Sell and the said Seller/s shall not have any objection for the same at any later stage, but the said Purchaser/s shall be responsible to make the full and final payment to the said Seller/s as per provision of Clause No.1 of this "Agreement to Sell". That all expenses on transfer permission including transfer fee shall be borne by the said purchaser/s.

~~7. That if the permission to transfer is not granted/refused by the Estate Officer, HUDA, Panchkula due to any reason then the last date for full and final payment shall be extended with the mutual consent of both the parties of this deed.~~

8. That the said seller/s will hand over all the documents and papers in original, pertaining to this residential Plot to the said Purchaser/s at the time of execution of transfer paper/s final payment.

9. That this bargain has been finalized with the best efforts of M/s **New Sage Estate, SCO 48, Sector 8, Panchkula** to whom both the parties the seller/s and the Purchaser/s will pay 1% commission separately on the total sale price and defaulter party shall pay 4% commission to the said Property Consultants. No payment will be considered as paid without property receipt.

This payment is time bound as per Mr.P.S.S. Chadha has to make further payment from another deal. If payment is not made in time, then this agreement automatically becomes null and void and no claim can be lodged in the Courts.

10. That if the purchaser/s will backout from this bargain, then his/ her/their earnest money shall stand forfeited in favour of the said seller/s and if the said seller/s backs out from this bargain then he/she/they will pay double of the earnest money received by his/her to the said purchaser/s being the liquidated damages and the Purchaser/s shall have the option either to accept the damages or to get the said residential Plot transferred/executed through sale deed in his/her favour through the Court of law under the Specific Performance of the Relief Act and the said Purchaser/s shall have the first charge over the said site.

11. That in case of any dispute arises amongst the parties to this deed then the same shall be referred to Panchkula Courts.

12. That this deed of Agreement to Sell/Transfer is made in duplicate. Original will be kept by the Purchaser/s and copy thereof by the said Seller/s for their records and ready reference.

IN WITNESS THEREOF both the parties have set their hands on this deed at Panchkula on the day, month and year mentioned above the presence of marginal witnesses.

Witness No.1 (***Sd/-***)

1. Seller/s (***Sd/-***)

Witness No.2 -----

2. Purchaser/s (***Sd/-***)”

18. It may be clarified here that bold & italicized portion in the abovesaid reproduced agreement has been inserted by the parties by filling in blanks. Clause N: 7 forming part of formatted agreement has been deleted; whereas, a new clause in between clauses N: 9 & 10 was added with pen. All the additions and alteration are duly signed by both the parties.

19. Still further, though not pleaded either in the written statement or the counter-claim, defendant – appellant tried to project in his evidence that time for execution of transfer papers was extended up to 31.5.2005 while executing the receipt of ₹ 8 Lacs dated 28.1.2005 on the reverse side of page N:2 of the agreement Ex.D1.

20. On analyzing the entire evidence on record and considering the contentions of both the sides, it is found by this court that:

20.1 *I. Plea of Extension of Time – Forged Document:* The entire edifice of the appellant’s case rests on the assertion that the date of performance under the agreement to sell was extended from 31.03.2005 to 31.05.2005. This assertion is untenable for the following reasons:

- The written statement and counter-claim, both filed on 27.05.2005, do not contain any whisper of such extension.
- No issue was framed on this alleged extension of time, nor was any such plea pressed during the trial.
- The receipt containing the alleged extension was introduced only during the cross-examination of the plaintiff on 17.02.2010, nearly five years after the suit.

- No application was ever moved by the defendant to amend the written statement or counter-claim to incorporate the plea of extension of time.
- The said endorsement on reverse of Page N: 2 of Ex.D1/Mark X-1, was not proved by any permissible mode of evidence, as PW3 – plaintiff was confronted with copy of main agreement Mark X-1, which was put as Ex.D1 by defendant, while tendering his affidavit.
- The above endorsement on reverse of Page N: 2 of Ex.D1/Mark X-1 was found to be forged and tampered with. The additional two lines were added later to create a false impression of extension.
- Both courts below have recorded concurrent findings, based on the circumstances and the report of Forensic Document Expert – PW4 Devender Prasad that the said interpolation was a deliberate act of forgery.
- Furthermore, the appellant has been convicted under Sections 193, 465, 467, 468, 471 and 120-B IPC by the Criminal Court vide judgment dated 28.10.2022, with sentence awarded on 05.11.2022, though the said conviction & sentence are under appeal.
- This plea is therefore not only contrary to the pleadings and procedural fairness, but stands discredited by judicial findings and a criminal conviction.

20.2 As per consistent position of law, a plea not taken in the pleadings cannot be permitted to be raised at a later stage. Besides, a forged document cannot be the basis for enforcing or defending a contract. As such, this Court concurs with the concurrent findings of the Courts below that the plea of extension is an afterthought based on a forged document. Hence, the agreed date remained 31.03.2005.

21.1 II. Readiness and Willingness of Appellant, & Relief of Specific

Performance: The doctrine of readiness and willingness is codified under Section 16 (c) of the Specific Relief Act. It casts a mandatory burden on the person seeking specific performance or resisting forfeiture to prove that he was and continued to be ready and willing to perform his part. Besides, readiness & willingness must be established throughout the transaction and must be proved by concrete evidence, not merely by oral assertion. However, in present case,

- the appellant failed to produce any evidence—documentary or oral—to show financial capacity on the date of performance, i.e., 31.03.2005.
- He did not produce any account statements, bank details, or stamp paper purchases to show preparedness.
- His own admission that he did not have the balance consideration on 31.03.2005 discredits his stand that he was ready and willing.
- His appearance before the Sub-Registrar on 31.03.2005, if true, contradicts his own claim that the performance date had been extended to 31.05.2005.

21.2 Not only above, the conduct of the appellant, by attempting to mislead the Court by using a forged document to show extension of time, taking inconsistent pleas, and failing to make payment as per clause inserted between clause N: 9 & 10 making time the essence, which clause he never assailed on any ground, completely disentitles him from the equitable relief of specific performance. A party, who seeks equity must come with clean hands. A party who has engaged in fraud or forgery cannot seek equitable relief.

21.3 In view of above observations and the concurrent findings of the courts below that the buyer - defendant was not ready and willing, it is clear that the requirement under Section 16(c) of the Specific Relief Act is not satisfied and so, courts below rightly declined the relief of specific

performance to the buyer - appellant – defendant, by dismissing his counter claim.

22.1 III. Terms of the Agreement, and the Right to Forfeiture by Seller:

Clause 3 of the agreement made it incumbent upon the seller - plaintiff to obtain all clearances and permissions from HUDA, and provide a No Dues Certificate 10 days before 31.03.2005. Clause 4 fixed the last date for execution of transfer papers as 31.03.2005, regardless of whether permission was received. As per Clause 5, purchaser was to pay balance amount at time of execution. Though, Clause 7 allowed for extension by mutual consent, but this clause was deliberately deleted by both the parties. A new clause inserted with pen between clause N: 9 & 10 made time the essence, providing that non-payment by due date would cause the agreement to become automatically null and void, and bar any court claims.

22.2 It is well-settled that in agreements for sale of immovable property, time is ordinarily not of the essence, unless expressly made so. In the present case, though clause 4 fixed the outer date for execution of transfer documents as 31.03.2005, but clause 3 imposed pre-conditions including clearance of dues and obtaining of NOC, whereas clause 5 postponed the obligation to pay balance consideration to the stage of execution of transfer papers. Thus, the timeline of 31.03.2005 was not absolute, but contingent on fulfillment of earlier obligations.

22.3 Admittedly, plaintiff did not obtain the NDC or permission to transfer. Though he argues that the buyer being a property dealer had to handle this, but the express language of Clause 3 cannot be re-written, as the primary obligation lay with the seller. No doubt that as per own admission of the defendant (DW1), he did not bring the cash or draft to pay balance sale consideration on 31.3.2005, but his obligation to pay was conditional upon the seller - plaintiff obtaining statutory clearances. The plaintiff's failure to do so rendered defendant's non-payment justified in principle.

22.4 The newly inserted clause between clause N: 9 & 10 with mutual consent providing for automatic cancellation in place of a previously existing clause 7 that permitted extension of time, though intended to make time the essence and to terminate the agreement upon non-payment, irrespective of reason, but this clause is to be read in consonance with other clauses of the agreement and cannot be allowed to override statutory rights of the defendant under Section 51 of the Contract Act.

22.5 The seller himself being in breach of Clause 3, he cannot be permitted to take advantage of his own default and so, his claim for forfeiture cannot be justified under equity and restitutionary principles. When obligations are interlinked and dependent on conditions precedent, failure to satisfy them disentitles a party from claiming breach. Thus, though the clause providing for non-payment by due date, would cause the agreement to become automatically null and void, but it would not entitle the plaintiff – respondent to forfeit the amount of ₹ 25 Lacs received by him from the defendant.

Conclusion and Final Order

23. In view of the foregoing discussion, this Court is of the considered opinion that the appellant–defendant is not entitled to the relief of specific performance, as the agreement in question has lawfully and contractually come to an end. However, considering that the seller–plaintiff also failed to perform his obligation under the agreement—specifically, by not obtaining the requisite NOC—he cannot be permitted to unjustly enrich himself by retaining the amount of ₹25 lakhs received under the agreement. Principles of equity require that the said amount be refunded to the appellant–defendant.

24. Accordingly, the appeal challenging the denial of specific performance is dismissed, and the concurrent findings of the courts below being based on proper appreciation of the evidence are affirmed, warranting no interference. However, the finding of the first appellate court declining

the refund of ₹25 lakhs and permitting the respondent–plaintiff to forfeit the same is set aside. Modifying the judgment of Trial court in this regard, respondent - plaintiff is hereby directed to refund the amount of ₹ 25 Lacs to the defendant – appellant, along with interest @ 9% per annum from the date of filing of the suit before trial court till this order in present RSAs. The defendant – appellant shall be further entitled to future interest @ 6 % on the amount of ₹ 25 Lacs, from the date of this decision till actual realisation. Parties shall bear their own costs throughout. Both the appeals stand disposed of accordingly.

25. Misc. applications, moved by both the sides, also stands disposed of.

26. A photocopy of this order be placed on the file of connected case.

02.07.2025

Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?
Whether reportable?

Yes
No