



2025:DHC:9232-DB



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

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Judgment reserved on: 26.09.2025***Judgment pronounced on: 17.10.2025***

+ RFA (OS) 61/2025, CM APPL. 61955/2025, CM APPL. 61956/2025 & CM APPL. 61957/2025

MOHINDER KUMAR VERMA

.....Appellant

Through: Mr. Giriraj Subramaniam, Ms. Aadhyaa Khanna, Mr. Aditya Sarma, Mr. Jaisal Baath, Mr. Arun Kumar and Ms. Priyanka Jain, Advs.

versus

VINOD RAJORIA

.....Respondent

Through: Mr. Gaurav Kakkar, Advs.

CORAM:**HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR****J U D G M E N T****ANIL KSHETARPAL, J.**

1. The issue that arises for consideration in the present Appeal is whether, in the absence of a forfeiture clause in the Agreement to Sell, the Appellant/Defendant could claim a right to forfeit the advance of Rs.40 Lakhs on alleged breach by the Respondent/Plaintiff in a suit for specific performance of ATS, or whether the learned Single Judge was justified in decreeing the Plaintiff's suit for refund of the advance of Rs.40 Lakhs with interest and creating a statutory charge over the suit property under Section 55(6)(b) of the Transfer of Property Act, 1882 [hereinafter referred to as "TPA"], in favour of the Plaintiff,



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despite the Defendant's asserted readiness and willingness to perform the ATS (as put before the Court during the proceedings), and the Plaintiff's own failure to tender the balance sale consideration of Rs.2.90 Crores.

2. The present Appeal assails the correctness of judgment dated 22.07.2025 [hereinafter referred to as "Impugned Judgment"] passed by the learned Single Judge in CS(OS) No.131/2022, whereby the learned Single Judge decreed the Plaintiff's suit for refund of advance of Rs.40 Lakhs paid under the Agreement to Sell dated 11.12.2019 [hereinafter referred to as "ATS"], awarded interest @ 12% per annum from 11.12.2019 until payment, and declared a statutory charge in favour of the Plaintiff under Section 55(6)(b) of the TPA until repayment takes place. The learned Single Judge further restrained the Defendant from dealing with the property admeasuring 1 bigha 12 biswas out of Khasra Nos. 185/1 min East (1-03) and 185/2 min East (0-09) situated in the revenue estate of Village Khanpur, Tehsil Saket, also known as Sainik Farms, New Delhi [hereinafter referred to as "suit property"] until refund was effected.

FACTUAL MATRIX

3. In order to appreciate the issues arising for consideration in the present Appeal, it is necessary to briefly notice the relevant facts. The Defendant is the owner of the suit property by virtue of a registered Sale Deed dated 16.04.1993. On 11.12.2019, the Defendant entered into an ATS with the Plaintiff for a total consideration of Rs.3.30 Crores, out of which Rs.40 Lakhs was paid by the Plaintiff by way of



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demand draft. The balance Rs.2.90 Crores was agreed to be paid at the time of handing over possession of the suit property and execution/registration of the Sale Deed.

4. Subsequently, disputes arose between the parties regarding the readiness and willingness to perform the ATS. The Plaintiff issued a notice on 04.01.2022 and filed the subject suit on 25.02.2022 seeking specific performance or, in the alternative, refund of the advance together with interest. It was contended that the suit property lacked independent demarcation and did not have an exclusive entry and exit. Further, rival claims had been raised by the Defendant's relatives, namely the Defendant's brother and sister-in-law, over adjoining plots, which affected the usability and possession of the suit property.

5. The Defendant, on the other hand, maintained that he was the absolute owner of the suit property and had consistently expressed willingness to execute the Sale Deed, asserting that the ATS was binding and the Plaintiff had failed to act in accordance with the terms of the ATS. The Defendant relied upon various orders and reports, including that of the Local Commissioner dated 31.01.2023, to demonstrate readiness to provide independent access to the suit property. Further, two applications under Order I Rule 10 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] were filed by third parties claiming interest in the suit property through M/s Majestic Holding Pvt. Ltd. These applications primarily relied upon company balance sheets without production of any title documents and remain pending adjudication before the National Company Law Tribunal [hereinafter referred to as "NCLT"].



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6. CONTENTIONS OF THE APPELLANT/DEFENDANT

6.1 Learned counsel for the Defendant contended that the Defendant, being the recorded owner of the suit property, was at all times ready and willing to execute the Sale Deed in terms of the ATS dated 11.12.2019 and it was, in fact, the Plaintiff who failed to perform his reciprocal obligation, having not deposited the balance sale consideration of Rs.2.90 crores and having refused to accept possession of the suit property in its existing condition, thereby disentitling him to claim refund. Reliance was placed on the Local Commissioner's report dated 31.01.2023 to demonstrate that independent access to the suit property was available and that the Defendant had made arrangements to demarcate the same in terms of the ATS.

6.2 It was further contended that the alleged third-party claims, purportedly raised before the NCLT by the Defendant's brother and sister-in-law through M/s Majestic Holding Pvt. Ltd., do not divest the Defendant of ownership of the suit property nor do they create any legal impediment to execution of the Sale Deed. Those claims, according to the Defendant, are founded merely on company records and balance-sheet entries, without supporting title documents, and remain *sub judice*.

6.3 It was also urged that the market value of the suit property has appreciated substantially since execution of the ATS, and that a decree directing refund of only Rs.40 Lakhs, without directing performance by the Plaintiff, would therefore unjustly enrich the Plaintiff while



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penalising the Defendant, who has not defaulted in his obligations.

6.4 It was contended that the learned Single Judge erred in granting refund with interest @ 12% per annum and in creating a statutory charge under Section 55(6)(b) of the TPA. Since the Defendant never refused performance and had repeatedly demonstrated willingness to execute the Sale Deed, the decree cannot be sustained in law.

6.5 It was further contended that the learned Single Judge erred in relying upon Section 22(1)(b) of the Specific Relief Act, 1963 [hereinafter referred to as “SRA”] to justify refund of Rs.40 Lakhs with interest. The sum paid by the Plaintiff was not “earnest money” or “deposit” within the meaning of Section 22 of the SRA but was an advance towards the purchase price of the suit property. Even if Section 22 of the SRA were to apply, it does not authorize payment of interest and, therefore, the reliance of the Impugned Judgment on Section 22 of the SRA is legally untenable.

6.6 Lastly, it was submitted that the Plaintiff having failed to pay the balance consideration, the Defendant was entitled to forfeit the earnest money of Rs.40 Lakhs as compensation for the Plaintiff’s breach. The learned Single Judge, according to the Defendant, failed to appreciate that forfeiture of earnest money is a recognised legal consequence when a purchaser defaults, and that directing refund despite the Plaintiff’s default is contrary to law and equity.

7. CONTENTIONS OF THE RESPONDENT/PLAINTIFF

7.1 *Per contra*, learned counsel for the Plaintiff submitted that the



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Plaintiff was at all times ready and willing to perform the ATS. The Plaintiff's issuance of notice dated 04.01.2022 and subsequent institution of the suit were in exercise of his legitimate rights after the Defendant's failure to perform. It was argued that the suit property was neither independently demarcated nor capable of exclusive access, and that rival claims were raised by the Defendant's own family members in relation to the same property. Such disputes, pending adjudication before the NCLT, rendered the title doubtful and directly affected the Plaintiff's ability to obtain vacant and peaceful possession.

7.2 Learned counsel emphasized that the Defendant could not convey what was not free from encumbrance, and therefore, the Plaintiff was fully justified in seeking refund of the advance paid. The Plaintiff's refusal to accept delivery of the suit property prior to proper demarcation and creation of an independent entry and exit was reasonable and justified in light of the pending claims and the actual condition of the property.

7.3 Learned counsel further submitted that the Local Commissioner's report dated 31.01.2023 clearly established that independent access and demarcation had not been provided, and therefore, the Plaintiff's decision to decline delivery of the suit property cannot be deemed improper or a default under Section 55(6)(b) of the TPA.

7.4 It was contended that the Plaintiff was entitled to the refund of Rs.40 Lakhs along with interest under Section 55(6)(b) of the TPA.



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The statutory charge arises in favour of the buyer for any purchase money properly paid in anticipation of delivery of the property and continues until conveyance is executed and possession delivered, and can be lost only if the buyer improperly refuses delivery, which was not the case here.

7.5 Learned counsel also submitted that Section 22(1)(b) of the SRA, is applicable. The Plaintiff initially sought specific performance of the ATS, and upon refusal of specific performance, Section 22(1)(b) of the SRA empowers the Court to grant any other relief to which the buyer may be entitled, including the refund of any earnest money or deposit. Even if the amount of Rs.40 Lakhs is termed “advance money,” it functions as part-payment of the purchase price as well as security for performance of the contract, thereby bringing it within the scope of Section 22(1)(b) of the SRA.

7.6 It was contended that the Defendant’s claim for forfeiture of the advance is untenable, as the Defendant has not suffered any loss on account of the Plaintiff’s refusal to accept delivery. The Plaintiff’s conduct in declining delivery in light of the lack of demarcation, fencing, and independent entry and exit, as well as the rival claims of the Defendant’s relatives, was reasonable and in accordance with common prudence of a buyer.

7.7 Learned counsel lastly submitted that the creation of a statutory charge in favour of the Plaintiff was legally correct and necessary to protect the pre-paid purchase money until refund was effected, and the grant of interest @ 12% per annum from 11.12.2019 until actual



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payment was appropriate under Section 55(6)(b) of the TPA.

ANALYSIS & FINDINGS

8. This Court has considered the submissions advanced by learned counsel for the parties and carefully perused the material on record. The core issue is whether the Defendant could forfeit the advance of Rs.40 Lakhs in the absence of a forfeiture clause, or whether the Plaintiff was entitled to a refund with interest and a statutory charge under Section 55(6)(b) of the TPA.

9. It is evident from the record that disputes existed concerning the independent demarcation and access to the suit property. The Plaintiff raised *bona fide* concerns that the property was neither independently demarcated nor capable of exclusive entry and exit. Further, rival claims over adjoining plots by the Defendant's own family members, pending adjudication before the NCLT, affected the Plaintiff's ability to obtain vacant and peaceful possession. These circumstances are relevant in evaluating the Defendant's entitlement to forfeit the advance amount, as forfeiture presupposes that the buyer has refused delivery or failed to perform obligations without reasonable cause.

10. Two preliminary factual events recorded in the Impugned Judgment require specific attention because they materially inform the equities:

10.1 On 07.01.2025, during the hearing of I.A. No.31220/2024, the Defendant, through senior counsel, expressly represented to the Court that he was ready and willing to refund the entire amount of Rs.40



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Lakhs with interest; the Plaintiff accepted that position and agreed that the suit could be disposed of in those terms. The order dated 07.01.2025 records these statements and directs refund at 12% simple interest, with the Defendant to bring a pay order or specify the timeframe on the next date. Those recorded statements are part of the judicial record and bear upon the parties' conduct.

10.2 On 10.01.2025 the Defendant's counsel stated that the Defendant, being abroad, was unable to give instructions as to the timeframe for refund and declined to specify any timeline. The Single Judge therefore recalled the order dated 07.01.2025 so as not to prejudice the Plaintiff, and restored the parties to their original positions. The recall did not erase the antecedent representation; the fact that the Defendant represented a willingness to refund and later resiled is material to the assessment of the Defendant's bona fides and the equities.

11. These recorded events must be read in conjunction with I.A. No.5759/2025 filed by the Defendant on 07.02.2025 under Section 16(c) of the SRA seeking a direction that the Plaintiff deposit the balance consideration of Rs. 2.90 Crores in Court to be placed in an interest-bearing FDR. I.A. 5759/2025 makes no reference to I.A. 31220/2024 nor to the orders dated 07.01.2025 / 10.01.2025, nor does it seek to honour or vary the earlier undertaking. The omission to refer to the earlier recorded undertaking and the subsequent recall is material. It highlights an inconsistency in the Defendant's judicially-noted positions and is a relevant circumstance in balancing equities.



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12. It is also relevant that prior to institution of CS(OS) No.131/2022, the Plaintiff served a notice dated 04.01.2022 calling upon the Defendant for demarcation, fencing and construction of an independent gate providing an exclusive entry and exit to the suit plot. The Defendant did not reply to that notice. Consequently, the Plaintiff's request for demarcation and an independent gate remained unrebutted on the record and formed the basis for appointment of a Local Commissioner and the Local Commissioner's report dated 31.01.2023. The Defendant's non-pleading on these points is an important evidentiary circumstance. The Defendant also did not file his written statement in the suit.

13. The foregoing factual matrix leads to three interlinked points of law and fact that determine the present appeal.

A. Absence of forfeiture clause: The ATS does not contain a contractual clause authorising the Defendant to forfeit the advance of Rs.40 Lakhs. As a matter of settled law, an amount described as "advance" or part-payment cannot be summarily forfeited unless the contract clearly characterises the payment as earnest/security for due performance.

i. In *Satish Batra v. Sudhir Rawal* (2013) 1 SCC 345, the Supreme Court held that to justify the forfeiture of advance money being part of 'earnest money', the terms of the contract should be clear and explicit. The Court emphasized that earnest money is paid at the time when the contract is entered into and serves as a pledge for its due performance by the depositor to be forfeited in case of non-



performance by the depositor.

ii. In *K.R. Suresh v. R. Poornima & Ors.*¹, the Supreme Court reiterated that the forfeiture of advance money as part of earnest money can only be justified if the terms of the contract are clear and explicit. The Court emphasized that an amount which is in the nature of an advance or serves as part-payment of the purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract.

The party seeking forfeiture must show either (i) an express contractual right to forfeit the sum as earnest, or (ii) that the sum was indeed intended as earnest/security by clear and explicit terms and surrounding circumstances. No such positive contractual foundation for forfeiture exists here.

B. Buyer's statutory protection under Section 55(6)(b) of the TPA:

Section 55(6)(b) of the TPA engrafts on a buyer who has properly paid part of the purchase price a statutory charge on the vendor's interest in the property and, where the buyer properly declines delivery, a right to interest on the amount paid and such other consequences as the provision specifies. Where the buyer's refusal to accept delivery is *bona fide* (for example, because of lack of independent demarcation and pending rival claims affecting possession), the vendor cannot defeat that protection by declaring the advance forfeited in the absence of a clear contractual entitlement to do so.

¹ 2025 INSC 617



Section 55(6)(b) of the TPA reads as under –

“Section 55(6)(b) – unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, to the extent of the seller’s interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.”

In the present case, the Plaintiff had paid Rs.40 Lakhs as part of the consideration, whereas the balance consideration of Rs.2.90 Crores remained unpaid. In the absence of a contractual forfeiture clause in the ATS, the statutory protection afforded under Section 55(6)(b) of the TPA overrides the Defendant’s claim for forfeiture.

C. Equity and conduct of the parties – undertakings, recall and inconsistent applications: The Defendant’s recorded undertaking on 07.01.2025 to refund with interest, followed by an inability to specify a timeframe on 10.01.2025 and the subsequent filing of I.A. No.5759/2025 without reference to the earlier positions, are circumstances that properly inform the learned Single Judge’s view of the equities and the Defendant’s *bona fides*. A party who places a positive statement before the Court is under an obligation to act consistently; when a party resiles and declines to perform an undertaking, the Court is entitled to consider that conduct in framing equitable relief.

14. Two additional procedural-evidentiary points follow from the record and bear on the question whether a trial on the issue of refund was necessary.



A. Un-rebutted facts on demarcation/access: The Plaintiff's notice dated 04.01.2022 calling for demarcation, fencing and construction of an independent gate was not answered and no written statement was filed on these issues which were then in large measure determinative of whether delivery in the existing condition would be acceptable. The Local Commissioner's report subsequently corroborated the factual position that independent demarcation / entry and exit were not in place. Where a material factual contention is unrebutted and has been judicially verified by a Local Commissioner, the Court may, in a proper case, pronounce judgment on that basis where no triable issue remains.

B. No claim pleaded or pressed by the Defendant that it lacked opportunity to adduce evidence on demarcation or related matters: Nowhere in the record does the Defendant contend that it was denied an opportunity to be heard on the factual point of demarcation/entry (*for example, by saying it could not file a written statement or sought adjournment to produce evidence*). The Defendant did not raise lack of opportunity to lead evidence in the present Appeal.

15. The combined effect of Paragraph Nos.13 and 14 is that, on the material placed before the learned Single Judge and this Court, no triable issue of fact remained that would make a trial on the discrete question of refund necessary. The receipt of Rs.40 Lakhs by the Defendant is admitted; the Plaintiff limited his claim during the proceedings to refund; the Local Commissioner's report, the unrebutted notice and the Defendant's non-pleading on demarcation meant the factual foundation for the Plaintiff's refusal to accept



delivery was established on the record; and the Defendant's earlier offer to refund and subsequent resiling further reduced any need for extensive factual inquiry.

16. This conclusion is consistent with the principle that where parties are not at variance on any material question of fact or law, Order XV Rule 1 of the CPC empowers the Court to pronounce judgment without proceeding to a full trial. The learned Single Judge applied that principle after scrutinising pleadings, admissions and the Local Commissioner's report and rightly found that no triable issue of fact survived in relation to the narrow relief of refund.

17. We turn briefly to the contested issue of interest and the use of Section 22(1)(b) of the SRA. For reference, Section 22(1)(b) of the SRA, reads as under –

“Section 22(1)(b) – any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or¹ [made by] him, in case his claim for specific performance is refused”

Section 22(1)(b) of the SRA permits a buyer who sues for specific performance to seek in an appropriate case other reliefs including refund of earnest money or deposit if specific performance is refused. **K.R. Suresh** (*supra*) and other authorities explain that while a specific claim for refund is required, the proviso to Section 22(2) of the SRA permits amendment at any stage; further, where the plaintiff has, in the course of proceedings, abandoned specific performance and accepted a refund, the Court is not disabled from granting it. In this case, the Plaintiff expressly accepted refund during proceedings held on 07.01.2025 and the learned Single Judge, after review of the record, found Section 22 of the SRA principles satisfied i.e., that



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refund was an appropriate ancillary relief and that the record permitted final determination without further trial.

18. For the avoidance of doubt, nothing we state should be read as undermining the settled proposition that where a contract clearly and explicitly allows forfeiture and the amount forfeited is reasonable or demonstrably justifiable as compensation for vendor's loss, a vendor may be entitled to retain (or appropriate) the deposit. That is not this case: the ATS contains no forfeiture clause; the payment was part of the purchase money; the Plaintiff's *bona fide* refusal to accept delivery was supported by the Local Commissioner's report and unrebutted pleadings; and the Defendant's conduct in proceedings (undertaking and resiling; subsequent inconsistent relief) weakens any equitable case for forfeiture.

19. In these circumstances the learned Single Judge's findings that the Plaintiff properly declined delivery; that the refund of Rs.40 Lakhs with interest @ 12% p.a. is warranted; and that a statutory charge under Section 55(6)(b) of the TPA should be declared until repayment, are supported by the record and the applicable law.

20. Accordingly, taking into account –

- i. The absence of a contractual forfeiture clause,
- ii. The statutory protection in Section 55(6)(b) of the TPA,
- iii. The Local Commissioner's report and unrebutted demand for demarcation (legal notice dated 04.01.2022 and absence of written statement), and;



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iv. The Defendant's recorded undertaking on 07.01.2025 and subsequent inconsistent conduct,

This Court finds no justification to interfere with the Impugned Judgment.

21. Hence, the present Appeal is dismissed. Pending applications also stand dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

OCTOBER 17, 2025

s.godara/pal