IN THE COURT OF SH. NEERAJ SHARMA
DISTRICT JUDGE-04(CENTRAL), TIS HAZARI COURTS,
DELHI

CS DJ NO. 1891 OF 2017

IN THE MATTER OF:

Smt. Bimla Devi (since deceased)
W/o Sh. Narinder Kumar @ Narinder Kumar Harit
R/o I-16/528-I, Gali No. 15, Bapa Nagar,
Karol Bagh, New Delhi-110005
Through her Legal Representatives:
(i) Sh. Narinder Kumar @ Narinder Kumar Harit (husband)
(ii) Sh. Varun Harit; (iii) Sh. Vineet Harit;
(iv) Sh. Piyush Harit; (v) Ms. Kunika Harit
All R/o I-16/528-I, Gali No. 15, Bapa Nagar,
Karol Bagh, New Delhi-110005 ...Plaintiffs

Versus

1. Sh. Gaurav Gupta S/o Late Sh. Roop Chand Gupta
   R/o 4578/52, Reghar Pura, Karol Bagh, New Delhi-110005
   2nd Address: FF-47, Mangal Bazar, Laxmi Nagar, Delhi
2. Sh. Shyam Lal S/o Late Sh. Hoob Lal
3. Sh. Keshav Kumar S/o Late Sh. Hoob Lal
   Both R/o I-16/522, Bapa Nagar, Military Road, Karol Bagh, New Delhi

...Defendants

Date of Institution	:	22.05.2017
Final Arguments heard on	:	19.09.2025
Date of Judgment	:	30.03.2026

JUDGMENT

1. The present judgment shall dispose of the suit for specific

performance of agreement to sell dated 20.11.2013, for permanent injunction, and for delivery of possession filed by Smt. Bimla Devi (since deceased), now prosecuted through her legal representatives, namely Sh. Narinder Kumar @ Narinder Kumar Harit (husband), Sh. Varun Harit, Sh. Vineet Harit, Sh. Piyush Harit (sons) and Ms. Kunika Harit (daughter) (*hereinafter collectively the 'plaintiffs' and the original plaintiff Smt. Bimla Devi referred to as the 'original plaintiff'*) in respect of Flat No. 305, Third Floor, area measuring 46 sq. yds., portion of property bearing No. I-16/522, Bapa Nagar, Military Road, Karol Bagh, New Delhi-110005 (*hereinafter the "suit flat"*) against Sh. Gaurav Gupta, Sh. Shyam Lal and Sh. Keshav Kumar (*hereinafter defendants no. 1, 2 and 3 respectively*).

<u>FACTS PLEADED IN THE PLAINT (IN BRIEF)</u>

2. It is averred that one Smt. Yashoda Devi, wife of Late Sh. Hoob Lal, was the owner of property bearing No. I-16/522, Bapa Nagar, Military Road, Karol Bagh, New Delhi (*hereinafter the "said property"*). It is further averred that defendant nos. 2 and 3, being her sons and attorneys, entered into two separate collaboration agreements each dated 06.08.2013 with defendant no. 1 for reconstruction and development of the said property. Under the terms of the said agreements, defendant no. 1, described as the second party therein, undertook to raise construction from basement up to the fourth floor at his own expense,

including the cost of material and labour. In consideration thereof, defendant nos. 2 and 3 agreed to hand over the third and fourth floors, without roof rights, to defendant no. 1 upon completion of construction. It was also agreed that till completion of construction, defendant no. 1 would arrange alternative rented accommodation for defendant nos. 2 and 3 at his own expense. The agreements further contemplated that upon completion of construction, possession of the third and fourth floors would be handed over to defendant no. 1 and appropriate documents would be executed in his favour.

3. It is further pleaded that the proposed construction consisted of six flats each on the third and fourth floors. According to the original plaintiff, the area of the ground floor was approximately 265 square yards, whereas from the first floor onwards the constructed area was proposed to be approximately 300 square yards. It is averred that defendant no. 1 represented that out of the flats to be constructed, six flats would be sold and six flats would be retained by him for himself and for his near relations. It is averred that the area of each flat on the third and fourth floor was to be constructed on a land measuring 50 sq. yards.

4. It is further averred that pursuant to the collaboration arrangement, defendant nos. 2 and 3 vacated the said property and handed over possession thereof to defendant no. 1 for the purpose of reconstruction and shifted to

rented accommodation at House No. 674, First Floor, Military Road, Karol Bagh, New Delhi.

5. The original plaintiff further states that thereafter she entered into an agreement to sell (Bayana) dated 20.11.2013 with defendant no. 1 in respect of Flat No. 305, Third Floor in the said property for a total sale consideration of Rs. 22,00,000/-. At the time of execution of the agreement, a sum of Rs. 6,00,000/- is stated to have been paid by the original plaintiff to defendant no. 1 by way of bayana/earnest money. It is pleaded that defendant no. 1 undertook to complete the construction and execute documents within a period of twelve months, i.e., on or before 19.11.2014. The original plaintiff claims that thereafter, the construction in the said property commenced and she made the payments towards the sale consideration as demanded by defendant no. 1 from time to time, against receipt/acknowledgement.

6. It is further averred that subsequently disputes arose between defendant no. 1 and defendant nos. 2 and 3, and defendant no. 1 allegedly failed to make payment of rent to defendant nos. 2 and 3, as agreed. According to the original plaintiff, although the basic structure of the building was raised, the finishing work remained incomplete and construction activities eventually stopped. It is stated that defendant nos. 2 and 3 are presently in possession of the said property in a semi-finished condition.

7. The original plaintiff further pleads that upon approaching defendant no. 1 regarding completion of the project and delivery of possession, defendant no. 1 expressed financial difficulties. It is stated that despite the fact that the balance sale consideration was otherwise payable at the stage of possession, the original plaintiff, acting upon the assurances of defendant no. 1 and his brother-in-law namely Sh. Nitish Gupta, given in writing, paid the entire balance sale consideration under an Ikrarnama dated 25.03.2015 executed between the original plaintiff and defendant no. 1,. Under the said arrangement, possession of the suit property was allegedly promised to be delivered by 14.11.2015. It is further pleaded that defendant no. 1 had assured that in the event of failure on the part of defendant no. 1 to deliver possession by the aforesaid stipulated date, the original plaintiff would be entitled to complete the construction of the suit property from the funds realized through sale of the flats belonging to defendant no. 1 or his close relatives situated on the third and fourth floors of the said property. It is further pleaded that on the assurance of defendant no. 1 and Sh. Nitish Gupta and towards the final tranche of the sale consideration, four cheques, drawn on the bank account of the husband of the original plaintiff in favour of M/s Manoj Building Material Suppliers, were issued at the instance of defendant no. 1, the said cheques being cheque no. 564996 dated 20.06.2015 for Rs. 10,000/-, cheque no. 564997 dated 21.06.2015 for Rs. 20,000/-, cheque no.

564999 dated 21.06.2015 for Rs. 10,000/- and cheque no. 565000 dated 22.06.2015 for Rs. 10,000/-.

8. It is also averred that prior to entering into the agreement to sell dated 20.11.2013, the original plaintiff had consulted defendant nos. 2 and 3 who had confirmed the authority and entitlement of defendant no. 1 in respect of the flats proposed to be constructed and sold. The original plaintiff further states that when possession was not delivered by defendant no. 1 even after the lapse of considerable time, then apprehending mischief by defendant no. 1 individually or jointly with defendant nos. 2 and 3, she caused a legal notice dated 29.04.2017 to be issued to all the defendants, which is further stated to have been received back with the postal remarks "refused" and "not found". The original plaintiff claims that throughout the subsistence of the agreement to sell, she remained ready and willing to perform her part of the contractual obligations, however, defendant no. 1 failed to perform his obligations under the agreement to sell dated 20.11.2013.

9. On the basis of the aforesaid averments, the original plaintiff has sought a decree of specific performance of the agreement to sell dated 20.11.2013 against defendant no. 1, seeking specific direction for defendant no. 1 to execute the sale deed in respect of the suit flat. In the alternative, the original plaintiff has prayed for refund of Rs. 22,00,000/- along with interest at the rate of 24% per annum and damages quantified at Rs. 20,00,000/-. The

original plaintiff has also sought a decree of permanent injunction against the defendants restraining them from creating any third-party interest in the suit flat, together with the consequential relief of delivery of actual, vacant and physical possession of the suit flat.

PROCEEDINGS OF THE CASE

10. Defendant nos. 2 and 3 failed to file their written statement within the prescribed period despite opportunity having been granted. Consequently, their right to file the written statement was closed vide order dated 07.02.2018. Thereafter, an application moved on their behalf seeking setting aside of the said order also came to be dismissed vide order dated 11.02.2019. As such, the written statement on record has been filed only by defendant no. 1, who alone contested the suit on merits.

11. During the pendency of the suit, the original plaintiff Smt. Bimla Devi expired on 26.04.2021. An application under Order XXII Rule 3 read with Section 151 of the Code of Civil Procedure, 1908 was thereafter moved on behalf of her legal representatives, namely her husband Sh. Narinder Kumar @ Narinder Kumar Harit, her three sons Sh. Varun Harit, Sh. Vineet Harit, Sh. Piyush Harit, and her daughter Ms. Kunika Harit, for being brought on record as legal representatives of the original plaintiff. The said application came to be allowed by this court vide order dated 14.09.2021 and the present plaintiffs stood

substituted in the present case.

<u>WRITTEN STATEMENT OF DEFENDANT NO. 1 (IN BRIEF)</u>

12. Defendant no. 1 contested the suit by filing his written statement. By way of preliminary objections, defendant no. 1 has urged that the suit, as instituted, is not maintainable in the eye of law inasmuch as the original plaintiff has approached this court without coming with clean hands and is alleged to have suppressed and concealed the true and material facts. It is further contended that the suit has been filed by the original plaintiff in collusion with defendant nos. 2 and 3, the principal motive whereof is alleged to be to grab the hard-earned money invested by defendant no. 1 in raising the construction over the suit property. On these premises, the suit is sought to be dismissed at the very threshold, the defendant having relied upon the well-known equitable maxim that a person who seeks equity must do equity first.

13. Coming to the merits of the case, the execution of the two collaboration agreements, both dated 06.08.2013, entered into separately by defendant no. 1 with defendant nos. 2 and 3, as well as the agreement to sell dated 20.11.2013 executed between the original plaintiff and defendant no. 1, has not been disputed by defendant no. 1. However, he has resisted the present suit by alleging that the original plaintiff had colluded with defendant nos. 2 and 3 along with other prospective purchasers. It is specifically pleaded that pursuant to the said collusion, defendant nos. 2 and 3 turned him out from the said property and did not permit him to continue the work thereon, and therefore, according to him, the original plaintiff and defendant nos. 2 and 3 themselves are responsible for stoppage of the construction work. It is further averred by defendant no. 1 that he had, in fact, completed approximately 80% of the construction work in the suit property by the relevant point of time, the structure having been raised in entirety, railings having been installed, marble and tiles having been fixed, wooden frames, electricity wiring and sanitary work having been completed throughout the building, and that hardly 20% of the work was pending, when defendant nos. 2 and 3, allegedly in collusion with the original plaintiff and other buyers, prohibited the entry of his labourers into the suit property and did not allow him to complete the construction work. Defendant no. 1 has further averred that the original plaintiff and other buyers made payments in the hands of defendant nos. 2 and 3 and receipts in respect thereof were got signed from him. It is further averred that the original plaintiff and defendant nos. 2 and 3 acted in concert so as to compel defendant no. 1 to relinquish his rights in the constructed property, whereafter defendant nos. 2 and 3 completely occupied the property and prevented the entry of defendant no. 1 and his labourers therein. According to defendant no. 1, defendant nos. 2 and 3 also colluded with other buyers with mala fide intention to stop the construction work, snatched the machinery and instruments belonging to the labourers, and prevented them from completing the remaining work. It has been the further plea of defendant no. 1 that defendant nos. 2 and 3 and their associates removed certain machinery and material lying in the suit property, thereby causing him a loss of approximately Rs. 8,00,000/-.

14. Defendant no. 1 has admitted that he has appended his signatures upon the Ikrarnama/Vachanpatra dated 25.03.2015, but has averred that the said document was got executed only from him and was not signed by defendant nos. 2 and 3. Defendant no. 1 has further pleaded that the entire stoppage of construction work was orchestrated at the instance of one Sh. Deepak Gupta and was carried out by defendant nos. 2 and 3 acting in concert with the original plaintiff and other prospective purchasers. It is also pleaded that the original plaintiff has not paid the full and final agreed payment in respect of the suit flat and balance remains to be paid out of the agreed consideration amount. Defendant No. 1 has also specifically denied having received the payments allegedly made on 20.06.2015 for a sum of Rs. 10,000/-, on 21.06.2015 for sums of Rs. 20,000/- and Rs. 10,000/-, and on 22.06.2015 for a sum of Rs. 10,000/-.

15. On the question of his title and capacity to convey the suit flat, the position taken by defendant no. 1 in his written statement is, in substance, that he is not the absolute owner of the suit property and that the title in the suit property

continues to vest in defendant nos. 2 and 3, who alone are competent to execute the eventual sale deed in favour of the original plaintiff and the other respective flat-purchasers. It is the express assertion of defendant no. 1 that he is, at most, a confirming party to the eventual conveyance, and that he has no objection to the execution of the sale deed or transfer documents in the names of the respective flat-purchasers by defendant nos. 2 and 3, and is willing to give his written consent to that effect. Defendant no. 1 has further asserted that he has no right to alienate, transfer, mortgage, sell or in any manner create third-party interest in the suit property, and that he has not threatened to do so. It is also the case of defendant no. 1 that, of the remaining six flats falling to his share on the third and fourth floors under the collaboration agreements, one of them has been booked by Ashish and the remaining five stand booked through Sh. Nitish Gupta. Defendant no. 1 has further denied having received any legal notice dated 29.04.2017. Premised upon the foregoing, defendant no. 1 has prayed for dismissal of the suit with costs.

REPLICATION

16. The original plaintiff, in her replication, reiterated the contents and averments made in the plaint and specifically denied the allegations of collusion levelled by defendant no. 1. Though it was admitted that certain payments were physically received by Sh. Deepak Gupta, it was specifically pleaded that the said amounts were received by him solely on the instructions, authority, and on behalf of defendant no. 1.

ISSUES

17. Vide order dated 16.04.2019, the following issues were framed:

1. ***Whether defendant no. 2 and 3, the plaintiff, other buyers and Mr. Deepak Gupta are responsible for stoppage of work of construction in collusion with each other after completion of 80% of work in the suit property of removal of machine/material and obstruction of labourers and defendant no. 1? OPD-1***
2. ***Whether plaintiff and buyer has made payment to defendant no. 2 and 3 and has taken receipt from defendant no. 1 of the suit property and its effect? OPD-1***
3. ***Whether plaintiff is entitled to specific performance of agreement to sell dated 20.11.2013 in respect of flat no. 305, 3rd floor, in property no. I-16/522, Bapa Nagar, Military Road, Karol Bagh, New Delhi-110005 in terms of collaboration agreement dated 06.08.2013 on land measuring 50 sq. yds.? OPP***
4. ***Whether plaintiff is entitled in the alternative to recovery of Rs.22 lakh against the defendant no. 1 alongwith pre-suit and pendente-lite and future interest***

@ 24% p.a. on the due amount? OPP

5. *Whether plaintiff is entitled to permanent injunction against the defendant and their agents from alienating, transferring or creating any encumbrance on the suit property referred under issue no. 3 above? OPP*
6. *Whether plaintiff is entitled to damages on account of non-performance of agreement to sell dated 20.11.2013 for a sum of Rs.20 lakh? OPP*
7. *Whether plaintiff has made payment to defendant no. 1 for a sum of Rs.10,000/- vide cheque no. 564996 dated 20.06.2015, for a sum of Rs.20,000/- vide cheque no. 564997 dated 21.06.2015, for a sum of Rs.10,000/- vide cheque no. 564999 dated 21.06.2015 and for a sum of Rs.10,000/- vide cheque no. 565000 dated 22.06.2015? OPP*
8. *Relief.*

PLAINTIFFS' EVIDENCE

18. On behalf of the plaintiffs, Sh. Varun Harit, son of the deceased original plaintiff and one of her legal representatives, was examined as PW-1 on 09.08.2024. He tendered his evidence by way of affidavit, exhibited as Ex. PW1/A, in his own capacity as legal representative and as the constituted attorney of the remaining legal representatives in terms of the General Power of Attorney dated 18.01.2024 (Ex. PW1/B). PW-1 further relied upon various documents, the details whereof are set out in the table below for ready reference:

S. No.	*Particulars*	*Exhibits*
1.	*General Power of Attorney dated 18.01.2024 executed by Sh. Vineet Harit, Sh. Piyush Harit and Ms. Kunika Harit in favour of Sh. Varun Harit*	*Ex. PW1/B*
2.	*Notice to produce documents dated 19.08.2019 with postal receipt dated 19.08.2019*	*Ex. PW1/1 and Ex. PW1/2*
3.	*Collaboration agreement dated 06.08.2013 (between Defendant No. 1 & Sh. Shyam Lal/Defendant No. 2)*	*Ex. PW1/3*
4.	*Collaboration agreement dated 06.08.2013 (between Defendant No. 1 & Sh. Keshav Kumar/Defendant No. 3)*	*Ex. PW1/4*
5.	*Sketch of construction (photocopy)*	*Ex. PW1/5*
6.	*Original Agreement to Sell (Bayana) dated 20.11.2013 between the original plaintiff and defendant no. 1 with the payments made from time to time having been recorded at the back page of the agreement*	*Ex. PW1/6*
7.	*Original Final Payment Receipt dated 24.06.2015 executed by defendant no. 1*	*Ex. PW1/7*
8.	*Original Ikrarnama dated 25.03.2015 executed by defendant no. 1 in favour of the original plaintiff*	*Ex. PW1/8*
9.	*Original legal notice dated 29.04.2017*	*Ex. PW1/12*

S. No.	Particulars	Exhibits
	sent by the original plaintiff to the defendants	
10.	*Four original postal receipts dated 03.05.2017*	*Ex. PW1/13 to Ex. PW1/16*
11.	*Four envelopes containing the returned legal notice*	*Ex. PW1/17 (colly.)*

19. At this stage, it is noticed that learned counsel for defendant no. 1 had objected to the exhibition of the collaboration agreements dated 06.08.2013 executed between defendant no. 1 and defendant nos. 2 and 3 (Ex. PW1/3 and Ex. PW1/4) on the ground that the said documents were merely photocopies. However, the said objections are hereby rejected by this court inasmuch as the said documents are admitted documents by the defendant no. 1 by pleadings. It is further noticed that the documents at Ex. PW1/9 to Ex. PW1/11, which were referenced in the evidence affidavit (Ex. PW1/A), were not available on the court file at the time of tendering and have accordingly been treated as deleted. The aforesaid clarifications are being recorded so as to remove any possible confusion regarding the exhibit markings of the documents and to ensure accuracy, consistency, and proper identification of the documentary record forming part of the present proceedings.

20. PW-1 was duly cross-examined and discharged on

06.12.2024 (after part cross-examination on 09.08.2024 by counsel for defendant no. 1, and further cross-examination on 06.12.2024 by counsel for defendants no. 2 and 3). The plaintiffs' evidence stood closed on the same day pursuant to the separate statement of the learned counsel for the plaintiffs recorded to that effect.

DEFENDANT'S EVIDENCE

21. Defendant no. 1 examined himself as DW-1 on 06.12.2024 by tendering his evidence by way of affidavit, exhibited as Ex. DW1/A, and relied upon the two documents, the details whereof are set out in the table below for ready reference:

S.No.	*Particulars*	*Exhibits/ Mark*
1.	*Copy of FIR No. 1021/2015 dated 31.12.2015*	*Mark-A*
2.	*Photocopy of complaint dated 01.01.2016 made by Defendant No. 1 to DCP, Central, Daryaganj, New Delhi*	*Mark-B*

22. DW-1 tendered his evidence on 06.12.2024 and was thereafter cross-examined on 09.05.2025 (pre-lunch session) and 09.05.2025 (post-lunch session), and was discharged on 09.05.2025. Defendant no. 1's evidence stood closed on the same day pursuant to the separate statement of his counsel recorded to that effect. It is also recorded that an objection was taken by learned counsel

for defendant no. 1 at the end of the cross-examination dated 09.05.2025 to the effect that the entire cross-examination of DW-1 was beyond the pleadings of defendant no. 1. The said objection was directed to be considered at the time of final arguments and is appropriately dealt with as part of the present judgment in the context of the relevant issues.

23. No evidence was led on behalf of defendant nos. 2 and 3, as their right to file the written statement had already been closed vide order dated 07.02.2018.

24. This court has heard the arguments advanced on behalf of the parties at length and has carefully gone through the pleadings, evidence led by the parties, documents exhibited on record, written submissions filed by defendant no. 1 and the entire material available on the judicial file. The findings of this court on the issues framed are as follows:

ISSUE-WISE FINDINGS

25. Before adjudicating the issues on merits, this court considers it necessary to address a threshold question of law, namely, whether the Specific Relief Act, 1963 as it stood prior to the Specific Relief (Amendment) Act, 2018 (*'pre-amendment Act'*) shall apply, or whether the amended provisions (*'post-amendment Act', effective from 01.10.2018*) shall govern the present dispute.

26. The significance of this question is considerable inasmuch as under the pre-amendment regime, specific performance was a discretionary relief. Section 20(1) of the unamended Act read: *"The jurisdiction to decree specific performance is discretionary, and the court is not bound to grant such relief merely because it is lawful to do so."* The court was required to exercise sound judicial discretion guided by Sections 14 to 22 of the pre-amendment Act, and could decline specific performance on equitable grounds while directing refund or compensation.

27. Under the post-amendment regime, a paradigm shift was effected. Amended Section 10 made specific performance the rule and not an exception. The erstwhile Section 20 was substituted and Section 14(1) narrowed the grounds for refusal. Under the amended regime, refusal of specific performance requires positive justification under the narrow grounds of Section 14(1), unlike the pre-amendment position where the court was vested with wider discretion.

28. The Hon'ble Supreme Court in ***Katta Sujatha Reddy & Anr. v. Siddamsetty Infra Projects Pvt. Ltd. & Ors., Civil Appeal No. 5822 of 2022 (arising out of SLP (C) No. 13565 of 2021), decided on 25.08.2022***, held that the substituted Section 10 of the Specific Relief Act, as introduced by the 2018 Amendment, is prospective in nature and cannot be applied to transactions that took place prior to its coming into force. Thus, from the said decision, it is clear that the date of filing of the suit or the date of passing of the decree is not relevant to see if the pre-amendment Act or post-amendment Act would be applicable.

29. At this stage, it is noted that the said decision in ***Katta Sujatha Reddy (supra)*** was subsequently reviewed by the Hon'ble Supreme Court in ***Siddamsetty Infra Projects Pvt. Ltd. v. Katta Sujatha Reddy, 2024 INSC 861 (decided on 08.11.2024)***. However, while the review was allowed on the merits of that particular case (on the questions of limitation and specific performance), the review judgment did not specifically overrule the finding that the 2018 Amendment is prospective in nature.

30. Most significantly, the legal position has been further clarified and reaffirmed in the most recent pronouncement of the Hon'ble Supreme Court in ***Annamalai v. Vasanthi, 2025 INSC 1267, SLP (C) Nos. 26848-26849/2018, decided on 29.10.2025***. In this decision, the Hon'ble Supreme Court unequivocally held that the 2018 Amendment to the Specific Relief Act, 1963, which made the grant of specific performance a mandatory relief, has no retrospective effect and does not apply to suits or transactions that arose before its enforcement on 01.10.2018. The Hon'ble Supreme Court, while referring to its earlier decision in ***Katta Sujatha Reddy (supra)*** and the review thereof in ***Siddamsetty Infra Projects (supra)***, specifically observed that even in the review judgment, the

Hon'ble Court did not hold that the amended provisions would govern suits instituted prior to the 2018 Amendment, and that the review decision merely proceeded on the assumption that the grant of specific performance continued to be discretionary for suits instituted before the amendment. Thus, from the ratio of the above decisions, it is quite clear that the amendment, which substitutes judicial discretion with compulsion, cannot be applied to pending cases. In the present case, the agreement to sell (Ex. PW1/6) was executed on 20.11.2013 and the present suit came to be instituted on 22.05.2017. Thus, both the substantive events giving rise to the present *lis* had occurred prior to 01.10.2018, i.e., before the coming into force of the amended provisions of the Specific Relief Act, 1963. Accordingly, the present suit is governed by the pre-amendment regime of the Specific Relief Act, 1963. Consequently, this court continues to retain the discretionary jurisdiction vested under the erstwhile Section 20 of the unamended Act to either grant or refuse the relief of specific performance and, in the event of refusal thereof, to award compensation or direct refund in terms of Sections 21 and 22 of the Act.

Issue No. 1

Whether defendant no. 2 and 3, the plaintiff, other buyers and Mr. Deepak Gupta are responsible for stoppage of work of construction in collusion with each other after completion of 80% of work in the suit property of removal of machine/material and

obstruction of labourers and defendant no. 1? OPD-1

31. The onus to prove this issue squarely rests upon defendant no. 1. He has alleged in his written statement that the original plaintiff, defendants no. 2 and 3 colluded with other buyers and Sh. Deepak Gupta and in furtherance of that conspiracy, turned him out from the suit property, prohibited entry of labourers, snatched machinery and caused him losses to the tune of Rs. 8 lakhs. However, in support of these allegations, apart from his own testimony by way of affidavit of evidence (Ex. DW1/A), defendant no. 1 has not produced a single oral or documentary piece of evidence to prove the collusion. He has relied upon Mark-A (photocopy of a purported FIR dated 31.12.2015) and Mark-B (photocopy of a purported complaint dated 01.01.2016), but the originals were never produced and no witness from the concerned department was called to prove the factum of any complaint having been made to the authorities. As such, these documents remain unproved photocopies, entitled to no evidentiary weight. Significantly, Mark-A is, on its own showing, an FIR lodged by one Naresh Kumar against defendant no. 1 alleging cheating, far from supporting the defence of defendant no. 1, the said document, even if assumed to be admissible, rather undermines his defence.

32. Pertinently, in his cross-examination dated 09.05.2025 (post-lunch session), DW-1 made the following admission:

> ***"It is correct that I have not served any written notice to the plaintiff complaining that the plaintiff as talked me or my worker from carrying out the work in the property."***

33. (***Court Observation:*** Though in the said testimony the words "as talked me" have been recorded, however, having regard to the context and tenor of the deposition, this court is of the opinion that the same appears to be a typographical or recording error and ought to read as "has stopped me". The testimony is accordingly being construed and read in that manner, inasmuch as the expression "as talked me" does not convey any intelligible meaning in the context of the deposition.) Thus, by his own admission, defendant no. 1 did not lodge any complaint, written or oral, against the original plaintiff or any other person with respect to the alleged acts complained of by him. In the considered opinion of this court, such conduct appears highly improbable and inconsistent with ordinary human behaviour. A builder who claims to have invested substantial amounts in construction activities and asserts that a multi-storeyed building had already been completed to the extent of nearly 80% would ordinarily be expected to immediately raise grievances before the competent authorities or initiate appropriate legal proceedings if the construction work had in fact been forcibly stopped or obstructed pursuant to an alleged conspiracy. The complete absence of any contemporaneous complaint, protest, correspondence, or legal action on the part of defendant no. 1 materially

undermines the credibility of the case now sought to be projected. A person genuinely aggrieved by alleged illegal interference causing serious financial losses would ordinarily not remain silent or passive. The unexplained inaction on the part of defendant no. 1 therefore creates serious doubt regarding the genuineness of the allegations and renders the defence inherently improbable and lacking in bona fides.

34. Furthermore, DW-1 has also admitted that, as per the collaboration agreements, both dated 06.08.2013 (Ex. PW1/3 and Ex. PW1/4), he was to bear the rent of defendants no. 2 and 3 (cross-examination dated 09.05.2025), yet admitted having no receipt for any rent payment, claiming that the payments were made only in cash, and being unable to state how many times or how much he paid. The relevant excerpt from the cross-examination dated 09.05.2025 is reproduced as under:

> ***"Q. Is it correct that in pursuance to the collaboration agreement dated 06.08.2013 entered between you and defendant no. 2 & 3 separately amongst other covenants, you were to bear the rental of the premises, shall be occupied by the defendant no. 2 & 3 on vacation of the suit property?***
>
> ***Ans. It is correct.***
>
> ***Q. Can you produce any receipt/acknowledgement to show the receipt of payment of the premises occupied by defendant no. 2 & 3? If so, give the details of the same.***
>
> ***Ans. I do not have any receipt. I do not have any***

document. I made payment in cash. I cannot tell how many times I made the payments even approximately. I cannot tell the total amount if any paid on account of rent. I used to mention the same in the diary.

Q. Can you tell when you physically looked into the contents of the diary maintained by you as deposed in your statement?

Ans. I cannot tell even approximately the month, year etc. when I looked into the diary.

…that I have not placed any rent receipt of any period showing the payment of the rent of the tenanted premises occupied by defendant no. 2 & 3."

"Q. Is it correct that due to non-payment of rent to the landlord of defendant no. 2 & 3 of the aforesaid tenanted premises, the latter has to vacate the same?

Ans. I was directly not making the payment of rent to the landlord of the tenanted premises occupied by defendant no. 2 & 3, in fact, I was making payment of the rent to the defendant no. 2 & 3, in cash.

I do not recollect how many times and how much amount I used to pay on account of rent for onward payment to the landlord of defendant no. 2 & 3 of the aforesaid tenanted premises occupied by them. It is wrong to suggest that defendant no. 2 & 3 were to give up the tenancy in respect of the aforesaid premises for non-payment of rent of the same which was to be paid by me as per the agreement dated 06.08.2013."

35. This omission on the part of defendant no. 1 to even recall or disclose the particulars of payments allegedly made towards rent clearly reflects upon the credibility of his version of having made payments towards the rent as per the admitted collaboration agreements and indicates that defendant no. 1 himself failed to honour his obligations arising under the collaboration agreements. Had the payments in fact been regularly made and the obligations duly performed, defendant no. 1 would ordinarily have been expected to possess at least the basic particulars relating thereto or to place supporting material on record. In the considered opinion of this court, the inability of defendant no. 1 to furnish such particulars materially weakens the defence sought to be projected and instead probabilizes the case that the relationship between the parties, and in particular with defendants no. 2 and 3, deteriorated primarily on account of the failure of defendant no. 1 to fulfill his own contractual commitments towards the landowners. Such failure provides a far more natural, probable, and convincing explanation for the breakdown of relations between the parties than the theory of conspiracy and collusion now sought to be advanced. The plea of conspiracy, therefore, appears to be merely an afterthought intended to shift blame and deflect attention from the defendant's own defaults and omissions.

36. Furthermore, defendant no. 1, during the course of his cross-examination dated 09.05.2025 itself, has also admitted that the construction work was stopped on or about 22.09.2014. He has further admitted that no intimation regarding the alleged stoppage of construction was ever furnished, either to the original plaintiff or to defendants no. 2 and 3. The relevant part of the cross-examination is reproduced as under:

"Q. I put to you that the construction process was completely stopped by you on 22.09.2014. What do you have to say?

Ans. The construction process was stopped from some time in the year 2014. I do not admit/deny the date or month of stopping of the construction process.

I do not remember whether the construction process stopped as deposed by me today, was two months or four months or number of months prior or subsequent to the date as stated above i.e. 22.09.2014. It is correct that I did not intimated to the plaintiff about stoppage of work as deposed today nor I intimated to any local body or to defendant no. 2 or 3. I do not remember whether or not, I was facing financial stringency for raising the construction at the suit property. It is correct that I have not placed on record any iota of documentary evidence to indicate my financial potential 2 or 3 months prior to entering into the vachan patra dated 25.3.2015."

37. The aforesaid admissions clearly demonstrate that the stoppage of construction was not, in fact, attributable to the alleged collusion or conspiracy now sought to be projected by defendant no. 1. On the contrary, the categorical admission of defendant no. 1 that neither the original plaintiff nor defendants no. 2 and 3 were ever informed regarding the stoppage of construction itself indicates that the construction activities had ceased for reasons other than those presently sought to be alleged in his defence. Had the construction work actually been stopped because of any acts, interference, collusion or conduct attributable to the original plaintiff or defendants no. 2 and 3, the natural response of defendant no. 1 would not have been a simple admission that he never informed them about such stoppage. Rather, the expected and logical response would have been to specifically explain the alleged acts committed by them, to contemporaneously blame them for the obstruction caused, and to demonstrate that they had been made aware of the same. The very admission of defendant no. 1 that he did not communicate the stoppage of construction to the original plaintiff or to defendants no. 2 and 3 therefore materially undermines the defence now sought to be projected.

38. The effect of such non-communication assumes considerable significance. If defendant no. 1 genuinely believed that the stoppage of construction had occurred at the behest of, or due to wrongful conduct on the part of, the original plaintiff or defendants no. 2 and 3, there was no reason whatsoever for him to remain silent and not immediately bring such facts to their notice. A prudent builder or developer, genuinely aggrieved by obstruction or collusive conduct affecting a project, would ordinarily issue communications, raise objections, call upon the concerned parties to remedy the situation, or initiate appropriate legal or contractual action. Admittedly, defendant no. 1 did none of these things. The absence of any such contemporaneous communication, protest, grievance or remedial action strongly probabilizes that, at the relevant point of time, defendant no. 1 himself did not attribute the stoppage of construction to any wrongful act or collusion on the part of the original plaintiff or defendants no. 2 and 3. Had such allegations genuinely

existed, defendant no. 1 would have reacted in a manner consistent with the conduct of an aggrieved person protecting his commercial and contractual interests, however, no such conduct is borne out from the record. This omission becomes even more material considering that the stoppage of construction was a significant development directly affecting the project, the contractual obligations of the parties and their respective rights and liabilities. The admitted silence and inaction on the part of defendant no. 1, therefore, materially weakens the defence now sought to be projected before this court and substantially affects its credibility.

39. Furthermore, when suggestions were put to defendant no. 1 on behalf of the original plaintiff that the construction work had, in fact, stopped due to financial constraints and other practical difficulties allegedly being faced by him, defendant no. 1 denied the said suggestions. However, despite such denial, no documentary material whatsoever has been placed on record by defendant no. 1 to substantiate the actual reasons for the stoppage of construction. No bank statements, account records, financial documents, loan details, correspondence with financial institutions, or records reflecting availability of funds, have been produced before this court.

40. At this stage, it is pertinent to note that this court is conscious of the settled principle of evidence that the burden ordinarily lies upon the party who asserts a particular fact. Thus, initially, the original plaintiff was required to lay the foundation for the plea that the construction had stopped due to the financial incapacity or other constraints being faced by defendant no. 1. However, the position materially changed once defendant no. 1 himself admitted the factum of stoppage of construction and, at the same time, did not contemporaneously attribute the said stoppage to any obstruction or collusion on the part of the original plaintiff or defendants no. 2 and 3, and in that situation the burden squarely shifted upon defendant no. 1 to satisfactorily explain, through cogent, reliable and affirmative evidence, the actual reasons which led to the stoppage of construction. More so, when defendant no. 1 sought to dispute the original plaintiff's suggestions regarding financial difficulties, it became incumbent upon him to disclose the true and genuine reasons for such stoppage and substantiate the same by producing the best evidence available within his special knowledge and possession. However, as already observed, except for bald denials and unsubstantiated assertions, no credible evidence has been led by defendant no. 1 in this regard. Neither has any material been produced to demonstrate his financial soundness and continued capability to carry on the project, nor has any independent reason for the stoppage been established through documentary or oral evidence. The complete absence of any supporting documentary material, coupled with the admitted conduct of defendant no. 1 in neither informing the concerned parties about the alleged stoppage of work nor initiating any contemporaneous remedial or legal proceedings in that regard, substantially undermines the defence now sought to be projected. The plea of alleged collusion between the original plaintiff, defendant nos. 2 and 3 and Sh. Deepak Gupta, sought to be put forth as the reason for non-completion of construction, thus appears to be a mere afterthought advanced subsequently in order to evade contractual liability. It is reiterated that the said contention remains wholly unsubstantiated by any cogent evidence and, viewed in the overall factual matrix, appears inherently improbable and devoid of credibility, and consequently, the defence projected by defendant no. 1 does not inspire confidence and cannot be accepted at face value.

41. On the other side, PW-1 in his cross-examination denied all suggestions of collusion. No admission supporting the allegation of collusion could be elicited from the cross-examination of PW-1 conducted on behalf of defendant no. 1. Thus, in the absence of any cogent evidence, and in the light of the admissions made by DW-1 as discussed above, this court holds that defendant no. 1 has failed to discharge the onus cast upon him under issue no. 1. The allegation of collusion is rejected as unfounded. Issue No. 1 is, accordingly, decided against defendant no. 1 and in favour of the plaintiffs.

Issue No. 2

Whether plaintiff and buyer has made payment to defendant no. 2 and 3 and has taken receipt from defendant no. 1 of the suit property and its effect? OPD-1

42. The onus to prove this issue squarely lies upon defendant no. 1, inasmuch as it is defendant no. 1 who has set up the affirmative plea that the payments in question were not, in fact, received by him but were allegedly made to defendant nos. 2 and 3, and that he merely appended his signatures upon the receipts acknowledging such payments without actually receiving the amounts himself.

43. In the present case, the agreement to sell dated 20.11.2013 (Ex. PW1/6) is the parent contract document executed inter se between the original plaintiff and defendant no. 1. The said document, on its face, records receipt of a sum of Rs. 6,00,000/- as bayana/earnest money at the time of execution of the agreement. The agreement, by its terms, contemplates a total sale consideration of Rs. 22,00,000/- and a balance of Rs. 16,00,000/-, the balance being payable at the stage of finishing/possession (Clause 8 of the agreement). Pertinently, the said agreement to sell dated 20.11.2013 (Ex. PW1/6) is an admitted document on record inasmuch as the defendant no. 1 has admitted the execution of the same through pleading.

44. Significantly, the original plaintiff in the present case is not relying upon any series of loose, stand-alone payment

receipts. The acknowledgements of part-payments are recorded directly on the reverse of the agreement to sell (Ex. PW1/6) itself. The said reverse, having been formally tendered and exhibited along with the parent agreement at the time of recording of the evidence of PW-1, forms part and parcel of Ex. PW1/6. A perusal of the reverse of Ex. PW1/6 reveals nine chronological endorsements, each recording a part-payment of varying amounts and each admittedly bearing the signature of defendant no. 1. At this stage, it is apposite to note that the defendant no.1 has not denied the signatures on the receipts but his defence has been that payments against the signed receipts were never made to him rather they were made to defendant no. 2 & 3 only. The said nine endorsements, when read in chronological order, may be tabulated as under:

S.No.	***Date***	***Amount (Rs.)***	***Description***	***Signature***
1.	*20.11.2013*	*50,000/-*	*Part Payment in Advance (Fifty thousand only)*	*Defendant No. 1*
2.	*12.12.2013*	*4,00,000/-*	*Part Payment in Advance (Four lac only)*	*Defendant No. 1*
3.	*18.10.2014*	*50,000/-*	*Part Payment in Advance (Fifty thousand only)*	*Defendant No. 1*
4.	*27.11.2014*	*1,00,000/-*	*Part Payment in Advance (One lac only)*	*Defendant No. 1*

S.No.	*Date*	*Amount (Rs.)*	*Description*	*Signature*
5.	*26.12.2014*	*2,00,000/-*	*Part Payment in Advance (Two lac only)*	*Defendant No. 1*
6.	*07.04.2015*	*1,00,000/-*	*Part Payment in Advance (One lac only)*	*Defendant No. 1*
7.	*14.04.2015*	*1,00,000/-*	*Part Payment in Advance (One lac only)*	*Defendant No. 1*
8.	*22.04.2015*	*3,00,000/-*	*Part Payment in Advance (Three lac only)*	*Defendant No. 1*
9.	*07.06.2015*	*1,00,000/-*	*Part Payment in Advance (One lac only)*	*Defendant No. 1*

Sub-total of endorsements on the reverse of Ex. PW1/6: Rs. 14,00,000/-

Bayana on the face of Ex. PW1/6: Rs. 6,00,000/-

Payments recorded in Final Payment Receipt dated 24.06.2015 (Ex. PW1/7): Rs. 2,00,000/-

Aggregate acknowledged payment: Rs. 22,00,000/-

45. It is in the aforesaid evidentiary backdrop that the defence raised by defendant no. 1 is required to be appreciated. The defence, insofar as it relates to the payments alleged to have been made by the original plaintiff, as cumulatively emerging from the written statement and the evidence

affidavit Ex. DW1/A, is essentially twofold. Firstly, it is the stand of defendant no. 1 that certain payments were not made to him but were instead paid to Sh. Deepak Gupta. In particular, defendant no. 1 has sought to contend that the initial amount of Rs. 5,00,000/- was paid exclusively to Sh. Deepak Gupta and not to him. Secondly, defendant no. 1 has asserted that although the signatures appearing against the various endorsements on the reverse of the Agreement to Sell Ex. PW1/6 are admitted to be his signatures, the amounts recorded therein were not actually received by him. According to him, the payments were allegedly made to defendant nos. 2 and 3 along with Sh. Deepak Gupta, and the corresponding endorsements were signed by him only at their instance. In his evidence affidavit Ex. DW1/A, defendant no. 1 has further sought to dispute the entries at serial nos. 1 to 4 on the reverse of Ex. PW1/6, pertaining to the period from 07.04.2015 to 09.06.2015, as also the entries at serial nos. 1 to 5 contained in the Final Payment Receipt Ex. PW1/7. Defendant no. 1 has also disputed the four cheque payments reflected in Ex. PW1/7, namely cheque no. 564996 dated 20.06.2015 for Rs. 10,000/-, cheque no. 564997 dated 21.06.2015 for Rs. 20,000/-, cheque no. 564999 dated 21.06.2015 for Rs. 10,000/-, and cheque no. 565000 dated 22.06.2015 for Rs. 10,000/-. It has been contended that the said cheques were admittedly issued in favour of M/s Manoj Building Material Suppliers and not in favour of defendant no. 1, and therefore the amounts thereunder were never received by him. Defendant no. 1 has further claimed that an amount of Rs. 1,00,000/- still remained due and payable by the plaintiff and that the entire sale consideration was never fully paid.

46. At this stage, it is apposite to note that it has nowhere been specifically pleaded by defendant no. 1 in the written statement that any particular endorsement appearing on the reverse of Ex. PW1/6 represented a payment made to Sh. Deepak Gupta (though the averments as to said payments having been made to defendant no. 2 & 3 are there which are dealt with later on). Equally significant is the fact that, in the written statement, defendant no. 1 specifically disputed only the four cheque payments, namely the amounts of Rs. 10,000/- vide cheque no. 564996 dated 20.06.2015, Rs. 20,000/- vide cheque no. 564997 dated 21.06.2015, Rs. 10,000/- vide cheque no. 564999 dated 21.06.2015, and Rs. 10,000/- vide cheque no. 565000 dated 22.06.2015. Pertinently, the various endorsements appearing on the reverse of Ex. PW1/6 were never specifically denied in the written statement, whether on the ground of non-execution, absence of signatures. Further, it has never been pleaded that the said amounts were paid to Sh. Deepak Gupta. The plea now sought to be introduced through the evidence affidavit Ex. DW1/A, namely that the payments reflected in Ex. PW1/6 were either paid to Sh. Deepak Gupta, and not to defendant no. 1, or that the initial payment of Rs. 5,00,000/- was made exclusively to Sh. Deepak Gupta or disputing the entries no. 1 to 4 in Ex. PW1/6, clearly travels beyond the pleadings and constitutes an improvement introduced at the stage of evidence.

47. Indeed, it is a well-settled principle of civil jurisprudence that parties are strictly bound by their pleadings and cannot be permitted to travel beyond the case specifically pleaded by them. Pleadings form the foundational basis of a civil trial and serve the essential purpose of clearly identifying and delineating the disputes which require adjudication between the parties. Any contention, challenge, or defence which has not been specifically pleaded ordinarily cannot be permitted to be introduced subsequently during evidence or at the stage of arguments, particularly where the opposite party had no notice of such case at the relevant stage and consequently no opportunity to meet the same. It is equally settled that a party cannot be allowed to indirectly set up a new case through suggestions put in cross-examination or through submissions advanced during final arguments when no corresponding foundation exists in the pleadings. Accordingly, all such objections and challenges which fall beyond the scope of the pleadings of defendant no. 1 deserve to be eschewed from consideration, except to the extent specifically pleaded with regard to the four disputed cheques (which falls for separate adjudication under issue no. 7).

48. Thus, once the controversy is confined to the actual

pleadings on record, the principal issue which survives for consideration is a limited one, namely, whether the payments reflected in the nine endorsements on the reverse of Ex. PW1/6, all of which admittedly bear the signature of defendant no. 1, were in fact made to defendant nos. 2 and 3 (with defendant no. 1 merely lending his signatures), or whether the said payments stand received by and on behalf of defendant no. 1 himself.

49. It is at the very threshold relevant to observe that the present case stands on a materially stronger footing for the plaintiffs than would have been the case had the acknowledgements of payment been recorded on loose, stand-alone receipts. Where loose receipts are tendered, a court may have to examine each receipt as a discrete document, to test the genuineness of the signature appearing thereon, and to weigh the probative value of each individually. In the present case, however, the acknowledgements appear, in chronological sequence, on the reverse of the parent contract (Ex. PW1/6) document itself. Every subsequent endorsement written on the document is placed in such a manner that it clearly shows it was made as part of, and in continuation of, the original agreement to sell. Once the parent agreement (Ex. PW1/6) is accepted as having been executed by defendant no. 1, and once each of the nine endorsements thereon admittedly bears the signature of defendant no. 1, a strong and almost unanswerable presumption arises that the said endorsements record the true and contemporaneous state of the transaction inter se between the original plaintiff and defendant no. 1.

50. It is in this context further significant that the entries on the reverse of Ex. PW1/6 are themselves descriptive in character, each entry recording a "part payment in advance" in specified amounts, with a corresponding date and signature of defendant no. 1. The chronological sequence of the said entries, spread between 20.11.2013 and 07.06.2015, evidences a continuous, ongoing transaction tracked on the same document, and the cumulative amount of Rs. 14,00,000/- recorded therein, when read together with the bayana of Rs. 6,00,000/- on the face of Ex. PW1/6 and the Rs. 2,00,000/- paid under the Final Payment Receipt dated 24.06.2015 (Ex. PW1/7), exactly matches the total agreed sale consideration of Rs. 22,00,000/-. This precise arithmetical correspondence is itself a strong indicator of the genuineness of the entries, the said correspondence being inconsistent with any hypothesis of fabrication, manipulation, or post-dated insertion.

51. Pertinently, once execution of the document by way of signatures of defendant no. 1 is admitted, a presumption arises in law that the contents thereof reflect the transaction as recorded therein, and the burden lies upon defendant no. 1 to satisfactorily displace such presumption by leading positive, cogent and reliable evidence.

Defendant no. 1 has, however, neither placed on record any contemporaneous protest or grievance, nor any communication, complaint or notice in which he has alleged that his signatures had been obtained without payment having been actually received by him. There is no allegation of fraud, coercion, undue influence, misrepresentation or any other vitiating circumstance in the obtaining of his signatures, and equally there is no plea that any signature was forged or fabricated. On the contrary, his case is that he willingly appended his signatures to each of the said endorsements at the instance of others. The conduct attributed to defendant no. 1, namely signing acknowledgements on a parent contract recording receipt of substantial sums of money on multiple successive occasions, spread over a period of about nineteen months, without raising any objection or protest, and without ever putting any of his alleged grievances in writing to the original plaintiff or to defendant nos. 2 and 3, is inherently improbable and defies the ordinary course of human and commercial conduct.

52. There is one more aspect to this issue. In the present case, as already noted hereinabove, all the nine purported acknowledgements appear on the same page, i.e., back side of front page of agreement to sell (Ex. PW1/6). In such circumstances, once defendant no. 1 appended his signatures to any of the subsequent acknowledgements appearing thereon, it is difficult to accept that he was unaware of or had not seen the earlier entries and endorsements already existing on the same page and bearing his signatures. The placement and continuity of the endorsements on the very same document clearly indicate that the entries formed part of one continuous transaction and were within the knowledge of defendant no. 1 at the time when he affixed his signatures thereupon. Additionally, there is nothing on record to suggest that defendant no. 1 ever raised any objection, protest, or reservation with respect to the earlier entries at the time of appending his signatures upon the subsequent endorsements appearing on the same page. Had the earlier acknowledgements been incorrect, unauthorized, or not within his knowledge, the natural and expected conduct of an ordinary prudent person would have been to immediately object to the same or refuse to sign further endorsements incorporating or continuing such entries. However, no such conduct is either pleaded or proved on record.

53. The absence of any contemporaneous objection on the part of defendant no. 1 while signing the subsequent entries materially strengthens the inference that the earlier acknowledgements were within his knowledge, were accepted by him, and formed part of the same continuous transaction between the parties. Such conduct is wholly inconsistent with the defence now sought to be projected and substantially undermines the credibility thereof. As such, although this court has already held that the dispute sought to be raised with respect to the endorsements no. 1 to 4 on the reverse of Ex. PW1/6, falls beyond the scope of the pleadings of defendant no. 1 and is therefore liable to be eschewed from consideration on that ground alone, nevertheless, even upon examining the said contention on merits, in view of the detailed discussion and reasoning recorded hereinabove, this court finds no substance in the objections sought to be raised by defendant no. 1 against the aforesaid endorsements. The circumstances appearing on record, the admitted signatures of defendant no. 1, the continuity of the endorsements on the same page, the absence of any contemporaneous objection, and the overall conduct of defendant no. 1 cumulatively render the said defence disputing the endorsements on the reverse of Ex. PW1/6 wholly untenable and devoid of merit. Accordingly, even independently on merits, the challenge sought to be raised with respect to the endorsements on the reverse of Ex. PW1/6 stands rejected.

54. At this stage, it is also noted that learned counsel for defendant no. 1 has contended that the original plaintiff, in her pleadings as well as during the course of cross-examination of PW-1, admitted that certain payments had been made to one Sh. Deepak Gupta, despite there being no specific term in the agreement to sell authorizing payment to the said person. On the strength of the said admission, it has been argued that since the payments were admittedly made to Sh. Deepak Gupta, defendant no. 1 cannot be held liable for or bound by the said payments and it cannot be said that the amounts in question were received by him.

55. To address this contention, this court at this stage would advert to certain admissions made by defendant no. 1 in his cross-examination dated 09.05.2025 (post-lunch session). The relevant portion of the said cross-examination is reproduced hereunder:

> ***"Sh. Deepak Gupta was not my business partner.***
>
> ***At this stage, the witness is confronted with the portion A to A1 now encircled with red colour in cross-examination dated 25.02.2025 where it has been deposed 'I alongwith Sh. Deepak Gupta was doing the business of construction under collaboration'. The witness has explained that Sh. Deepak Gupta was his partner in another project at Sat Nagar, Karol Bagh and not in the collaboration qua the present suit property.***
>
> ***I used to sit in the office maintained by Sh. Deepak Gupta. I do not know the address. I sit and conducted the business with Sh. Deepak Gupta for a period of 2-3 years and during that period, we used to sit together in the office stated by me owned by Sh. Deepak Gupta. I do not have any document to show that I entered into collaboration agreement with Sh. Deepak Gupta in respect of the project at Sat Nagar, Karol Bagh…"***
>
> ***"It is correct that in spite of knowing the payment received and acknowledged by Deepak Gupta in the agreement to sell, I did not complain to the plaintiff as to why the payment has been given to Sh. Deepak Gupta."***

56. From the bare perusal of the above testimony, it is quite evident that defendant no. 1, although initially denying that Sh. Deepak Gupta was his partner, subsequently made material admissions concerning his relationship and association with the said Sh. Deepak Gupta. Pertinently, these admissions establish three crucial facts. *First*, defendant no. 1 and Sh. Deepak Gupta were not strangers and were known to each other and had a pre-existing business relationship inasmuch as they were partners in a different project and shared an office for 2-3 years. *Secondly*, defendant no. 1 was aware that Sh. Deepak Gupta had received and acknowledged payment on his behalf in relation to the suit property. *Thirdly*, despite this knowledge, defendant no. 1 never complained, objected, or repudiated the payment to Sh. Deepak Gupta. The silence of defendant no. 1 in the face of knowledge is an unequivocal acquiescence. A payment made to, and acknowledged by, a person's business associate, with the knowledge of and without any objection from the principal, is in law treated as a payment made to the principal himself. As such, even if the admissions made on behalf of the plaintiffs in respect of certain payments being made to Sh. Deepak Gupta are taken into account, the same would still bind defendant no. 1 as given to him in his own capacity, and the contention of the learned counsel for defendant no. 1, that defendant no. 1 cannot be held liable for or bound by the said payments, cannot be countenanced. It is reiterated that even if certain payments were physically handed over to Sh. Deepak Gupta, the same were received with the knowledge, consent, and authority of defendant no. 1 and in connection with the very transaction forming subject matter of the present proceedings. In such circumstances, the payments made to Sh. Deepak Gupta cannot be treated as independent or unauthorized transactions divorced from the agreement between the original plaintiff and defendant no. 1. Rather, in the eye of law, such payments would be deemed to have been made to and received on behalf of defendant no. 1 himself. Accordingly, the contention sought to be advanced by learned counsel for defendant no. 1 on this aspect stands rejected.

57. Further, it is also wholly improbable that an original plaintiff, who admittedly made the very first payment of Rs. 6,00,000/- by way of bayana directly to defendant no. 1 (as recorded on the face of Ex. PW1/6 itself, by the very document signed by defendant no. 1), would suddenly start making subsequent payments to entirely different persons without reason and yet continue to obtain signed acknowledgements on the reverse of the same parent contract from defendant no. 1. The said plea is contrary to ordinary business prudence and to the contemporaneous documentary record. At the cost of repetition, it is observed that defendant no. 1 has not offered any explanation, much less a satisfactory explanation, as to why, if his case were true, he would have continued to oblige the original plaintiff and other persons by mechanically appending his signature, on multiple successive occasions over a nineteen-month period, to false acknowledgements of receipt for substantial sums of money on a parent contract document of which he himself was a contracting party.

58. In sum, the evidence on record establishes that the agreement to sell dated 20.11.2013 (Ex. PW1/6) was executed between the original plaintiff and defendant no. 1, that the said agreement on its face acknowledges receipt of bayana of Rs. 6,00,000/- by defendant no. 1, that the reverse of the said agreement bears nine chronological endorsements aggregating to Rs. 14,00,000/- each duly signed by defendant no. 1, and that, when combined with the further sum of Rs. 2,00,000/- received under the Final Payment Receipt dated 24.06.2015 (Ex. PW1/7) (the discussion in respect whereof falls partly under issue no. 7), the cumulative payment of Rs. 22,00,000/- recorded on the parent contract document and the consequent receipt stands proved on the preponderance of probabilities. The plea of defendant no. 1 that he merely signed without receiving money and that the amounts were handed over to defendant nos. 2 and 3 or to Sh. Deepak Gupta is rejected as a bald, unsubstantiated and improbable afterthought. Issue No. 2 is, accordingly, decided in favour of the plaintiffs and against defendant no. 1.

Issue No. 3

Whether plaintiff is entitled to specific performance of agreement to sell dated 20.11.2013 in respect of flat no. 305, 3rd floor, in property no. I-16/522, Bapa Nagar, Military Road, Karol Bagh, New Delhi-110005 in terms of collaboration agreement dated 06.08.2013 on land measuring 50 sq. yds.? OPP

59. The pivotal issue which now falls for adjudication is whether the plaintiffs are entitled to the relief of specific performance of the agreement to sell dated 20.11.2013 (Ex. PW1/6). The onus to prove this issue lies upon the plaintiff. The relief of specific performance, in the context of the present suit, has to be examined under the regime of the Specific Relief Act, 1963 as it stood prior to the 2018 Amendment, for the reasons recorded in the threshold discussion preceding the issue-wise findings.

60. It is on the strength of his pleadings, evidence affidavit Ex. PW1/A and the documentary record, particularly Ex. PW1/6 (the agreement to sell) and Ex. PW1/7 (the running record of part-payments on the reverse thereof), that the plaintiff seeks a decree of specific performance directing defendant no. 1 to execute and register a sale deed in his favour in respect of the suit flat. The said relief is, however, opposed by defendant no. 1 on multiple grounds, the principal among them being that he himself is not the absolute owner of the suit flat, that title to the same vests in defendant nos. 2 and 3 (acting through their mother Smt.

Yashoda Devi), and that he is, at most, a confirming party in the eventual conveyance and also that the plaintiff and defendant no. 2 & 3 in collusion with other buyers, deliberately stopped the defendant no. 1 from carrying out the construction in the said property though 80% was already completed.

61. It is apposite, at this stage, to recall the relevant ingredients which a plaintiff seeking specific performance is required to plead and prove. He must establish: (i) the existence and execution of a valid and enforceable contract for transfer of immovable property; (ii) his own continuous readiness and willingness to perform his part of the contract within the meaning of Section 16(c) of the Specific Relief Act, 1963 (*vide* Explanation thereto); (iii) the breach committed by the defendant; and (iv) the absence of any factor disentitling him to the discretionary relief of specific performance under Sections 14, 16, 19, 20 of the pre-amendment Act, or under any equitable consideration. Where, additionally, the contracting vendor does not have title to the property he has agreed to sell, the plaintiff must further bring his case within one or other of the four sub-clauses of Section 13(1) of the Act.

62. On the first three of the said ingredients, the position on the record is reasonably clear. The execution of the agreement to sell dated 20.11.2013 (Ex. PW1/6) is amply established and is, in any event, admitted by defendant no. 1 himself. The plaintiff has, on the strength of the running record of part-payments at the back of Ex. PW1/6 & Ex. PW1/7 (held to be genuine and binding upon defendant no. 1 while disposing of issue no. 2), established payment of the agreed sale consideration of Rs. 22,00,000/. The plaintiff has consistently maintained, both in his pleadings and in his evidence, that he was at all material times ready and willing to perform his part of the contract, and the said averment has not been displaced through any cogent material put to him in cross-examination. Defendant no. 1, on the other hand, has admittedly not delivered possession of the suit flat to the plaintiff, has admittedly not executed any sale deed or conveyance, and has admittedly not even completed the construction of the suit flat. The breach, in such circumstances, is squarely attributable to defendant no. 1.

63. However, all the above does not necessarily entitle the plaintiff to the relief of specific performance. The decisive question, in the present case, is whether defendant no. 1 has the title, capacity and authority to convey the suit flat to the plaintiff, or to procure the conveyance thereof, and if not, whether the plaintiff can, even so, obtain a decree of specific performance against defendant no. 1 under Section 13 of the Specific Relief Act, 1963.

64. The two collaboration agreements dated 06.08.2013 (Ex. PW1/3 and Ex. PW1/4), executed separately between defendant no. 1 and each of defendants nos. 2 and 3 (the latter acting on behalf of their mother Smt. Yashoda Devi,

the admitted owner of the said property), constitute the source of whatever interest defendant no. 1 may possibly possess in the suit property. Pertinently, there is no dispute as to execution of those agreements. Under those agreements, defendant no. 1 was permitted to demolish and reconstruct the said property at his own cost, and was to be allotted the third and fourth floors thereof (without roof rights) in consideration of the said construction. Pertinently, however, clause 28 of each of the said collaboration agreements expressly contemplates that the actual physical handover of the third and fourth floors to defendant no. 1, and the execution of the corresponding writing in his favour, would take place after completion of the entire construction. In other words, the vesting of any conveyable interest in defendant no. 1 in respect of the third and fourth floors (and *a fortiori* in respect of the suit flat, which is one of the flats on the fourth floor) is, by the very terms of the collaboration agreements, contingent upon and postponed to completion of construction by defendant no. 1.

65. It is an admitted position, in fact pleaded by defendant no. 1 himself, that the construction of the suit project has remained incomplete and that, at no stage prior to the institution of the suit (or thereafter), have the third and fourth floors been handed over by defendant nos. 2 and 3 to defendant no. 1, nor have any conveyance documents in his favour been executed. It is established on record that

since the date of filing of the suit till date, the actual vacant and physical possession of the suit flat has not been delivered to the plaintiff, and that the construction process was, in any event, brought to a halt during the year 2014. The contingent obligation under clause 28, in such circumstances, has admittedly never matured into an enforceable right in favour of defendant no. 1.

66. The position which thus emerges is, in legal substance, the position which the common-law maxim *nemo dat quod non habet* encapsulates i.e. a person cannot transfer to another a better title than he himself has. Defendant no. 1, on the admitted facts of the present case, has no title to the suit flat which he can convey to the plaintiff. Whatever derivative or inchoate interest he may possess under the collaboration agreements is contingent and unmatured. A decree of specific performance against defendant no. 1, ordering him to execute and register a sale deed in respect of the suit flat in favour of the plaintiff, would, in such circumstances, be a decree which defendant no. 1 cannot, on his own, comply with, and which would equally be incapable of execution. Passing such a decree would amount to directing a person to do an act which cannot possibly be carried out. The law does not compel anyone to perform an impossible act. This principle is embodied in the well-recognized legal maxim *lex non cogit ad impossibilia*, which means that the law does not compel the doing of impossibilities.

67. Section 19 of the Specific Relief Act, 1963, which permits enforcement of a contract against persons claiming under a party thereto, does not avail the plaintiff either. Section 19 contemplates a person who possessed title at the time of contracting, or who has subsequently acquired such title from the contracting party with notice. Defendant no. 1 was never the owner and, as already observed, he held, at best, a contingent contractual right under the collaboration agreements which never fructified into title. Defendants no. 2 and 3, who alone could have conveyed title, were not parties to the agreement to sell dated 20.11.2013 (Ex. PW1/6), and the collaboration agreements do not, by their own terms, oblige them to execute any sale deed in favour of the plaintiff in the absence of completion of construction by defendant no. 1. The plaintiff has, in any event, not sought any specific relief against defendants no. 2 and 3 in respect of the agreement to sell dated 20.11.2013 (Ex. PW1/6).

68. It is also significant that it is the admitted case of the plaintiff that at the time of execution of the agreement to sell with defendant no. 1 there was no construction of the suit property in existence and the same was to be constructed after demolition of the said property. Further, it is also admitted that the plaintiff was aware of the fact that defendant no. 1 was not the owner of said property or the suit property. In other words, the plaintiff agreed to purchase a flat which was yet to be constructed, from a

person who did not own the underlying land, and on the strength of the collaboration agreements to which he was not a party. The speculative and derivative character of the transaction so entered into by the plaintiff cannot now be cured by a decree of this court directed against a person who has no title to convey.

69. At this stage, it is also noted that learned counsel for the plaintiff has vehemently contended that defendant no. 1 is still the owner of six out of the twelve flats falling to his share under the collaboration agreements including the suit property and could validly convey title to the same. Learned counsel for the plaintiff argues that defendant no. 1 continues to be the owner of the remaining six flats in the suit property and that his testimony (in cross-examination) to the effect that the said six flats are in the control of one Sh. Nitish Gupta, husband of his sister, stands wholly impeached in his own cross-examination dated 09.05.2025 itself. It is contended that it has been the consistent case of the plaintiff, as specifically pleaded in para 3 of the plaint, that out of the twelve flats falling to the share of defendant no. 1 under the collaboration agreements with defendant nos. 2 and 3, six flats would be in the ownership and control of defendant no. 1, and that the said averment stands impliedly admitted, inasmuch as defendant no. 1 in his written statement has not specifically denied or offered any explanation qua the contents of para 3 of the plaint. It is further argued that the defence put forward by defendant no. 1 in his testimony/cross-examination to the effect that the said six flats have come into the hands of Sh. Nitish Gupta by virtue of an agreement to sell, also stands wholly demolished in his cross-examination itself. He relies upon the following cross-examination of defendant no. 1:

> *"…The control of remaining six flats in terms of collaboration agreement dated 06.08.2013 entered into between defendant no. 2 & 3 separately are with Sh. Nitish Gupta (husband of my sister). It is correct that I have not placed on record any documentary proof to prove that the six flats as deposed by me are in control with/owned by Sh. Nitish Gupta. It is correct that in accordance with collaboration agreement dated 06.08.2013, I alone was entitled to take the possession & ownership right of 12 flats (6 flats on 3rd floor & 6 flats on 4th floor of the suit property)."*
>
> *"Q. I put it to you that whether you have filed any civil suit for recovery of possession of remaining six flats in the property, if so, give the details of the proceedings?"*
>
> *"Ans. I am no more the owner of the remaining six flats in the property."*
>
> *"Q. Whether you have transferred the six flats in the name of Sh. Nitish Gupta, if so, give the detail?"*
>
> *"Ans. I have not transferred the said six flats which are owned by me to Sh. Nitish Gupta. Vol., I have only entered into agreement to sell with him."*
>
> *"It is correct that I have never stated the said fact of having entered into agreement to sell with Sh. Nitish Gupta qua the flats which are owned by me in any civil litigation or in any other proceedings. Vol., I have not mentioned the said fact as no such occasion has ever*

arisen. At this stage, the witness is confronted with the contents of the plaint and in particular Para-3 of the plaint where the plaintiff has specifically claimed that six flats are sold out and six flats are with the defendant no. 1. To that, witness deposed: it is correct that I have not mentioned the fact of having entered into agreement to sell qua the six flats, owned by me in reply to said para. It is correct that I have not placed on record that agreement to sell with Sh. Nitish Gupta as deposed by me today. I cannot tell the date, month or year of the agreement to sell as deposed by me with Sh. Nitish Gupta. Sh. Nitish Gupta expired in June, 2020 leaving behind his wife and children. I know the residential address of wife and children of Sh. Nitish Gupta. It is correct that I have not given any intimation of the aforesaid agreement to sell of wife and children of Sh. Nitish Gupta. Vol., the agreement might be with the wife of Sh. Nitish Gupta…"

70. On the strength of the aforesaid admissions, learned counsel for the plaintiff contends that the testimony of defendant no. 1 regarding the alleged transfer of beneficial control of the said six flats to Sh. Nitish Gupta cannot be believed and is liable to be discarded as being wholly unworthy of credit, and as such defendant no. 1 continues to be the owner of the remaining six flats and that the implied admission contained in the failure to traverse para 3 of the plaint clinches the issue in favour of the plaintiff.

71. This argument, however, does not advance the case of the plaintiff in the present suit. Even assuming, *arguendo*, that the deposition of defendant no. 1 regarding the agreement to sell with Sh. Nitish Gupta is liable to be discarded, and even further assuming that the failure to specifically traverse para 3 of the plaint amounts to an implied admission of the fact that defendant no. 1 was originally entitled to twelve flats out of which six were to be retained by defendant no. 1, no specific pleading has been brought on record by the plaintiff identifying the suit flat (Flat No. 305) as one of the six unsold flats so retained by defendant no. 1. The mere generic admission elicited in cross-examination, that defendant no. 1 was originally entitled to twelve flats under the collaboration agreements with defendant nos. 2 and 3 (both dated 06.08.2013) and that six of them (without specification of flat numbers) remain unsold, does not, *ipso facto*, fasten title to the suit flat upon him in the absence of a specific averment, and proof, correlating the suit flat to that unsold inventory. The plaintiff's case for specific performance, having proceeded on the footing of the agreement to sell dated 20.11.2013 (Ex. PW1/6) read with the Ikrarnama dated 25.03.2015 (Ex. PW1/8) in respect of a specifically identified flat, must rise or fall on the strength of the plaintiff's own pleadings and proof, and not on the strength of a general admission elicited in cross-examination unaccompanied by any pleading of identification. The argument is, accordingly, rejected.

72. Further, in any event, the contention also stands wholly negatived by the findings already recorded in para 65 to 67 of this judgment. As has been categorically held therein, defendant no. 1 was never the owner of the suit property and he was, and remains, no more than a builder/contractor under the collaboration agreements dated 06.08.2013. His rights under the said agreements were derivative and contingent first, upon completion of construction, and second, upon execution of a separate writing/conveyance in his favour by defendants no. 2 and 3, as expressly stipulated in clause 28 of the collaboration agreements. It is the admitted position on record that neither of the said conditions has ever been fulfilled, the construction admittedly being incomplete and no writing, sale deed or conveyance of any nature whatsoever having ever been executed by defendants no. 2 and 3 in favour of defendant no. 1. Defendant no. 1, therefore, never came to acquire any title, much less any conveyable title, in any of the twelve flats said to fall to his notional share under the collaboration agreements, including the six flats now said to be still in his "ownership" or "control". When read in the light of the said collaboration agreements with defendant nos. 2 and 3, which are the foundational documents on which the rights, if any, of defendant no. 1 rest, the admissions elicited from defendant no. 1 in his cross-examination dated 09.05.2025 can mean no more than that defendant no. 1 holds, at best, a contingent contractual expectancy in respect of the said six flats and such an expectancy, never having crystallized into title, is incapable of being specifically enforced against him by way of a decree of specific performance, on the application of the maxims *nemo dat quod non habet* and *lex non cogit ad impossibilia*, both of which have been discussed in detail hereinabove. The very same reasons that disable defendant no. 1 from conveying title to the suit flat also disable the plaintiff from converting the said cross-examination admissions into a foundation for the relief of specific performance. Even at its highest, the alleged impeachment establishes nothing more than defendant no. 1's continued contingent expectancy under the collaboration agreements, an expectancy which, for the reasons already recorded, is itself insufficient to sustain a decree of specific performance, more particularly when the relief is not even sought against defendants no. 2 and 3, who alone could have conveyed title. The contention of learned counsel for the plaintiff, founded on the alleged impeachment of defendant no. 1 in his cross-examination dated 09.05.2025, therefore does not further the case of the plaintiff and is, accordingly, rejected.

73. It is also observed that even otherwise, this court would still have to consider whether a decree of specific performance, if passed, would be capable of being worked out on the ground. In the facts as they presently stand, any such decree would necessarily be a nullity. A person without title, without possession of the locked third and fourth floors, and without any subsisting right under the collaboration agreements dated 06.08.2013 with defendant nos. 2 and 3, (the condition precedent therein never having been fulfilled), cannot execute a sale deed which would, in law, vest any right in the plaintiff. Such a decree would be unworkable and inexecutable. Pertinently, the impossibility in the present case is not incidental or temporary, rather, the same is inherent in the very structure of defendant no. 1's rights *vis-à-vis* the suit property. He never had, and does not now have, the title required to convey.

74. Before parting with the discussion on the capacity of defendant no. 1 to convey the suit property, this court considers it essential to address a connected question that arises naturally from the findings recorded in the preceding paragraphs. Having held that defendant no. 1 has no title to the suit property and that the condition precedent in clause 28 of the collaboration agreements each dated 06.08.2013, for vesting of any title in him has admittedly never been fulfilled, the question that follows is whether the plaintiff can nevertheless invoke Section 13 of the Specific Relief Act, 1963, which, in certain circumstances, comes to the aid of a purchaser who contracts with a person having no title or only an imperfect title, to obtain the relief of specific performance. The said provision was not specifically pleaded by the plaintiff in his plaint, nor was it pressed in oral arguments; nevertheless, since the question of want of title is the central plank on which the relief of specific performance has been declined, this court, in order to deal with the issue comprehensively and to obviate the possibility of any statutory remedy potentially available to the plaintiff being overlooked, considers it appropriate to deal with Section 13 on its merits and proceeds accordingly.

75. The said provision reads as follows:

> *"13. Rights of purchaser or lessee against person with no title or imperfect title. — (1) Where a person contracts to sell or let certain immovable property having no title or only an imperfect title, the purchaser or lessee (subject to the other provisions of this Chapter) has the following rights, namely: —*
>
> *(a) if the vendor or lessor has subsequently to the contract acquired any interest in the property, the purchaser or lessee may compel him to make good the contract out of such interest;*
>
> *(b) where the concurrence of other persons is necessary for validating the title, and they are bound to concur at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such concurrence, and when a conveyance by other persons is necessary to validate the title and they are bound to convey at the request of the vendor or lessor, the purchaser or lessee may compel him to procure such conveyance;*
>
> *(c) where the vendor professes to sell unencumbered property, but the property is mortgaged for an amount not exceeding the purchase-money and the vendor has in fact only a right to redeem it, the purchaser may compel him to redeem the mortgage and to obtain a valid discharge, and, where necessary, also a conveyance from the mortgagee;*
>
> *(d) where the vendor or lessor sues for specific performance of the contract and the suit is dismissed on the ground of his want of title or imperfect title, the defendant has a right to a return of his deposit, if any, with interest thereon, to his costs of the suit, and to a lien for such deposit, interest and costs on the interest, if any, of the vendor or lessor in the property which is the subject-matter of the contract."*

76. A plain reading of the section shows that it is a beneficial provision enacted as a statutory mitigation of the rigour of the common-law maxim *nemo dat quod non habet.* It carves out four distinct situations in which a purchaser, notwithstanding that his vendor has no title or only an imperfect title, may nevertheless obtain specific performance or, alternatively, restitutionary relief. Each of the four sub-clauses, however, is conditioned upon a precise and well-defined factual matrix and purchaser must bring his case within one or the other of the four enumerated situations. Whether he has done so falls to be tested on the admitted facts.

77. Turning first to clause (a) of sub-section (1), the provision is attracted only where the vendor, subsequent to the contract, has acquired some interest in the property which interest can be made the subject of a decree of specific performance. The provision postulates a pre-existing want of title at the time of the contract and a subsequent acquisition of title (or a partial interest) by the vendor. However, in the present case, on the admitted and proved facts on record, the position of defendant no. 1 is precisely the converse. The collaboration agreements (Ex. PW1/3 and Ex. PW1/4), under which defendant no. 1 was to receive the third and fourth floors of the property after completion of construction, are dated 06.08.2013 and thus pre-date the agreement to sell dated 20.11.2013 (Ex. PW1/6). The contingent right of defendant no. 1 in the suit property therefore existed, in its derivative and inchoate form, even at the time of the agreement to sell. Defendant no. 1 has not, since 18.11.2013, acquired any new or further interest in the suit property. The plaintiff has failed to establish on record that, subsequent to the execution of the agreement to sell dated 20.11.2013 (Ex. PW1/6), and up to the institution of the present suit or at any time thereafter, any valid title in respect of the suit property came to be vested in defendant no. 1. The condition precedent for crystallization of any title in his favour, namely completion of construction in terms of clause 28 of the collaboration agreements (Ex. PW1/3 and Ex. PW1/4), has admittedly never been satisfied. There is, therefore, no "interest", subsequently acquired or otherwise, which defendant no. 1 holds and out of which he could be compelled to make good the contract. Clause (a) of Section 13(1) is, accordingly, of no assistance to the plaintiff.

78. It is clause (b) of sub-section (1) which would, in the ordinary course, have been the most natural refuge of a purchaser circumstanced as the plaintiff is. The clause is designed precisely for cases where the contracting vendor does not by himself hold complete title, but where the concurrence of some other person, typically a co-owner, a remainderman, or a holder of a paramount title, would suffice to validate the conveyance. In the present case, the plaintiff might be expected to contend that since the title to the suit property vests in Smt. Yashoda Devi (acting through her sons and attorneys, the defendants nos. 2 and 3), their concurrence would validate the title, that they are bound under the collaboration agreements (Ex. PW1/3 and Ex. PW1/4) to so concur, and that defendant no. 1 may, accordingly, be compelled to procure such concurrence.

79. Such a contention, however, must be examined with reference to the precise statutory language. Clause (b) is not attracted merely because the concurrence of others would, as a matter of fact, validate the title. The clause requires, additionally and conjunctively, that those other persons are *"bound to concur at the request of the vendor"*. The expression *"bound to concur"* denotes a subsisting, enforceable, present obligation on the part of the third party to lend his concurrence, i.e., an obligation which, on demand, is capable of being specifically enforced. A contingent or conditional obligation, the precondition for the operation of which has not been fulfilled, does not satisfy this statutory test. To hold otherwise would be to convert clause (b) into a vehicle for compelling persons to perform contractual obligations the time and trigger for which has not yet arisen, a result plainly unintended by the legislature.

80. On the admitted facts of the present case, the obligation of defendants nos. 2 and 3 to execute any writing or conveyance in favour of defendant no. 1 (and *a fortiori*, in favour of the plaintiff claiming through defendant no. 1) is not a present, subsisting and enforceable obligation. It is a contingent obligation, the operation of which is, by the express terms of clause 28 of the collaboration agreements (Ex. PW1/3 and Ex. PW1/4), postponed to and dependent upon completion of construction by defendant no. 1 in accordance with the agreed specifications and timelines.

The construction having admittedly never been completed, the said contingent obligation has never matured into an enforceable one. Defendants nos. 2 and 3 are not, in the language of Section 13(1)(b), "bound to concur" at this stage, and there is no manner in which their concurrence can be procured by defendant no. 1 by lawful means without first completing the construction, which is not, and cannot be, the subject matter of the present suit, the plaintiff being a stranger to the collaboration agreements (Ex. PW1/3 and Ex. PW1/4).

81. Two further structural impediments stand in the way of any application of clause (b) to the facts of the present case. First, the obligation of defendants nos. 2 and 3 under the collaboration agreements (Ex. PW1/3 and Ex. PW1/4) (such as it is, and contingent as it is) is owed to defendant no. 1, and not to the plaintiff. There is no privity of contract whatsoever between the plaintiff and defendants nos. 2 and 3. The plaintiff has not, in his plaint, sought any specific relief against defendants nos. 2 and 3 in respect of the agreement to sell dated 20.11.2013 (Ex. PW1/6). Secondly, and more fundamentally, even if the plaintiff were to be permitted to seek a direction under Section 13(1)(b) compelling defendant no. 1 to procure the concurrence of defendants nos. 2 and 3, such a direction would be incapable of execution. Defendant no. 1 cannot procure their concurrence today inasmuch as he can do so only after completing the construction in accordance with

the collaboration agreement. The completion of construction, in turn, is not capable of being judicially decreed in the present suit, because the plaintiff is not a party to the collaboration agreements (Ex. PW1/3 and Ex. PW1/4).

82. Clause (c) of sub-section (1) requires no extended discussion inasmuch as it is attracted only where the vendor professes to sell unencumbered property, but the property is in fact mortgaged for an amount not exceeding the purchase money, and the vendor has in fact only a right to redeem it. The present case is not, and has never been, presented as one of mortgage and redemption. The clause has, therefore, no manner of application to the facts at hand.

83. Clause (d) of sub-section (1) operates in an entirely distinct sphere and stands on a fundamentally different footing from the other provisions dealing with enforcement of specific performance. In its true import, the said provision is essentially restitutionary in nature rather than one intended to deal with the relief of specific performance itself. The provision becomes operative in a situation where a suit for specific performance has been instituted by the vendor against the purchaser, but the court ultimately declines the relief of specific performance on account of the vendor having no title, defective title, or imperfect title in respect of the suit property. In such circumstances, the legislature, recognizing the inequity

that may otherwise result to a purchaser who had entered into the transaction bona fide and parted with consideration, confers upon such purchaser a statutory right to seek restitution in the form of refund of the earnest money or consideration paid, together with interest thereon and costs of the litigation. The provision further creates a statutory lien in favour of the purchaser upon whatever interest, if any, the vendor may possess in the property, to the extent necessary for securing repayment of such amounts. Clause (d) does not in any manner preserve or revive the substantive relief of specific performance. On the contrary, the very foundation for invocation of the provision is the prior refusal of the relief of specific performance by the court. The provision, therefore, operates only after the court has already reached the conclusion that the contract cannot be specifically enforced owing to want of title or imperfect title in the vendor, that too at the suit of the vendor himself. The said provision, strictly construed, is not directly attracted to the factual matrix of the present case. Although in the present matter the relief of specific performance has indeed been declined on account of the imperfect or deficient nature of the vendor's title, but since the present suit has not been filed by the vendor (who is the defendant here), but by the purchaser, the controversy relating to refund and restitution qua the consideration paid by the purchaser is not governed by clause (d) *per se*, and the same has been independently examined by this court on the basis of the pleadings, evidence and equities arising in the case, while deciding the next issue.

84. It is also necessary to bear in mind that Section 13 of the Specific Relief Act, 1963 must be read together with Section 20 of the Act (as it stood prior to the 2018 Amendment), which preserves the discretionary character of the relief of specific performance. Even where one or other of the sub-clauses of Section 13 is technically attracted, the court retains the discretion to decline specific performance in cases where the decree, when passed, would be unworkable or would be incapable of execution. As already discussed, the present is, on any view, a case where any decree of specific performance would suffer from precisely such infirmities. Section 13 cannot be invoked to compel the court to pass a decree which, in its discretionary judgment, ought not to be passed.

85. In the result, this court holds that none of clauses (a), (b), (c) and (d) of sub-section (1) of Section 13 of the Specific Relief Act, 1963 is attracted on the admitted facts of the present case, and that Section 13 does not come to the aid of the plaintiff qua his prayer for specific performance of the agreement to sell dated 20.11.2013 (Ex. PW1/6).

86. Accordingly, this court holds that although the plaintiff has succeeded in proving the existence of the valid agreement to sell dated 20.11.2013 (Ex. PW1/6) and has further established his continuous readiness and willingness to

perform his part of the contract within the meaning of Section 16(c) of the Specific Relief Act, 1963, the plaintiff is not entitled to a decree of specific performance of the said agreement to sell dated 20.11.2013 (Ex. PW1/6). This is for the reason that defendant no. 1, who alone is the contracting party, admittedly lacks the title, capacity and authority to convey the suit property in favour of the plaintiff, the condition precedent in the collaboration agreements (Ex. PW1/3 and Ex. PW1/4) for vesting of any title in defendant no. 1 having, concededly, never been fulfilled. A decree of specific performance against defendant no. 1, in such circumstances, would be an exercise in futility and contrary to the maxims *nemo dat quod non habet* and *lex non cogit ad impossibilia.* Issue No. 3 is, accordingly, decided against the plaintiff and *in favour of* defendant no. 1.

Issue No. 4

Whether plaintiff is entitled in the alternative to recovery of Rs.22 lakh against the defendant no. 1 alongwith pre-suit and pendente-lite and future interest @ 24% p.a. on the due amount? OPP

87. Having declined the relief of specific performance under issue no. 3, this court must now turn to the alternative relief of refund of the sale consideration. The plaintiffs have, in the plaint itself, pleaded the alternative prayer of refund of the sale consideration paid, together with interest, in the event that the relief of specific performance is found not to be grantable. The relief of refund is, accordingly, well within the four corners of the pleadings, and the foundation thereof has been duly laid in the plaint.

88. Section 22(2) of the Specific Relief Act, 1963 specifically permits the court to grant the relief of refund of earnest money or deposit, including refund of part or whole of consideration paid, in lieu of, or in addition to, the relief of specific performance. The said provision, in terms, recognises that the relief of refund is an alternative remedy available to a plaintiff who has paid consideration in part-performance of an agreement to sell and is, for one reason or another, not granted the relief of specific performance. It must be observed that the relief of refund, unlike the relief of specific performance, is not contingent upon proof of title in the defendant; it is grounded in the broader principle of restitution and against unjust enrichment, and operates independently of any question of title. It is, accordingly, in the eye of law, a relief which is entirely separable from, and capable of being granted notwithstanding the refusal of, the relief of specific performance.

89. Insofar as the quantum is concerned, the question is no longer res integra in the present case. It has been concluded, while disposing of issue no. 2 and (as will be presently held under issue no. 7), that the entire sale consideration of Rs. 22,00,000/- has been paid by the original plaintiff to defendant no. 1. The said sum stands proved partly by the bayana of Rs. 6,00,000/- recorded on the face of the agreement to sell dated 20.11.2013 (Ex. PW1/6), partly by the nine chronological endorsements on the reverse of the same document aggregating to Rs. 14,00,000/-, and partly by the further sum of Rs. 2,00,000/- received under the Final Payment Receipt dated 24.06.2015 (Ex. PW1/7). The arithmetic precision with which the said payments together match the agreed sale consideration of Rs. 22,00,000/- is itself a strong indicator of the genuineness of the underlying transaction and the consequential receipt of the said sum by defendant no. 1. Accordingly, the plaintiffs are entitled to refund of the said sum of Rs. 22,00,000/-, the entire consideration having been received by defendant no. 1.

90. The question that next arises is of the rate and the period of interest. The plaintiffs have claimed interest at the rate of 24% per annum, both pre-suit, pendente-lite and post-decree. The claim of 24% per annum, in the considered opinion of this court, is excessive and unconscionable. The agreement to sell (Ex. PW1/6) does not, by its terms, provide for payment of any pre-determined rate of interest in the event of non-performance by defendant no. 1; the only consequence stipulated in the said agreement is the right of the original plaintiff to recover double the earnest money or to seek specific performance. The relief of refund of the entire sale consideration, together with interest at a reasonable rate, is, accordingly, being moulded by this court in the exercise of its equitable discretion having regard to the totality of circumstances of the present case.

91. While considering the appropriate rate of interest, this court has been mindful of the fact that the sum of Rs. 22,00,000/- has been retained by defendant no. 1 for a considerable period of time; the major portion thereof since the year 2013-2015, when the payments were made, and the entire amount since at least 24.06.2015 (when the Final Payment Receipt was executed). The original plaintiff, having paid the entire sale consideration in good faith and having received neither the suit flat nor the refund of her money, has suffered grave financial loss and prejudice. Equally, this court is mindful of the fact that defendant no. 1 has had the use and benefit of the said funds during this period. Having regard to the prevailing rates of interest applicable to commercial transactions and the broad equities of the case, this court is of the considered opinion that interest at the rate of 12% per annum (simple interest) would be reasonable, fair, and just compensation for the deprivation suffered by the original plaintiff and her legal representatives. The claim of 24% per annum is held to be excessive and is, accordingly, reduced to 12% per annum simple interest.

92. As regards the period for which interest is to be allowed, the plaintiffs are held entitled to simple interest at the rate of 12% per annum on the sum of Rs. 22,00,000/- from the date of institution of the present suit, i.e. 22.05.2017, till the date of actual realization. While this court is conscious of the fact that the payments were made by the original plaintiff much prior to the date of institution of the suit, however, in the

absence of a contractual stipulation regarding interest and having regard to the principles of equity and the conduct of the parties as borne out from the record, this court is of the considered opinion that pre-suit interest is not warranted in the facts and circumstances of the present case. The award of interest from the date of institution of the suit, in the considered view of this court, sufficiently compensates the plaintiffs for the financial loss occasioned to them by the failure of defendant no. 1 to perform his contractual obligations and the consequent retention of the sale consideration by him.

93. Accordingly, issue No. 4 is decided partly in favour of the plaintiffs and against defendant no. 1. The plaintiffs are held entitled to recovery of a sum of Rs. 22,00,000/- (Rupees Twenty-Two Lakhs only) from defendant no. 1 along with pre-decree, pendente-lite, and future interest at the rate of 12% per annum (simple interest) from the date of institution of the suit, i.e., 22.05.2017, till the date of actual realisation. The claim of interest at the rate of 24% per annum is, however, rejected as excessive and unconscionable.

Issue No. 5

Whether plaintiff is entitled to permanent injunction against the defendant and their agents from alienating, transferring or creating any encumbrance on the suit property referred under issue no. 3 above? OPP

94. The plaintiffs have prayed for a decree of permanent injunction restraining the defendants from alienating, transferring or creating any third-party rights in the suit flat. The said prayer is, however, in the considered opinion of this court, not maintainable in the facts of the present case, for reasons which follow.

95. First, the relief of permanent injunction was being sought essentially as ancillary to the principal prayer of specific performance, the object being to preserve the subject matter of the suit until the agreement to sell could be executed. Once specific performance has been declined and the alternative relief of refund has been granted, the relief of injunction loses its very substratum. The plaintiffs are no longer claiming any subsisting proprietary or equitable interest in the suit flat which would warrant protection by injunction. The relief now operative is purely monetary, in the form of a money decree, and such monetary relief is not aided in any manner by an order of injunction restraining transfer of the suit flat.

96. Second, and equally importantly, the relief of permanent injunction is bound by the well-settled principles of Section 41(e) of the Specific Relief Act, 1963, which provides that an injunction cannot be granted to prevent the breach of a contract the performance of which would not be specifically enforced. Where the principal relief of specific performance has been refused by this court, the consequential relief of injunction restraining alienation of the suit flat (which restraint would otherwise have made sense only as preservation of the subject matter) cannot survive independently. The legal foundation having fallen, the ancillary relief must inevitably fall with it.

97. Third, as already concluded under issue no. 3, defendant no. 1 has no title in the suit flat. He cannot, in law, transfer or alienate the suit flat or create any third-party interest therein in any case, as he simply does not possess the title to do so. The discussion in this regard under issue no. 3 stands incorporated mutatis mutandis. An injunction against an act which the party against whom it is sought has, in law, no capacity to perform, would be a wholly futile and ineffectual exercise. The court does not pass futile orders.

98. Fourth, insofar as defendant nos. 2 and 3 are concerned, the original plaintiff and her legal representatives have no privity of contract with them. There is no agreement to sell or any other instrument inter se between the plaintiffs and defendant nos. 2 and 3 in respect of the suit flat, and consequently no enforceable contractual right which could be protected by an injunction. The plaintiffs cannot, on the basis of their agreement with defendant no. 1 alone, restrain defendant nos. 2 and 3 from dealing with the property of which the latter are the recorded owners.

99. For the foregoing reasons, Issue No. 5 is decided against the plaintiffs. The relief of permanent injunction, as prayed for, is declined.

<u>Issue No. 6</u>

> ***Whether plaintiff is entitled to damages on account of non-performance of agreement to sell dated 20.11.2013 for a sum of Rs.20 lakh? OPP***

100. The plaintiffs have, in the plaint, claimed damages quantified at Rs. 20,00,000/- on account of non-performance of the agreement to sell dated 20.11.2013 by defendant no. 1. It is the specific case of the plaintiff that despite having paid substantially the entire sale consideration, defendant no. 1 failed to complete the construction of the suit flat within the stipulated period and also failed to convey the same to the plaintiff in terms of the contractual arrangement between the parties. It has been contended that the conduct of defendant no. 1 in neither completing the construction nor honouring his contractual obligations resulted in substantial financial loss, harassment, and deprivation of the benefit of the bargain to the plaintiff. On this basis, the plaintiff seeks compensation by way of damages for the alleged breach committed by defendant no. 1.

101. The onus to prove the issue is squarely upon the plaintiff. The power of this court to grant compensation in a suit for specific performance is traceable to Section 21 of the Specific Relief Act, 1963 (as it stood prior to the Specific Relief (Amendment) Act, 2018, which governs the present suit, the agreement to sell being of the year 2013). Sub-section (1) of Section 21 permits the plaintiff in a suit for specific performance to claim compensation for breach of the contract either in addition to, or in substitution of, the relief of specific performance. Sub-section (2) provides that where the court declines specific performance but holds that there is a contract which has been broken and that the plaintiff is entitled to compensation for the breach, the court shall award him such compensation accordingly. Sub-section (4) is, however, of decisive importance and provides that in determining the amount of any compensation awarded under the section, the court shall be guided by the principles specified in Section 73 of the Indian Contract Act, 1872. Sub-section (5) further requires that no compensation shall be awarded under the section unless the plaintiff has claimed such compensation in his plaint, a requirement which, in the present case, evidently stands satisfied, the plaintiff having quantified his claim at Rs. 20,00,000/- in the plaint and the corresponding court fee having been paid thereon.

102. Section 73 of the Indian Contract Act, 1872, in turn, embodies the rule in *Hadley v. Baxendale* and entitles the party suffering breach to receive, from the party in breach, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. The Explanation to the section makes it clear that, in estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance must be taken into account. The section, by its very terms, contemplates actual loss or damage, the existence and extent of which must be established by evidence. Section 74, which deals with compensation where a sum is named in the contract by way of penalty or liquidated damages, has no application to the present case, the agreement to sell dated 20.11.2013 (Ex. PW1/6) containing no such stipulation.

103. The principles which govern the measure of damages for breach of a contract for sale of immovable property are by now well-settled. Where specific performance is refused or is otherwise unavailable, the ordinary measure of damages is the difference between the contract price and the market value of the property as on the date of the breach, together with such consequential losses as may have naturally and proximately flowed from the breach, and the burden of establishing both the fact of loss and its quantum lies upon the party claiming damages. It is equally well-settled that the requirement of proof is not dispensed with merely because the breach is admitted or established. In ***Kailash Nath Associates v. Delhi Development Authority, (2015) 4 SCC 136***, the Hon'ble Supreme Court has reiterated that even in cases where the contract names a sum by way of liquidated damages, the party claiming damages must, save in cases where it is impossible for the court to assess the loss, lead positive evidence of actual loss suffered. The position must, *a fortiori*, be the same where, as here, no liquidated sum is stipulated in the contract and the claim is governed wholly by Section 73.

104. To found a successful claim for damages, the plaintiff must, accordingly, plead and prove three distinct elements: (i) the *fact* of loss or damage having been suffered by him; (ii) the causal connection between such loss and the breach of contract complained of; and (iii) the quantum of such loss, established by cogent and reliable evidence. A claim for damages in a round figure, unsupported by particulars in the plaint and by evidence at trial, is not a claim that the law recognises. Each of the three elements is a burden separately to be discharged.

105. Turning to the present case, the plaint contains a bare assertion that the plaintiff has suffered damages quantified at Rs. 20,00,000/- by reason of the non-performance of the agreement to sell. The plaint does not, however, set out the head or heads under which such damages are claimed. Further, it does not specify whether the figure represents the difference between the contract price and the market value as on the date of breach, or whether it includes any element of consequential loss; it furnishes no working or basis for the figure of Rs. 20,00,000/-; and it does not make reference to any valuation, comparable sale, or other foundational material from which such a figure could be computed. Even at the threshold of pleading, therefore, the claim is a bald and unparticularized one.

106. At the stage of evidence, the position is no better. The plaintiff has not produced any valuation report from a registered valuer, nor any market survey, nor any sale deed or agreement to sell of any comparable flat in the same building or in the immediate vicinity, nor any data from any property index, builder's price list, or government circle rate notification, nor any other independent material from which the market value of the suit flat as on the date of breach (or as on any other relevant date) could be ascertained. The plaintiff, in his evidence affidavit Ex. PW1/A, does no more than reproduce the assertion in the plaint that he is entitled to damages of Rs. 20,00,000/-. He does not depose to the market value of the suit flat at any point of time. The plaintiff has thus failed to lay any evidentiary foundation whatsoever, either contemporaneous to the breach or proximate to the trial, on which a finding as to quantum could be rested. The only attempt made by the plaintiff to bring on record any material touching on the question of escalation in the cost of construction or in the value of the suit property was by way of certain suggestions put to defendant no. 1 (DW-1) during his cross-examination dated 09.05.2025. The relevant portion of the cross-examination of DW-1 reads as follows:

> ***"I do not remember if the cost of one brick was Rs. 3/- to Rs. 4/- as per quality. I cannot admit or deny as of today the cost of one brick***

> *varies between Rs. 15/- to Rs. 17/- depending upon the quality. I cannot admit or deny the cost of building material escalated to 4 to 5 times as was in the year 2014-15. I cannot admit or deny whether the cost of labour is also escalated 4 to 5 times as was in existence in the year 2014-15."*

107. Further, in the post-lunch session of his cross-examination dated 09.05.2025, DW-1 has, in response to a similar suggestion regarding present market value of the suit flat, stated:

> *"I cannot admit or deny as of now the market value of the suit flat is between Rs. 45 lakhs to Rs. 50 lakhs."*

108. It is on this slender base that the plaintiff invites the court to award damages in the sum of Rs. 20,00,000/-. It is a settled principle of the law of evidence that a mere suggestion put to a witness in cross-examination, which is denied or, as in the present case, neither admitted nor denied, does not become evidence in the case. The only manner in which a suggestion put to a witness can become evidence is when it is admitted by the witness, and in the absence of such admission, the suggestion remains a suggestion and nothing more, and the burden continues to rest where it always rested, namely upon the party making the suggestion. Where the suggestion is met with a non-committal "I cannot admit or deny", the position is precisely the same as if the suggestion had been denied and the burden is not displaced. To hold otherwise would be to permit a party to discharge his evidentiary burden simply by formulating self-serving propositions and putting them to the opposing witness, regardless of the witness's response.

109. Notably, in the present case, the suggestions put to DW-1 that the cost of bricks has risen from Rs. 3-4/- to Rs. 15-17/- per brick, that the cost of building material has escalated four to five times since 2014-15, and that the present market value of the suit flat is between Rs. 45 lakh and Rs. 50 lakh, were all met with answers ranging from "I do not remember" to "I cannot admit or deny". Not one of these suggestions was admitted. The suggestions, therefore, did not graduate into evidence. The plaintiff, having put them and having met with this response, was thereafter under an obligation to bring on record positive, independent evidence in support of the propositions so put, by way of, for instance, a valuation report, market data, sale instances of comparable flats, or expert testimony from a builder, valuer or property dealer. He did none of these things. The cross-examination, far from filling the evidentiary vacuum on quantum, only serves to highlight it.

110. It must also be observed that even if the figure of Rs. 45-50 lakh as the present market value of the suit flat were, *arguendo*, to be accepted, the plaintiff would still not be home. Damages under Section 73 of the Indian Contract Act, 1872 are, ordinarily, to be assessed as on the date of the breach, not as on the date of the trial. The plaintiff has led no evidence whatsoever as to the market value of the suit flat as on or about 20.11.2013 (the date of the agreement) or as on the contemplated date of performance. Without such evidence, the difference between the contract price and the market value at the relevant date, which is the conventional measure, simply cannot be computed. The figure of Rs. 20,00,000/- pleaded in the plaint thus stands wholly unsupported by any process of reasoning that can be traced through the evidence.

111. In the present case, it is an admitted position on record that the construction of the suit property has not been completed till date. The material available on record, including the admissions made during the course of evidence, clearly establishes that the project remained incomplete and the contemplated construction was never fully carried out in terms of the agreement between the parties. The obligation to complete the construction of the suit property admittedly rested upon defendant no. 1. As already discussed while dealing with issue no. 1, the plea of defendant no. 1 that the plaintiff in collusion with defendants nos. 2 and 3 and other purchasers prevented him from completing the construction work has been examined and rejected for want of any cogent or worthwhile evidence. Be that as it may, although the said defence set up by defendant no. 1 has failed and stands rejected, it nevertheless remained incumbent upon the plaintiff to independently establish not only his entitlement to damages but also the actual quantum thereof, inasmuch as the burden of proving issue no. 6 squarely rested upon the plaintiff. However, as already discussed in

the preceding paragraphs, the plaintiff has failed to either adequately plead or satisfactorily prove the basis, computation, and quantification of the damages claimed by him.

112. This court is conscious of the fact that the plaintiff has remained deprived of the fruits and benefits of the transaction for a considerable period of time extending over nearly a decade despite having paid substantially the entire sale consideration. It also cannot be ignored that, as a matter of common experience and judicial notice, property values in Delhi have generally witnessed appreciation during the intervening period. However, it is equally well settled that damages cannot be awarded on the basis of conjectures, assumptions, or mere surmises. In the absence of cogent material enabling the court to reasonably assess and quantify the actual loss suffered, the court cannot proceed to grant compensation by adopting a speculative or arbitrary approach. The law requires that damages must be pleaded and proved with reasonable certainty. In the present case, while adjudicating upon the issue relating to refund of consideration, this court has already granted a decree in favour of the plaintiff for refund of the principal amount paid by him to defendant no. 1 together with interest at the rate of 12% per annum from the date of filing of the suit. Having regard to the long intervening period, the award of interest at the aforesaid commercial rate itself constitutes substantial restitutionary and compensatory relief for

deprivation of use of the money invested by the plaintiff. In these circumstances, grant of an additional amount of Rs. 20,00,000/- towards damages, in the absence of any satisfactory proof regarding actual loss, escalation, or diminution in value, would effectively result in overcompensation and confer a benefit unsupported by evidence. Such a course would run contrary to the settled principles embodied under Section 21(4) of the Specific Relief Act, 1963 read with Section 73 of the Indian Contract Act, 1872, which require damages to be founded upon legally admissible proof and reasonable quantification.

113. Summarising the above discussion, it is reiterated that the plaintiff has failed to discharge the burden cast upon him of proving, with reasonable certainty, the damages claimed in the sum of Rs. 20,00,000/-. No valuation report, market assessment, comparable sale transaction, expert evidence, or other independent material has been produced from which the alleged loss could be objectively assessed or quantified. In the considered view of this court, the prejudice suffered by the plaintiff already stands sufficiently and adequately addressed through the decree for refund of the consideration amount coupled with interest at the rate of 12% per annum. No further amount can legally be awarded under the separate head of damages in the absence of proper pleadings and cogent proof. Accordingly, issue no. 6 is decided against the plaintiff and in favour of defendant no. 1

__Issue No. 7__

> ***Whether plaintiff has made payment to defendant no. 1 for a sum of Rs.10,000/- vide cheque no. 564996 dated 20.06.2015, for a sum of Rs.20,000/- vide cheque no. 564997 dated 21.06.2015, for a sum of Rs.10,000/- vide cheque no. 564999 dated 21.06.2015 and for a sum of Rs.10,000/- vide cheque no. 565000 dated 22.06.2015? OPP***

114. This issue is specifically directed to the question of whether the four cheques referenced in the Final Payment Receipt dated 24.06.2015 (Ex. PW1/7), namely cheque no. 564996 dated 20.06.2015 for Rs. 10,000/-, cheque no. 564997 dated 21.06.2015 for Rs. 20,000/-, cheque no. 564999 dated 21.06.2015 for Rs. 10,000/- and cheque no. 565000 dated 22.06.2015 for Rs. 10,000/-, can in law be treated as payments made by the original plaintiff to defendant no. 1, notwithstanding that the said cheques are admittedly drawn in favour of one M/s Manoj Building Material Suppliers and not in favour of defendant no. 1.

115. The said issue requires a determination of three sub-questions: (a) whether the said cheques were issued by the original plaintiff at the instance of defendant no. 1; (b) whether the cheques were actually presented and encashed; and (c) whether, in the eye of law, the encashment of cheques drawn in favour of a third party (i.e., M/s Manoj Building Material Suppliers) at the instance and for the benefit of defendant no. 1 can be regarded as payment made to and received by defendant no. 1 himself.

116. On the first sub-question, the case of the plaintiffs is that the said four cheques were issued at the express request and instance of defendant no. 1, who informed the original plaintiff that M/s Manoj Building Material Suppliers was the supplier of building material for the suit project and that the said payments were required to be made directly to the supplier in connection with the construction being undertaken by him. The said position finds substantial corroboration from the admission made by DW-1 in his cross-examination dated 09.05.2025 (pre-lunch session), the relevant portion whereof has already been noted under issue no. 1 hereinabove, wherein he has admitted that *"one of the building material supplier name was Manoj supplier"*. The said admission unequivocally establishes that defendant no. 1 was familiar with M/s Manoj Building Material Suppliers and was, at the relevant time, taking building material supplies from the said supplier in connection with the construction at the suit property. The link between the building material supplier and defendant no. 1 is, accordingly, established by the admission of defendant no. 1 himself.

117. On the second sub-question, namely the encashment of the cheques, no challenge whatsoever has been raised by defendant no. 1 in his pleadings, in his evidence affidavit, or during the course of arguments, to the effect that the four cheques in question were ever dishonoured, bounced, or returned unpaid. In fact, the said four cheques find

specific mention in the Final Payment Receipt dated 24.06.2015 (Ex. PW1/7), which is the contemporaneous document executed by defendant no. 1 himself acknowledging receipt of the sale consideration. Pertinently, the said document also records the cash payment of Rs. 1,00,000/- received on 20.06.2015 and a further cash payment of Rs. 50,000/- received on 24.06.2015. The aggregate sum recorded in Ex. PW1/7, namely Rs. 2,00,000/- (Rs. 1,00,000/- in cash on 20.06.2015 + Rs. 10,000/- + Rs. 20,000/- + Rs. 10,000/- + Rs. 10,000/- by way of the four cheques + Rs. 50,000/- in cash on 24.06.2015), is fully consistent with the case of the original plaintiff that the said payment of Rs. 2,00,000/- represented the final tranche of the sale consideration after which no balance remained payable. The fact that the cheques were issued and the corresponding amounts were treated by defendant no. 1 himself as having been received by him in part-payment of the sale consideration, as evidenced by the very execution of Ex. PW1/7 in the presence of the witnesses, raises a strong presumption that the said cheques were indeed encashed and the corresponding amounts were appropriated towards the construction at the suit property at the instance of defendant no. 1. No contrary evidence has been brought on record by defendant no. 1 to displace this presumption.

118. Significantly, the execution of the Final Payment Receipt

dated 24.06.2015 (Ex. PW1/7) has not been specifically denied or disputed by defendant no. 1. He has not pleaded that his signature on Ex. PW1/7 is forged or fabricated, nor has he set up any case that the said document was procured from him by fraud, coercion, undue influence or misrepresentation. The challenge raised by defendant no. 1, by way of his evidence affidavit Ex. DW1/A, is limited to the contention that the amounts comprised in the four cheques were not received by him, the cheques having been drawn in favour of a third party. The execution of Ex. PW1/7 by defendant no. 1, however, stands admitted. Once the execution of a document is admitted by a party, the contents thereof carry a strong presumption of correctness, and the burden lies on the said party to displace such presumption by leading positive and cogent evidence to the contrary. Defendant no. 1 has manifestly failed to discharge such burden. He has not produced any evidence to suggest that the four cheques were dishonoured, that the amounts were not encashed, or that the said amounts were not appropriated for the supply of building material in connection with the suit project. Equally, he has not led any evidence to demonstrate that the building material in respect whereof the said payments were made was not, in fact, supplied for or used in the construction at the suit property. The defence, accordingly, remains a bare denial without any supporting material on record.

119. On the third sub-question, namely whether payments made by way of cheques drawn in favour of a third party at the instance of a contracting party can in law be treated as payments made to and received by the contracting party himself, the position is no longer res integra. It is a well-settled principle of the law of agency that payments made to a third party at the instance, on the directions, and for the benefit of the principal are, in the eye of law, payments made to the principal himself. The principle finds embodiment in Section 196 of the Indian Contract Act, 1872 (relating to ratification of acts done on behalf of another), and is further reinforced by the equitable doctrine of subrogation and the rule against unjust enrichment. Where a contracting party directs the other party to make a payment to a third person who is the creditor or agent of the contracting party, and the payment is duly made and accepted in pursuance of such direction, the contracting party cannot subsequently turn around and contend that the payment did not enure to his benefit. To permit such a plea would be to permit a contracting party to take advantage of his own direction, contrary to the basic principles of equity and fair dealing.

120. In the present case, the cheques in question were drawn in favour of M/s Manoj Building Material Suppliers, a supplier admittedly known to defendant no. 1 and admittedly the supplier of building material at the suit project. The cheques were drawn on the bank account of the husband of the original plaintiff (Sh. Narinder Kumar Harit), who is one of the legal representatives presently prosecuting the suit. The said cheques, on their face, are connected to the construction at the suit property, which was the obligation of defendant no. 1 under the agreement to sell read with the collaboration agreements. The Final Payment Receipt dated 24.06.2015 (Ex. PW1/7) acknowledges, in unequivocal terms, that the said cheques were issued and accepted as part-payment of the sale consideration in respect of the suit flat. In such circumstances, the amounts comprised in the said four cheques cannot be regarded as payments to a stranger or third party divorced from the suit transaction, but must, in law, be treated as payments made to and received by defendant no. 1 himself, who was the direct beneficiary of the supply of building material against the said payments.

121. It is also relevant to note that the original plaintiff is not seeking to enforce any independent contractual claim against M/s Manoj Building Material Suppliers, nor has she sought to attribute any liability to the said supplier. The said supplier was merely a conduit through which the payments were channelised at the instance of defendant no. 1, and the supply of building material against the said payments was for the direct benefit of the construction work being undertaken by defendant no. 1 at the suit property. The substance of the transaction, accordingly, is that the original plaintiff paid the said amounts in

fulfilment of her obligations under the agreement to sell, and the said amounts were applied, at the instance of defendant no. 1, towards the building material to be used in the construction at the suit property. The form of the cheques being drawn in favour of M/s Manoj Building Material Suppliers cannot, in law, alter the substance of the transaction.

122. In the considered view of this court, the contention of defendant no. 1 that the amounts comprised in the four cheques cannot be treated as payments received by him is, accordingly, untenable. The payments in question, having been made at the instance of defendant no. 1, having been duly encashed and applied for the construction at the suit property, and having been specifically acknowledged by defendant no. 1 in the Final Payment Receipt dated 24.06.2015 (Ex. PW1/7), constitute, in law and in fact, payments made to and received by defendant no. 1 himself. The plea of defendant no. 1 to the contrary is rejected.

123. Issue No. 7 is, accordingly, decided in favour of the plaintiffs and against defendant no. 1. The payments of Rs. 10,000/- vide cheque no. 564996 dated 20.06.2015, Rs. 20,000/- vide cheque no. 564997 dated 21.06.2015, Rs. 10,000/- vide cheque no. 564999 dated 21.06.2015 and Rs. 10,000/- vide cheque no. 565000 dated 22.06.2015, aggregating to Rs. 50,000/-, are held to have been made by the original plaintiff to defendant no. 1, and the said amounts form part and parcel of the total sale consideration of Rs. 22,00,000/- in respect of which the relief of refund has been granted to the plaintiffs under issue no. 4.

Issue No. 8

Relief

124. In view of the findings recorded hereinabove on issues no. 1 to 7, the suit is partly decreed in the following terms:

(i) The prayer for specific performance of the agreement to sell dated 20.11.2013 (Ex. PW1/6) is declined.

(ii) A decree for recovery of a sum of Rs. 22,00,000/- (Rupees Twenty-Two Lakhs only) is passed in favour of the plaintiffs and against defendant no. 1, together with simple interest at the rate of 12% (twelve per cent) per annum on the principal sum of Rs. 22,00,000/- from the date of institution of the suit, i.e., 22.05.2017, till the date of actual realisation.

(iii) The prayer for permanent injunction is declined.

(iv) The prayer for damages quantified at Rs. 20,00,000/- is declined.

(v) The consequential prayer for delivery of actual, vacant and physical possession of the suit flat is declined, the same being founded upon and consequential to the relief of specific performance which has been refused.

(vi) The plaintiffs are held entitled to the costs of the suit, which shall be borne by defendant no. 1.

125. Decree sheet be drawn up accordingly.

126. File be consigned to the Record Room after due compliance.

Announced in open Court
on 30.03.2026

NEERAJ SHARMA Digitally signed by NEERAJ SHARMA Date: 2026.04.09 10:45:37 +0530

(NEERAJ SHARMA)
DISTRICT JUDGE-04, CENTRAL
TIS HAZARI COURTS, DELHI