



2025:DHC:11265-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 10.12.2025

+ RFA(OS) 67/2018
M/S ANGAD DEVELOPERS PVT LTDAppellant

Through: Mr. Rajesh Yadav, Sr. Adv.
with Mr. Naresh Gupta, Mr.
Rachit Gumber, Adv.

versus

M/S VERSATILE COMMOTRADE PVT LTDRespondent

Through: Mr. Ratan K. Singh, Sr. Adv.
with Mr. Nikhilesh Krishnan,
Adv.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T (O R A L)

ANIL KSHETARPAL, J.

1. Through the present Appeal, the Appellant assails the correctness of the judgment and order dated 20.07.2018 [hereinafter referred to as 'Impugned Judgment'] passed by the learned Single Judge, wherein the Appellant/Defendant has been called upon to refund a sum of Rs.75,00,000/- along with interest at the rate of 9% per annum from 13.03.2014 till the date of payment to the Respondent/Plaintiff. Additionally, for the remaining amount in the sum of Rs. 1,25,00,000/-, the leave to defend application has been allowed conditionally, i.e., subject to furnishing some security in the form of immovable property or a bank guarantee to the satisfaction of this Court in respect of the said amount of Rs.1,25,00,000/-.

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RFA(OS) 67/2018

Page 1 of 7



2025:DHC:11265-DB



2. For the sake of convenience, the parties before this Court shall be referred in accordance with their status and rank before the learned Single Judge.

3. Originally, the Defendant was the owner of the property admeasuring 14 bighas and 12 biswa, bearing Khasra Nos.4/12, 7, 8/2, 22 and 23 situated in Village Ujjwa, Nazafgarh, Delhi [hereinafter referred to as 'suit land'].

4. The Defendant entered into an Agreement to Sell ('ATS') with respect to the suit land, on 21.04.2013, on receipt of earnest money in the sum of Rs.1,25,00,000/-, out of the total sale consideration of Rs.10,37,20,833/-. It was stipulated in the ATS dated 21.04.2013 that the remaining payment shall be made by the Plaintiff within a period of 80 days from the date of execution of the ATS. It was further stipulated that if the Plaintiff fails to pay the balance amount, the amount of earnest money, i.e., Rs.1,25,00,000/-, shall be forfeited.

5. Thereafter, the Defendant requested for further payment of Rs.75,00,000/-, which was acceded to by the Plaintiff. The said additional amount of Rs.75,00,000/- was paid by the Plaintiff to the Defendant in two instalments. A payment of Rs.50,00,000/- was made on 11.05.2013 and another payment was also made of Rs.25,00,000/-. However, the date of receipt of the said sum is not clear.

6. Further, on 16.09.2013, the Defendant issued a notice to the Plaintiff stating that the earnest money stood forfeited on account of the Plaintiff's failure to pay the balance sale consideration and that the Agreement stood discharged. Consequently, the Defendant proceeded



2025:DHC:11265-DB



to forfeit the entire sum of Rs.2,00,00,000/-. The Plaintiff, through counsel, replied on 25.09.2013, challenging the forfeiture and seeking issuance of the No Objection Certificate ('NOC') for execution of the sale deed. A further notice dated 18.11.2013 sought a refund of Rs.2,18,00,000/-, to which no response was received from the Defendant.

7. Subsequently, the Plaintiff filed the suit, CS(OS) 802/2014, under Order XXXVII of the Code of Civil Procedure, 1908 [hereinafter referred to as 'Order XXXVII'] seeking a decree for refund/recovery of Rs.2,00,00,000/- along with interest at the rate of 16.25% per annum.

8. The Defendant filed its leave to defend application, i.e., I.A. No.14384/2014, before the learned Single Judge. The Defendant contended, in its application for leave to defend, that a suit under Order XXXVII is not maintainable for recovery of money paid under an ATS. It was further asserted that despite repeated calls to pay the balance sale consideration after issuance of the NOC, the Plaintiff failed to do so. According to the Defendant, time was the essence of the contract, and the Plaintiff's non-performance disentitles him from any recovery.

9. The learned Single Judge, upon appreciation of the pleadings and documents attached, came to a *prima facie* conclusion that the Plaintiff defaulted in payment of the balance sale consideration and performance of its part of the contract. Thus, the learned Single Judge proceeded to pass a decree of Rs.75 lakhs, which was the additional amount paid to the Defendant in addition to the amount of earnest

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CSA(OS) 67/2018

Page 3 of 7



2025:DHC:11265-DB



money. Further, the leave to defend application was conditionally granted to the Defendant subject to furnishing of some security in the form of immovable property or a bank guarantee to the satisfaction of the Court in respect of the sum of Rs.1,25,00,000/-.

10. Heard learned senior counsel representing the parties and with their able assistance, perused the paperbook.

11. Learned senior counsel representing the Appellant/Defendant submits that once there is a *prima facie* finding by the learned Single Judge that the Plaintiff defaulted in performance of the contract, the decree for recovery of Rs.75,00,000/- could not be passed. Learned senior counsel submits that the additional amount of Rs.75,00,000/- was a surety towards the performance of the responsibilities put on the Plaintiff. Hence, the said amount is also liable to be forfeited. In any case, the decree cannot be passed in a summary manner. *Lastly*, learned senior counsel submits that the Defendant could not be burdened with the responsibility of furnishing security for immovable property or a bank guarantee for Rs.1,25,00,000/-, particularly when the learned Single Judge *prima facie* concluded that the Plaintiff has committed the default.

12. *Per contra*, learned senior counsel representing the Respondent/Plaintiff submits that the Plaintiff is entitled to a refund of Rs.2,00,00,000/- and that even the amount of Rs.1,25,00,000/- could not be forfeited. In this regard, learned senior counsel relies on the judgment of the Supreme Court in ***Kailash Nath Associates v. Delhi***



2025:DHC:11265-DB



Development Authority & Anr.¹

13. By now, it is well settled that the owner is entitled to forfeit the amount of earnest money and not additional payment. In ***Satish Batra v. Sudhir Rawal²*** and ***Videocon Properties Ltd. v. Dr. Bhalchandra Laboratories & Ors.³***, the Supreme Court has elucidated the distinction between earnest money and any additional sum paid at the time of execution of an ATS. Earnest money is essentially a security deposit furnished by the proposed purchaser to assure the proposed seller of the purchaser's commitment to conclude the transaction. If the transaction culminates successfully, such earnest money stands adjusted towards the sale consideration. Further, the Court held that the earnest money is liable to be forfeited once the intended purchaser fails to perform his part of the contract. Reference may also profitably be made to the judgments of the Punjab and Haryana High Court in ***Om Prakash & Ors. v. M/s Ganga Developers Pvt Ltd.⁴*** and ***Bhupinder Kaur & Ors. v. Pawan Batra & Ors.⁵***

14. More recently, in ***Desh Raj and Ors. v. Rohtash Singh⁶***, the Supreme Court reiterated that where the purchasers fail to perform their part of the contract, the consequence in law is the forfeiture of the earnest money.

15. Further, learned senior counsel representing the Respondent relies on the judgment of the Supreme Court in ***Kailash Nath***

¹ (2015) 4 SCC 136

² (2013) 1 SCC 345

³ (2004) 3 SCC 711

⁴ 2020:PHHC:008884

⁵ 2023:PHHC:109193

⁶ (2023) 3 SCC 714



2025:DHC:11265-DB



Associates (supra). On a careful consideration of the said decision, it emerges that the Supreme Court was examining a public auction in which 25% of the total sale consideration had been deposited as earnest money and part payment. Owing to repeated extensions of time for the depositing of the remaining amount, prolonged pendency before the authorities, and the absence of any forfeiture in respect of other similarly situated allottees, the Court concluded that time was never treated as the essence of the contract, rendering the forfeiture of the amount by a government agency unjustified. The said decision is, therefore, clearly distinguishable, as the default in that case was attributable to the public authority (Defendant) and not to the purchaser.

16. From the reading of the ATS dated 21.04.2013, it is evident that Rs.1,25,00,000/- was the amount of earnest money and Rs.75,00,000/- was only the additional payment, which was subsequently paid. It is also evident from the ATS dated 21.04.2013 that complete earnest money was paid by the Plaintiff on the date of the ATS and there was no stipulation that the Plaintiff would be required to pay an additional amount towards earnest money.

17. Further, with regard to the direction of the learned Single Judge to the Defendant to furnish security of immovable property or bank guarantee for the remaining sum of Rs.1,25,00,000/-, there is absolutely no justification, particularly when the learned Single Judge *prima facie* formed an opinion to the effect that the Plaintiff has committed the default. Moreover, if ultimately the Plaintiff succeeds,



2025:DHC:11265-DB



there will be a charge upon the suit land for recovery of the amount as per the provisions under Section 55(6) of the Transfer of Property Act, 1882.

18. Keeping in view the aforesaid discussion, the present Appeal is partly allowed. The direction issued to the Defendant to furnish security, either by way of immovable property or by furnishing a bank guarantee, to the extent of Rs.1,25,00,000/- while granting conditional leave to defend, is set aside. However, the remaining direction requiring the Defendant to pay a sum of Rs.75,00,000/- along with interest stands affirmed. The Defendant is held entitled to unconditional leave to defend the suit.

19. The present Appeal stands disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

DECEMBER 10, 2025

jai/sh