IN THE COURT OF SH AKBAR SIDDIQUE,
DISTRICT JUDGE 04, NORTH DISTRICT
ROHINI COURTS: DELHI

CS DJ 73/2022 **CNR no. DLNT010007292022**

Smt. Geeta Kansal

W/o Sh. Dheeraj Kansal

R/o A-3/64, Sec-17, Rohini, Delhi,

...........Plaintiff

Versus

Mr. Amit Chopra

S/o Sh. Om Prakash Chopra

F-4/133, Sec-16, Rohini, Delhi

........Defendant

Date of Institution	**29.01.2022**
Date of Final Arguments Heard	**11.05.2026**
Date of Pronouncement of Judgment	**06.07.2026**

JUDGMENT

1. By way of this judgment, I shall decide the present suit filed by the Plaintiff seeking following reliefs: -
   a) Pass a decree of Recovery, in favour of the Plaintiff and against the Defendants, directing the Defendant to pay a sum of ₹ 4,00,000/- (₹ Four Lakh Only) along with pendent lite and future interest along with the cost of the suit in favour of the Plaintiff and against Defendant in the interest of justice.
   b) Any other order in the interest of justice.

2. ***CASE OF THE PLAINTIFF***

2.1. It is averred by the Plaintiff in the plaint that the Plaintiff is a peace loving and law-abiding citizen of India and residing at A-3/64, sector 17, Rohini, Delhi with her family.

2.2. It is further averred by the Plaintiff in the plaint that Defendant projected himself as the owner of the entire ground floor without roof right of the property, situated at Plot No. G-4/51, Sector 16, Rohini, Delhi, with free hold rights to the Plaintiff and told the Plaintiff that the Defendant wants to sell the same.

2.3. It is further averred by the Plaintiff in the plaint that the believing the words of the Defendant, the Plaintiff became ready to purchase the above mentioned property for a total consideration of ₹23,00,000/- (₹ Twenty Three Lakh Only) vide agreement to sell dated 25.09.2020 and a sum of ₹ 2,00,000/- (Rs. Two Lakhs only) was paid by the Plaintiff to the Defendant as advance/earnest money.

2.4. It is further averred by the Plaintiff in the plaint that after some time once again negotiations took place between the parties and thereafter a fresh agreement to sell and purchase, dated 03.10.2020 was executed between the Plaintiff and Defendant and total sale consideration for the above mentioned property was decided ₹ 22,65,000/- (₹ Twenty Two Lakhs Sixty Five Thousand Only) on the terms and conditions that if the housing loan for purchasing the above mentioned property will not be approved due to any reason, then the earnest money would be refunded by the Defendant to the Plaintiff. It was also agreed between the parties that all previous dues such as electricity, water and house tax etc. would be cleared by the Defendant.

2.5. It is further averred by the Plaintiff in the plaint that out of total sale consideration of ₹ 22,65,000/- (Rs. Twenty Two Lakhs Sixty

Five Thousand Only) for the above mentioned property the Plaintiff again paid a sum of ₹ 2,00,000/- in cash to the Defendant on the demand of Defendant as the Defendant was in need of money.

2.6. It is further averred by the Plaintiff in the plaint that Plaintiff paid a sum of ₹ 4,00,000/-(Rupee Four Lakh Only) to the Defendant for purchasing the above mentioned property and ₹18,65,000/- (Rupee Eighteen Lakh Sixty Five Thousand Only) was due but due to typographical mistake the balance amount was wrongly typed as ₹20,65,000/- (Rupees Twenty Lakh Sixty Five Thousand Only) in the agreement dated 03.10.2020.

2.7. It is further averred by the Plaintiff in the plaint that since the Defendant has not cleared the dues of the above mentioned property and the property was not free hold, the Plaintiff could not get sanctioned, the loan to purchase the above mentioned property from any bank despite her best efforts.

2.8. It is further averred by the plaintiff in the plaint that under these circumstances, the plaintiff many times demanded the amount of earnest money to the tune of ₹ 4,00,000/-(Rupee Four Lakh Only) from the defendant several times but the defendant did not refund the earnest money to the plaintiff and intentionally linger on the matter on one pretext.

2.9. It is further averred by the Plaintiff in the plaint that the Plaintiff came to know from the reliable sources/local dealers that the Defendant is trying to sell the above mentioned property to some other person without refunding the earnest money of ₹ 4,00,000/- (Rupee Four Lakh Only) to the Plaintiff.

2.10. It is further averred by the Plaintiff in the plaint that when the Defendant failed to refund the earnest money of ₹ 4,00,000/- (Rupee Four Lakh Only) to the Plaintiff despite several request, the Plaintiff issued a legal notice dated 12.04.2021, through speed post through his counsel which was duly served upon the Defendant and Defendant sent a false and frivolous reply dated 17.03.2021 to the legal notice but did not paid the earnest money so far.

3. ***CASE OF DEFENDANT AS PER WRITTEN STATEMENT***

3.1. It is averred by the Defendant in the written statement that the present suit is not maintainable as framed being an abuse and misuse of process of law and the same is liable to be outrightly dismissed containing concocted, manipulated and frivolous averments solely with a view to hide her own misdeeds and to claim the relief which is not at all available to the Plaintiff.

3.2. It is further averred by the Defendant in the written statement that the Plaintiff has no locus standi to file and maintain the present suit inasmuch as the Plaintiff being guilty of wilful violation of the agreed covenants more particularly the Agreement to Sell dated 03.10.2020, is not available with any of the reliefs as claimed in the present suit. It is submitted that since the Plaintiff intentionally and deliberately failed to perform her part of the contractual obligation in terms of the Agreement to Sell dated 03.10.2020 inasmuch as she did not pay the balance sale consideration of ₹20,65,000/- to the Defendant within the stipulated time i.e. on or before 03.11.2020 and also within the extended time, the amount of earnest money stood forfeited especially when the Plaintiff herself admitted and acknowledged that it is not possible and feasible for her to continue with the deal /sale due to non-availability of funds as is clear from the telephonic conversation between the parties. It is submitted that although in terms of the agreement to sell dated 03.10.2020, the earnest money had been forfeited on expiry of the stipulated period, yet the Defendant on the request of the Plaintiff granted her considerable time to perform her part of the obligation, but to no avail and now after a lapse of more than two years of the expiry of the stipulated period, the Plaintiff has come up with the present false and frivolous suit on the basis of forged and fabricated document which have no legs to stand.

3.3. It is further averred by the Defendant in the written statement that the Plaintiff has intentionally and deliberately concealed the material facts and rather she in collusion with her associates has filed/relied upon the forged and fabricated documents knowing fully well that the said documents are the result of forgery. It is submitted that the Plaintiff is guilty of the wilful offences of cheating, forgery and fabrication/manipulation of the original documents more particularly the Original Agreement to Sell dated 25.09.2020 & 03.10.2020.

3.4. Further, it is the case of Defendant that Defendant initially agreed to sell, being the owner of entire Ground Floor without roof rights of Property No.G-4/51, Sector 16, Rohini, Delhi, to the Plaintiff, by virtue of Agreement to Sell dated 25.09.2020, at ₹ 23,00,000/- (Rupees Twenty Three Lakh Only) and at the time of execution of the said Agreement to Sell dated 25.09.2020, Plaintiff paid Rs.2 Lacs in cash as earnest money with stipulation to complete sale by 25.10.2020. However, after 2-3 days of execution of the said Agreement to Sell, the Plaintiff approached the Defendant to revise / review the terms of sale i.e. sale consideration of ₹ 22,65,000/- in lieu of ₹ 23,00,000/- as well as change in date of completion of transaction as 04.11.2020 in lieu of 25.10.2020 and since the Defendant was interested to dispose of the property, he agreed to the said proposal / suggestions of the Plaintiff without doubting the integrity of the Plaintiff and accordingly, another Agreement to Sell dated 03.10.2020 was entered into between the parties containing the said revised stipulations qua the consideration with date of completion of the sale. Originals of both the said Agreements to Sell duly signed by both were retained by the Plaintiff while photocopies thereof were handed over to the Defendant.

3.5. It is relevant to state that while entering into the fresh/revised Agreement to Sell dated 03.10.2020, amount of earnest money already paid by the Plaintiff to the Defendant was acknowledged in the fresh agreement with the stipulation that balance amount of ₹ 20,65,000/- shall be paid at the time of execution and registration of the sale deed. It is quite surprising that the Plaintiff destroyed/tore all three pages of the document claiming it to be Original Agreement to sell dated 25.09.2020 and the Defendant did not doubt the malafide intent of the Plaintiff under the bonafide impression that the said document has already become a waste paper after execution of the fresh Agreement dated 03.10.2020, thereafter, Plaintiff did not perform her part of contractual obligations by the stipulated date in terms of Agreement to Sell dated 03.10.2020 and rather she kept on postponing the issue on one pretext or the other despite granting huge time and ultimately, the Defendant was compelled to serve legal notice dated 17.03.2021 through Advocate to the Plaintiff apprising the Plaintiff about forfeiture of the earnest money of ₹ 2 Lacs and cancellation of deal for all intents and purposes on account of wilful breach of the Agreement to Sell dated 03.10.2020.

3.6. It is relevant to state that upon being served with the notice dated 17.03.2021, the Plaintiff in collusion with her associates after manipulating the things got issued a false and frivolous notice dated 12.04.2021 with incorrect statement that the Plaintiff paid Rs. 4 Lacs as earnest money and now she has filed the present false and frivolous suit and upon being served with the present suit, it has been revealed that the Plaintiff has not only made false averments in the plaint but she has relied upon forged, fabricated and manipulated documents more particularly originals of the Agreement to Sell dated 25.09.2020 & 03.10.2020 (lying with her), by inserting few lines on the first page (stamp paper) of both the Agreements with malafide intent to cheat and defraud the defendant and also to hide her own misdeeds and after forging and fabricating the originals of the Agreement to Sell dated 25.09.2020 & 03.10.2020, the Plaintiff initially got issued false and frivolous notice dated 12.04.2021 and then filed the present suit. It is relevant to state that by relying on the forged and fabricated documents, the Plaintiff has not only committed the wilful offence of perjury, forgery and fabrication of the original documents with an intention to use the forged documents to be genuine ones inasmuch as perjury, forgery and fabrication on the part of the Plaintiff is clear from the naked eye inasmuch as, photocopies of both the Agreements (which were handed over by the plaintiff to the defendant) and being filed herewith would clearly go to establish that there is not even a single word on the First Page (Stamp Paper) except signatures of both the parties while the Agreements relied upon by the Plaintiff contain forged and fabricated lines got typed by the plaintiff subsequently i.e. "₹ 2,00,000/- received cash from Geeta Kansal on 25.09.2020" on the Agreement to sell dated 25.09.2020 and two lines i.e. "₹

2,00,000/- already received cash vide Agreement on 25.09.2020, Total amount received ₹4,00,000/- only till 3 Oct. 2020 from Geeta Kansal" on the Original Agreement to sell dated 03.10.2020. It is submitted that had there been any such insertion at the time of execution of the agreements, it would be certainly on photocopies of both the agreements provided by the Plaintiff to the Defendant and further there would be a mention of ₹18,65,000/- in the Agreement to Sell dated 03.10.2020 being the balance sale consideration instead of ₹20,65,000/-, which clearly go to establish and prove that the Plaintiff has played a calculated fraud, mischief, cheating by forging the original papers for which she is liable to be prosecuted and punished for the said wilful offences as provided under Indian Penal Code.

4. *ISSUES*

4.1. After completion of pleadings, vide order dated 04.11.2022, following issues have been settled for trial:

1. ***Whether the Plaintiff is entitled for the decree of recovery in favour of the Plaintiff and against the Defendant, directing the Defendant to pay a sum of ₹ 4,00,000/- (Rupees Four Lakh Only) along with pendente lite and future interest, as prayed for? OPP.***
2. ***Whether the suit is not maintainable against the Defendant as there is no cause of action and is liable to be dismissed? OPD.***
3. ***Relief.***

5. *PLAINTIFF'S EVIDENCE*

5.1. In order to discharge the onus of proof and establish his case, the plaintiff entered into the witness box and examined herself as PW1. PW1 tendered her evidence by way of affidavit exhibited as Ex. PW1/A. Relied upon the following documents in support of him case:

A. ***Mark A is Agreement dated 25.09.2020.***

B. ***Ex.PW1/2 (OSR) is Agreement dt. 03.10.2020.***

C. ***Ex.PW1/3 is true copy of legal notice dt. 12.04.2021.***

D. ***Ex.PW1/4 is reply to legal notice.***

5.2. Plaintiff was cross-examined by Sh. Irshad Ahmed, Ld. Counsel for the defendant at length.

5.3. I am 9th pass. I am doing a private job since 2021 and presently I am getting salary of Rs. 15,000/- per month. (Volt. Prior to 2021, I was doing business of readymade garments/boutique at B-1/179, Sector-17, Rohini, Delhi, on rent in the name and style of Geeta Boutique & Readymade Garments). I am living separate for the last ten years from my husband.

5.4. I had given an amount of ₹2,00,000/- (Rupees Two Lakh Only), firstly in the month of September 2020 towards bayana, to defendant qua property G-4/51, Ground Floor, Sector-16, Rohini, Delhi.

5.5. At this stage, witness is shown photocopy of agreement to sell Mark-A. Witness is asked if it bears her signature and the witness stated that yes, Mark-A bears her signature at point-A, B & C on each page.

5.6. At this stage, witness is shown photocopy of Agreement to sell Mark-DA. Witness is asked if it bears her signature and the witness stated that yes Mark-A bears her signature at point-A, B & C on each page.

5.7. It is correct that the said deal was finalized for a total consideration amount of ₹23,00,000/- (Rupee Twenty Three Lakh Only) After about 15-20 days of said deal, another meeting was done with defendant at his house at Sector-16, Rohini, Delhi and second agreement was executed between me and defendant on 03.10.2020 Ex PW-1/2, bearing my signature at points-A, B & C.

5.8. At this stage, witness is shown photocopy of agreement to sell Mark-DB. Witness is asked if it bears her signature and the witness stated that yes Mark-DB bears her signature at point-A, B & C.

5.9. Vide Agreement to Sell Ex PW-1/2 the total consideration amount was decreased and it was finalized for a sum of ₹22,65,000/-. It is wrong to suggest that I had to pay balance amount of Rs. 20,65,000/- to defendant. (Vol. The balance sum of ₹ 22,65,000/- is a typographical error in Ex PW-1/2. Since, I had paid ₹ 4 Lakh to defendant I had to pay ₹ 18,65,000/-). I had not read the entire contents of Ex PW-1/2 before singing the same.

5.10. It is correct that I have received notice dated 17.03.2021 to which I also replied. I applied for loan against suit property, but same was not sanctioned. It is correct that I stepped back from the deal because my loan was not sanctioned. It is incorrect to suggest that due to this reason, the earnest money stood forfeited. Vol. It is mentioned in the agreement to sell that in case the loan is not sanctioned, the earnest money be returned. The first Agreement to Sell was entered into with the defendant through property dealer Vijay and Kamal. It is incorrect to suggest that at the end of first agreement, defendant had returned ₹ 2.0 lacs to me in cash. It is further incorrect to suggest that the original first agreement to sell was torn then and there. It is correct that one another agreement was executed with the defendant wherein the total sale consideration has been shown as ₹ 22.65 lacs. I never purchased any stamp papers for execution of the sale deed in respect of the suit property. Nor I got any appointment at Registrar Office. It is incorrect to suggest that I have filed false and fabricated suit to extort money from the defendant illegally. It is incorrect to suggest that I had not paid ₹4.0 lacs to the defendant as earnest money. It is wrong to suggest that I am deposing falsely.

5.11. Vide order dated 02.04.2024, PE stands closed.

6. ***DEFENDANT'S EVIDENCE***

6.1. In order to discharge the onus of proof and establish his case, the defendant entered into the witness box and examined himself as DW1. DW1 tendered him evidence by way of affidavit exhibited as Ex. PW1/A. Relied upon the following documents in support of him case:

A. Copy of Agreement to Sell dated 25.09.2020 is Ex. DW-1/1 (objected to by Ld. Counsel for plaintiff as mode of proof and forged and fabricated).

B. Copy of Agreement to Sell dated 03.10.2020 is Ex. DW-1/2 (objected to by Ld. Counsel for plaintiff as mode of proof and forged and fabricated).

C. Copy of police complaint dated 16.04.2022 is Ex. DW-1/3.

D. Copy of police complaint dated 16.07.2022 is Ex. DW-1/4.

E. Pen drive is Ex. DW-1/5 (objected to by Ld. Counsel for plaintiff as mode of proof and forged and fabricated).

F. Affidavit u/s 65-B of Indian Evidence Act is Ex.DW-1/B, bearing my signatures at point C and D.

6.2. Defendant was cross-examined by Akash Mishra, Ld. Counsel for the plaintiff at length.

6.3. **Question:** Is it correct that there was a clause in the agreement to sell that the transaction was subject to loan to be taken by the plaintiff from the Bank?

6.4. **Answer:** It is correct. However, the plaintiff refused to take the loan on account of heavy expenses. The property in question was already under loan taken by me. There was no fault from my side. In order to materialized the deal, I had cleared the loan which I had taken over the suit property at the request of the plaintiff.

6.5. I had cleared the loan after the agreement to sell with the plaintiff on 14.12.2020. It is incorrect to suggest that the plaintiff could not avail the loan as I had not cleared my loan within the period as stipulated in the agreement to sell in question i.e. 03.10.2020. It is correct that on 03.10.2020 i.e. the time of execution of second agreement to sell, I have received ₹2 lacs as earnest money from the plaintiff. It is correct that according to the first agreement to sell dt. 25.09.2020, I have received ₹2 lacs from the plaintiff but the same were returned to the plaintiff after 4-5 days from 25.09.2020. No written work was done at the time of return of ₹ 2 lacs, taken by me in terms of first agreement to sell dt. 25.09.2020, however, the first agreement to sell dt. 25.09.2020 was destroyed/torn in the presence of the plaintiff and one more person with her and I. It is incorrect to suggest that I have not returned ₹ 2 lacs taken by me in terms of the first agreement to sell dt. 25.09.2020. I had taken the photo/screenshot of the first agreement to sell dt. 25.09.2020 on my SAMSUNG mobile phone M-31 which I am carrying even today. I had taken the printout of the screenshot through my mobile phone from a shop situated at Sector-16, Rohini, Delhi. However, I cannot tell the name of the shop as there are many shops in the said market. The shopkeeper had got the image of agreement to sell dated 25.09.2020 transferred on his system via Bluetooth. It is incorrect to suggest that the photocopy of agreement to sell dated 25.09.2020 Ex. DW-1/1 and Ex. DW-1/2 are forged and fabricated and that the copy has been got procured after applying fluid/whitener on the first page where "₹2 lacs already received cash vide agreement on 25.09.2020. Total amount received 4 lacs only till 03.10.2020 from Geeta Kansal"**,** has been removed with the help of computer photoshop.

6.6. It is incorrect to suggest that I have taken ₹ 4 lacs as earnest money from the plaintiff. It is incorrect to suggest that I am deposing falsely.

6.7. ***DW2, Sh, Pawan Pandey***

6.8. In order to discharge the onus of proof and establish his case, the defendant summoned witness Sh. Pawan Pandey as DW2.

6.9. Vide order dated 13.03.2026, DE stands closed.

7. ***ISSUE WISE FINDINGS AND ANALYSIS***

7.1. I have heard the Ld. Counsels for the parties and have given my anxious and thoughtful consideration to the submissions made. further I have also carefully gone through the entire record.

7.2. It is a settled principle of law that in civil proceedings, the standard of proof is not that of proof beyond reasonable doubt, but one based on the preponderance of probabilities. While adjudicating issues arising in a civil suit, the Court is required to weigh the evidence on the scale of probabilities, assessing which version appears more probable in the light of the surrounding circumstances. This position has been consistently reiterated by the Supreme Court, including in ***N.G. Dastane (Dr) v. S. Dastane, (1975) 2 SCC 326,*** wherein it was held that the normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. As explained therein, under Section 3 of the Indian Evidence Act, 1872, a fact is said to be proved when the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent person, when faced with conflicting probabilities, is expected to act upon the supposition that the fact exists if, on weighing the various probabilities, the preponderance lies in favour of the existence of that fact. The first step in this process is to exclude the impossible; and the second is to reject the improbable. Within the broad range of possibilities, it is this choice that ultimately determines where the preponderance of probabilities lies. As the Court further noted, *"the nature and gravity of an issue necessarily determine the manner of attaining reasonable satisfaction of the truth of the issue"* and therefore, issues affecting the status of parties may demand closer scrutiny than comparatively routine matters.

7.3. Even within the framework of the standard of preponderance of probabilities, the Court recognized that the degree of probability required is necessarily dependent on the nature and gravity of the subject matter. As observed by the Supreme Court in State of ***U.P. v. Krishna Gopal, (1988) 4 SCC 302,***

> *"The concepts of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately, on the trained intuitions of the Judge."*

7.4. It may be relevant now to consider the law pertaining to discharge of burden of proof of the issues as relevant and applicable to the Civil Jurisdiction. In the binding authority of the Hon'ble Supreme Court of India, in ***M/s. Gian Chand & Brothers and Another v. Rattan Lal@ Rattan Singh: [2013] 3 S.C.R. 601***; it has been laid down:-

> 1.3. It is well settled principle of law that a person who asserts a particular fact is required to affirmatively establish it. ***The burden of proving the facts rests on the party who substantially asserts the affirmative issues and not the party who denies it but the said principle may not be universal in its application and there may be an exception thereto.***

7.5. The various aspects of proving the facts of a case and exceptions, if any, have been duly considered by Hon'ble Supreme Court of India in ***Anil Rishi vs Gurbaksh Singh in Appeal (civil) 2413 of 2006 on 2 May, 2006***, wherein the binding legal position has been reinforced as under :-

> "Pleading is not evidence, far less proof. Issues are raised on the basis of the pleadings. Indisputably, the relationship between the parties itself would be an issue. The suit will fail if both the parties do not adduce any evidence, in view of Section 102 of the Evidence Act. Thus, ordinarily, the burden of proof would be on the party who asserts the affirmative of the issue and it rests, after evidence is gone into, upon the party against whom, at the time the question arises, judgment would be given, if no further evidence were to be adduced by either side."
>
> It has been further laid down (supra) :-
>
> "A distinction exists between a burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. ***The question of onus of proof has greater force, where the question is which party is to begin. Burden of proof is used in three ways : (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter evidence;***

and (iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule is Section 101 is inflexible. In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same."

7.6. As per law of the land, the onus to prove is upon the Plaintiff and if the Plaintiff discharges that onus and makes out a case to entitle him to the relief asserted, in this circumstance, the onus shifts upon the Defendant to prove such circumstances which may disentitle the Plaintiff to the relief claimed. Ergo, my issue wise findings are as under:

Issue no 1: Whether the plaintiff is entitled for the decree of recovery in favour of the plaintiff and against the defendants, directing the defendants to pay a sum of ₹4,00,000/- (Rupees Four Lakh Only) along with pendente lite and future interest, as prayed for? OPP.
Issue no 2: Whether the suit is not maintainable against the defendant as there is no cause of action and is liable to be dismissed? OPD.

7.7. The Issue no 1 & 2 are interconnected, ergo, both the issues are taken up together for adjudication. The onus to prove the Issue no 1 is on the Plaintiff and onus to prove the issue no 2 is on the Defendant, in my humble opinion, the Issue no 1 is required to be dealt with first.

7.8. It is the case of the Plaintiff that vide Agreement to Sell dated 25.09.2020, Mark A, Plaintiff and Defendant entered into an Agreement for sale and purchase of suit property, for sale consideration of ₹ 23,00,000/- (Rupees Twenty-Three Lakh Only), owned by the Defendant. Further, a sum of ₹ 2,00,000/- (Rs. Two Lakhs only) was paid by the Plaintiff to the Defendant as advance/earnest money. Thereafter, a fresh Agreement to Sell was entered into by Plaintiff and Defendant, vide subsequent agreement to sell and purchase, dated 03.10.2020, Ex PW 1/2, for a sale consideration of ₹ 22,65,000/- (Rs. Twenty Two Lakhs Sixty Five Thousand Only). Pertinently, it is further the case of the Plaintiff she again made a payment of ₹ 2,00,000/- to the Defendant, thus, in total till 03.10.2020, the Plaintiff paid ₹ 4,00,000/- to the Defendant.

7.9. Furthermore, it is the case of the Plaintiff, after payment of ₹ 4,00,000/- (Rupee Four Lakh Only) to the Defendant, for purchasing the above mentioned suit property and ₹ 18,65,000/- (Rupee Eighteen Lakh Sixty Five Thousand Only) was due but due to typographical mistake the balance amount was wrongly typed as ₹ 20,65,000/- (Rupees Twenty Lakh Sixty Five Thousand Only) in the Agreement dated 03.10.2020, Ex PW 1/2.

7.10. Conversely, the Defendant admits to have entered into an Agreement to Sell dated 03.10.2020, Ex PW 1/2, inasmuch as Plaintiff did not pay the balance sale consideration of ₹20,65,000/- to the Defendant within the stipulated time i.e. on or before 03.11.2020 and also within the extended time, the amount of earnest money stood forfeited, especially when the Plaintiff herself admitted and acknowledged that it is not possible and feasible for her to continue with the deal /sale due to non-availability of funds._Further, the Defendant admits to have executed Agreement to Sell dated 25.09.2020, Mark A, at ₹ 23,00,000/- (Rupees Twenty Three Lakh Only) and at the time of execution of the said Agreement to Sell dated 25.09.2020, Plaintiff paid Rs.2 Lacs in cash as earnest money with stipulation to complete sale by 25.10.2020. The Defendant also submits that the Plaintiff have forged the both the agreement to sell by adding lines regarding receiving the payment of ₹4,00,000/- by the Defendant.

7.11. On scrupulous examination of material on record it appears that initially Plaintiff and Defendant entered into an Agreement to Sell and purchase dated 25.09.2020, Mark A, for sale consideration of ₹ 23,00,000/- (Rupees Twenty Three Lakh Only). Admittedly, the Plaintiff paid ₹ 2,00,000/- as earnest money to the Defendant. Thereafter, fresh agreement to sell and purchase, dated 03.10.2020, Ex PW 1/2, for a sale consideration of ₹ 22,65,000/- (Rs. Twenty Two Lakhs Sixty Five Thousand Only) was entered into by the Plaintiff and Defendant. Pertinently, the Plaintiff again made a payment of ₹ 2,00,000/- to the Defendant, thus, in total till 03.10.2020, the Plaintiff paid ₹ 4,00,000/- to the Plaintiff. Thus, previous agreement to sell was subsequently changed into new agreement.

7.12. At this state it is apposite to refer to Section 62 of Indian Contract Act, 1872, which defines novation as follows:-

> *"62. Effect of novation, rescission, and alteration of contract.—If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.*

7.13. In this context, reference may be had to the judgment of the Supreme Court in ***Lata Construction and Ors. vs. Dr.Rameshchandra Ramnikalal Shah and Anr., (2000) 1 SCC 586***, where the Supreme Court held as follows:-

> "9. We may, at this stage, refer to the provisions of Section 62 of the Indian Contract Act which provides as under:
> "62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed." This provision contains the principle of "novation" of contract.
> ***10. One of the essential requirements of "novation", as contemplated by Section 62, is that there should be complete substitution of a new contract in place of the***

old. It is in that situation that the original contract need not be performed. Substitution of a new contract in place of the old contract which would have the effect of rescinding or completely altering the terms of the original contract, has to be by agreement between the parties. A substituted contract should rescind or alter or extinguish the previous contract. But if the terms of the two contracts are inconsistent and they cannot stand together, the subsequent contract cannot be said to be in substitution of the earlier contract."

7.14. Ergo, in order to appreciate the controversy in an effective manner, it is apposite to refer to the terms of the Agreement to Sell dated 25.09.2020 & 03.10.2020, to understand as to intention of the parties.

7.15. The relevant clauses of the Agreement to Sell dated 25.09.2020, Mark A & 03.10.2020, exhibited as EX PW 1/2, are as follows:

Agreement to Sell Dated 25.09.2020, Mark A

a. On the First Page bearing the Stamp paper, ₹ 2,00,000/- received cash from Geeta Kansal bearing signatures of both Plaintiff and Defendant.

b. The Agreement is undated and the stamp paper bears the date 25.09.2020.

c. And whereas the first party/ies have agreed to sell the above said Ground Floor without roof to the second party for a total sale consideration amount of ₹23,00,000/- (Rupee Twenty Three Lakh Only), out of the entire consideration amount a sum of ₹ 2,00,000/- (Rupees Two Lakh Only) by cash received by the First Party from the Second Party and balance amount of ₹ 21,00,000/- (Rupees Twenty One Lakh Only) will be received by the First Party from the Second Party before or till 25.10.2020.

d. That the second party shall be entitled to get completed the sale documents/sale deed of the said property in his/her name within the stipulated period to which the first party shall not raise any objection.

e. That the first party will clear all the due such as Electricity And Water.

f. That it is agreed by the first party that if the housing loan will not approved with any reason then the earnest money will be refunded.

g. That the first party shall deliver the actual physical vacant possession along with all the photocopies of the original title deeds and other connection document of the said property. to the second party at the time of payment.

h. That all the charges regarding the registration of said documents/sale deed of the said property shall be paid and borne by the second party.

i. That if the Second Party fails to pay the balance amount within stipulated period, then his earnest money shall be forfeited and this agreement shall stand cancelled.

Agreement to Sell Dated 03.10.2020, Ex PW 1/2 (OSR)

The Agreement is dated 09.01.2014 and the date 03.10.2020 is reflecting on the stamp paper.

On the First Page bearing the Stamp paper, ₹ 2,00,000/- received cash vide agreement on 25.09.2020. Total amount received ₹ 4,00,000/- only till 03rd October 2020 from Geeta Kansal. It is bearing signatures of both Plaintiff and Defendant.

And Whereas the First party/s for his/her legal bonafide needs and requirements has agreed to sell ENTIRE GROUND FLOOR, WITHOUT ROOF RIGHTS BUILT ON BUILT-UP PROPERTY BEARING NO.51, POCKET-4, BLOCK-G, SECTOR-16, 'SITUATED IN THE LAY OUT PLAN OF ROHINI RESIDENTIAL SCHEME ROHINI, DELHI-110089, along with all its rights, title, interests, fixtures, fittings, connections etc., Freehold rights of the land under the said property unto the Second Party and the Second Party has also agreed to purchase the same from the First party for a total sale consideration amounting ₹22,65,000/- (Twenty Two Lakh Sixty Five Thousand Only), as full and final settlement of the sale price on the following terms and conditions of this AGREEMENT TO SELL & PURCHASE as under:-

NOW THIS DEED OF AGREEMENT WITNESSETH AS UNDER

1. That the ***sale consideration of the said agreement has been fixed between the Party at Rs.22,65,000/-(Rupees Twenty Two Lakh Sixty Five Thousand Only), regard-***

ing the above said Property and The First party has received a sum of Rs.2,00,000/-(Rupees Two Lakh Only) in cash on dated 03/10/2020 as an earnest money/Bayana from the Second Party and the second Party will pay the balance amount Rs.20,65,000/-(Rupees Twenty Lakh Sixty Five Thousand Only Only), on or before 04/11/2020, and at the time of final payment the First party will execute the necessary sale documents/Sale Deed regarding the above said property in favour of the Second Party or his/her nominee(s) in the office of the Sub- Registrar/Registrar concerned.

3. That the House Tax, water and electricity charges etc. and any other charges of the above said property unto the date of execution of this sale documents shall be paid and borne by the First party and thereafter the same shall be paid and borne by the Second Party.
4. That the First Party hereby bound himself to present or execute all the connected documents of the above said property (1 to all chains) at the time of execution of the said property as and when required by Second Party in their own names or their nominee(s).

5. That all the original Title Deed and others documents of above said property will be handed over by the First Party to the Second Party at the time of full and final payment.

6. That the above said property under sale is free from all sorts of encumbrances such as sale, mortgage, gift, lien, litigation, legal flaws, stay, dispute, attachment, notification, acquisitions and decree etc., and the First party is fully competent to sale and transfer the same and the second Party has checked the original documents and fully satisfied with the file of the First party and the First party will not be liable for any loss relating to the above said property in future. And also the First party hereby assure to the second Party that there is no legal defect in the title of ownership regarding the above said property.

7 That both the Party shall be bound of the terms and conditions of this AGREEMENT TO SELL & PURCHASE/BAYANA in future.

7.16. The Section 62 of the Indian Contract Act of 1872 recognizes novation, stating that if parties agree to substitute, cancel, or amend a contract, the original contract need not be performed. For renewal, a new contract is required, not just a new agreement, and all parties must accept and sign it. Changing the contract terms creates new obligations. The basic requirement of Section 62 was discussed by the Supreme Court in ***Lata Construction & Ors v. Dr. Rameshchandra Ramniklal Shah(2000) 1 SCC 596***, *novation requires complete substitution of new contract in place of old contract and only under this condition the original contract is not fulfilled. The new replacement contract will cancel or completely modify the terms of the original contract.*

7.17. On bare perusal of Agreement to Sell dated 25.09.2020, Mark A & 03.10.2020, exhibited as EX PW 1/2, it is clear that the Agreement to sell dated 03.10.2020 is completely a new contract and there is no reference to the Agreement dated 25.09.2020. Hence, it is clear that the agreement dt.03.10.2020 was executed between the parties for novation of contract. They agreed to substitute a new contract with completely different terms and conditions. The Execution of both the agreements to sell are admitted. As per the parties i.e. Plaintiff and Defendant that the Agreement to sell dated 03.10.2020 was executed to create a fresh agreement for the purpose of sale of suit property.

7.18. Ergo, the first agreement to sell dated 25.09.2020 was replaced by completely new agreement to sell dated 03.10.2020. In my humble opinion the first Agreement to sell was not required to be acted upon as subsequently new agreement came into existence. Therefore, the argument of the Plaintiff that if the housing loan for purchasing the suit property will not be approved due to any reason, *then the earnest money would be refunded by the* *defendant to the plaintiff*, is liable to be rejected as there is no clause in the Agreement to sell dated 03.10.2020, regarding the refund of earnest money. Similarly, the argument of the Defendant that the earnest money is forfeited in terms of Agreement to sell is also sans merit as there is no forfeiture clause in the Agreement to sell dated 03.10.2020.

7.19. Importantly, it is the case of the Plaintiff that Plaintiff paid a sum of ₹ 4,00,000/- (Rupee Four Lakh Only) to the Defendant for purchasing the suit property and ₹ 18,65,000/- (Rupee Eighteen Lakh Sixty-Five Thousand Only) was due but due to typographical mistake the balance amount was wrongly typed as ₹20,65,000/- (Rupees Twenty Lakh Sixty-Five Thousand Only) in the agreement dated 03.10.2020. I am of the opinion that the argument of the Plaintiff is sans merit as in the present case, the Plaintiff, having accepted the execution of the Agreement to Sell dated 03.10.2020, EX PW 1/2, cannot seek to challenge the terms of the same by way of any oral evidence. Law is settled in this regard that oral evidence of a written agreement is excluded. Thus, relying upon Sections 91 and 92 of the Evidence Act, which provides that where terms of the contract have been reduced in the form of a document and have been proved, no evidence of any oral agreement between the parties for contradicting, varying, adding or subtracting from the terms therein shall be admitted, the Hon'ble High Court of Delhi in the case of ***Promila Gulati Versus Anil Gulati, 2015 SCC OnLine Del 7406***, held as follows:

> —*xxx xxx xxx*
>
> *16. It is a rule of law of evidence, which is also known as the "best evidence rule" that in case a written document is available, no oral evidence can be lead in that regard. In the present case, in the face of a document in writing, the pleas of the defendant cannot be permitted to be taken and are barred by the provision of Section*

92 of the Evidence Act. The following cases are relevant in this regard: (a) ***In Kusum Enterprises v. Vimal Kochhar 207 (2014) DLT 172****, it was observed as follows: —*
(c) Section 91 of the Indian Evidence Act, 1872 provides that where the terms of a contract have been reduced in the form of a document and where the matter is required by law to be reduced in the form of a document, no evidence shall be given in proof of the terms of such contract except the document itself; Section 92 of the Evidence Act provides that where the terms of the contract required by law to be reduced in the form of a document have been proved according to Section 91, no evidence of any oral agreement between the parties for the purpose of contradicting, varying, adding to, or subtracting from its terms shall be admitted*; though there are exceptions to both the said provisions but the same have not been invoked by the respondents/plaintiffs or their counsel and the case is not found to be falling in any of the exceptions; (d) it is also the settled position in law (See* ***Chandrakant Shankarrao Machale v. Parubai Bhairu Mohite (2008) 6 SCC 745 and S. Saktivel v. M. Venugopal Pillai (2000) 7 SCC 104)*** *that the* ***terms of a registered document can be varied/altered by a registered document only****; in* ***Raval & Co. v. K.G. Ramachandran (1974) 1 SCC 424*** *it was specifically held that any variation of rent reserved by a registered lease deed must be made by another registered instrument;‖ (b) In the case of Roop Kumar v. Mohan Thedani (2003) 6 SCC 595, it was held as follows:*
Section 91 relates to evidence of terms of contract, grants and other disposition of properties reduced to form of document. This section merely forbids proving the contents of a writing otherwise than by writing itself; it is covered by the ordinary rule of law of evidence, applicable not merely to solemn writings of the sort named but to others known sometimes as the ―best evidence rule‖. It is in really declaring a doctrine of the substantive law, namely, in the case of a written contract, that of all proceedings and contemporaneous oral expressions of the thing are merged in the writing or displaced by it. (See Thaver's Preliminary Law on Evidence p. 397 and p. 398; Phipson Evidence 7th Edn. p. 546; Wigmore's Evidence p. 2406.) It

has been best described by Wigmore stating that the rule is no sense a rule of evidence but a rule of substantive law. It does not exclude certain data because they are for one or another reason untrustworthy or undesirable means of evidencing some fact to be proved. It does not concern a probative mental process - the process of believing one fact on the faith of another. What the rule does is to declare that certain kinds of facts are legally ineffective in the substantive law; and this of course (like any other ruling of substantive law) results in forbidding the fact to be proved at all. But this prohibition of providing it is merely the dramatic aspect of the process of applying the rule of substantive law. When a thing is not to be proved at all the rule of prohibition does not become a rule of evidence merely because it comes into pay when the counsel offers to —prove it or —give evidence of it; otherwise any rule of law whatever might reduced to a rule of evidence. It would become the legitimate progeny of the law of evidence. For the purpose of specific varieties of jural effects - sale, contract etc. there are specific requirements varying according to the subject. (c) In Far East Marketing (P) Ltd. v. Khurana Electricals (in I.A. Nos. 17592/2011 and 17593/2011 in CS (OS) No. 303/2011, Decided On : 10.11.2014), this court observed that: —13. ***No evidence of any oral agreement or statement can be admitted when the terms of any such contract have been reduced in the form of a document****. Thus, the grounds mentioned in the application for leave to defend as defence, it is merely a moonshine defence. The said grounds have no application in law.*

7.20. Ergo, the Plaintiff having admitted the execution of Agreement to Sell cannot deny the recitals of the document by making self-serving statements that inadvertently due to typographical mistake the balance amount was wrongly mentioned as ₹20,65,000/- (Rupees Twenty Lakh Sixty-Five Thousand Only). Further, on perusal of the Agreement to sell dated 03.10.2020, Ex PW 1/2, it is clear that the stamp paper is purchased later on as it bears the dated 03.10.2020, whereas the Agreement itself bears the dated 09.01.2014. The dated 09.01.2014 clearly signifies that the Agreement was executed in a perfunctory manner. The acknowledgement of amount of ₹ 4,00,00/- (Rupees Four Lakh Only) is on the first page, which is the stamp paper and it bears signature of Plaintiff and Defendant and it is the part of the Agreement to Sell dated 03.10.2020. Further, it is the case of the Defendant that the Plaintiff has forged the Agreement to Sell dated 25.09.2020 and 03.10.2020 and inserted the receiving of the amount by Defendant. The Defendant has produced the photocopy of the Agreement to sell dated 25.09.2020 and 03.10.2020, wherein the acknowledgement is not reflecting. It is argued by Ld. Counsel for the Plaintiff that the document is not admissible as it is a photocopy and forged document.

7.21. Be that as it may, I am of the opinion that the Defendant has admitted the receipt of ₹ 4,00,000/-, which shifted the onus on the Defendant. It is apposite to refer to the judgment of Hon'ble Supreme Court in the case of ***Rebti Devi Versus Ram Dutt & Anr, (1997) 11 SCC 714***, wherein the Hon'ble Court held as follows:

> **6.** So far as the first submission of the appellant's counsel is concerned, we are of the view that it is true that the respondent-defendants who have raised a defence of benami in their written statement have to discharge the initial burden of proof and establish the plea of benami. Parties adduced oral and documentary evidence. The lower appellate court had considered the evidence adduced by both sides and arrived at a conclusion that the defendants had discharged the said burden. ***When both sides had adduced evidence, the question of burden of proof paled into insignificance. The High Court was therefore right in not interfering with the said finding. The said finding of fact cannot be canvassed in this civil appeal by the plaintiff or her legal representative.***

7.22. Ergo, it is paramount to advert to the evidence brought on record by the Defendant to demonstrate the admission of ₹4,00,000/- by the Defendant. The relevant part of the evidence of DW1, defendant is as follows:

> I had cleared the loan after the agreement to sell with the plaintiff on 14.12.2020. It is incorrect to suggest that the plaintiff could not avail the loan as I had not cleared my loan within the period as stipulated in the agreement to sell in question i.e. 03.10.2020. It is correct that on 03.10.2020 i.e. the time of execution of second agreement to sell, I have received ₹2 lacs as earnest money from the plaintiff. It is correct that according to the first agreement to sell dt. 25.09.2020, ***I have received ₹2 lacs from the plaintiff but the same were returned to the plaintiff after 4-5 days from 25.09.2020***. ***No written work was done at the time of return of ₹ 2 lacs, taken by me in terms of first agreement to sell dt. 25.09.2020, however, the first agreement to sell dt. 25.09.2020 was destroyed/torn in the presence of the plaintiff and one more person with her and I***. ***It is incorrect to suggest that I have not returned ₹ 2 lacs taken by me in terms of the first agreement to sell dt. 25.09.2020.*** I had taken the photo/screenshot of the first agreement to sell dt. 25.09.2020 on my SAMSUNG mobile phone M-31 which I am carrying even today. I had taken the printout of the screenshot through my mobile phone from a shop situated at Sector-16, Rohini, Delhi. However, I cannot tell the name of the shop as there are many shops in the said market. The shopkeeper had got the image of agreement to sell dated 25.09.2020 transferred on his system via Bluetooth. It is incorrect to suggest that the photocopy of agreement to sell dated 25.09.2020 Ex. DW-1/1 and Ex. DW-1/2 are forged and fabricated and that the copy has been got procured after applying fluid/whitener on the first page where "**₹2 lacs already received cash vide agreement on 25.09.2020. Total amount received 4 lacs only till 03.10.2020 from Geeta Kansal",** has been removed with the help of computer photoshop.

7.23. The Defendant has categorically admitted the receipt of ₹2,00,000/- which was allegedly paid back to the Plaintiff after 4-5 days from 25.09.2020. It is further come in the evidence of the

DW1 that no written work was done at the time of alleged payment of ₹2,00,000/- to the Plaintiff. I am of the opinion that this is not the pleaded case of the Defendant that he repaid ₹2,00,000/- to the Plaintiff and it is an improvement made by the Defendant as it is not a pleaded case of the Defendant. Ergo, the onus to prove that the payment was made to Plaintiff shifts on the Defendant. The Defendant's failure to produce any receipt in support of the alleged payment of ₹ 2,00,000/- further undermines his defence. It is unlikely that such a significant amount would have been repaid without documentation. It is equally improbable that the Defendant would return this sum without ensuring the presence of the attesting witnesses or any other witnesses. The burden of proving a fact lies upon the party who affirms, not on the party who denies it--"ei incumbit probatio, qui dicit, non qui negat." Since the Defendant claim to have returned the amount of ₹ 2,00,000/-, the onus to prove that repayment was on him. Nevertheless, after considering the entire record, this Court finds, on the balance of probabilities, that the amount of ₹ 2,00,000/- was not returned. Thus, the Plaintiff is liable to return the said amount.

7.24. It is also the case of the Defendant that the Plaintiff failed to comply with the conditions as to performance of the agreement to sell dated 03.10.2020. As adumbrated above, the Agreement to Sell dated 25.09.2020 was not required to be complied with as said agreement further, novated to new independent Agreement to Sell dated 03.10.2020, Ex PW 1/2, which did not contain any clause regarding the forfeiture of earnest money. In any case, the Defendant did not bring on record any cogent evidence to show any loss was suffered by the Defendant on account breach of agreement to sell by the Plaintiff.

7.25. It is apposite to advert to the judgment of Hon'ble Supreme Court in the case of ***K.R. Suresh v. R. Poornima & Ors. on May 2, 2025, 2025 SCC OnLine SC 1014, it was held as follows:***

> 44. A conjoint reading of Section 74 of the 1872 Act and the principles underlying forfeiture clauses was undertaken in the case of ***Fateh Chand v. Balkishan Dass, reported in 1963 SCC OnLine SC 49***. This Court held that Section 74 of the 1872 Act will apply to every covenant involving a penalty, whether it is for a future payment on breach of the contract or the forfeiture of a sum already paid. Ergo, a forfeiture clause in a contract would ordinarily fall within the ambit of the words "any other stipulation by way of penalty". ***Further, it was held that supplying evidence of a loss incurred by the vendor on account of the breach of contract by the buyer would be mandatory to justify forfeiture, and only a reasonable amount, commensurate with such loss, can be forfeited***. The relevant observations are extracted hereinbelow:
>
> "14. […] The words "to be paid" which appear in the first condition do not qualify the second condition relating to stipulation by way of penalty. The expression "if the contract contains any other stipulation by way of penalty" widens the operation of the section so as to make it applicable to all stipulations by way of penalty, whether the stipulation is to pay an amount of money, or is of another character, as, for example, providing for forfeiture of money already paid. There is nothing in the expression which implies that the stipulation must be one for rendering something after the contract is broken. There is no ground for holding that the expression 'contract contains any other stipulation by way of penalty' is limited to cases of stipulation in the nature of an agreement to pay money or deliver property on breach and does not comprehend covenants under which amounts paid or property delivered under the contract, which by the terms of the contract expressly or by clear implication are liable to be forfeited.
>
> xx xx xx
>
> ***16. There is no evidence that any loss was suffered by the plaintiff in consequence of the default by the defendant, save as to the loss suffered by him by being kept out of possession of the property. There is no evidence that the property had depreciated in value***

since the date of the contract provided; nor was there evidence that any other special damage had resulted. The contact provided for forfeiture of Rs 25,000 consisting of Rs. 1039 paid as earnest money and Rs 24,000 paid as part of the purchase price. The defendant has conceded that the plaintiff was entitled to forfeit the amount of Rs 1000 which was paid as earnest money. We cannot however agree with the High Court that 13 percent of the price may be regarded as reasonable compensation in relation to the value of the contract as a whole, as that in our opinion is assessed on an arbitrary assumption. The plaintiff failed to prove the loss suffered by him in consequence of the breach of the contract committed by the defendant and we are unable to find any principle on which compensation equal to ten percent of the agreed price could be awarded to the plaintiff. […]

48. A different view was taken by this Court in ***Kailash Nath Associates v. DDA, reported in (2015) 4 SCC 136***, wherein it held that Section 74 of the 1872 Act applies to the forfeiture of earnest money deposit. It further held that proof of actual damage or loss is a sine qua non for invoking the said section and thereby, only a reasonable amount will be permissible for forfeiture upon the breach of contract. The relevant observations are reproduced hereinbelow:

43.2. Reasonable compensation will be fixed on well-known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.

43.3. Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the section.

43.5. The sum spoken of may already be paid or be payable in future.

43.6. The expression "whether or not actual damage or loss is proved to have been caused thereby" means that where it is possible to prove actual damage or loss, such proof is not dispensed with. It is only in cases where damage or loss is difficult or impossible to prove that the liquidated amount named in the contract, if a genuine pre-estimate of damage or loss, can be awarded.

> 43.7. Section 74 will apply to cases of forfeiture of earnest money under a contract. […]"
>
> 51. On a conspectus of the aforementioned authorities, it is evident that a clause for the forfeiture of earnest money is not penal in the ordinary sense, rendering Section 74 of the 1872 Act, inapplicable. In the present case, the stipulated amount under the ATS was in the nature of an earnest money deposit and thus, Section 74 of the 1872 Act cannot apply to the same. Further, the forfeiture clause was fair and equitable rather than one-sided and unconscionable, as it imposed liabilities on both the appellant purchaser and respondent-sellers, wherein the seller was obligated to pay twice the advance amount paid by the buyer in case of his default.
>
> 52. Even, for argument's sake, if we have to apply the principle under Section 74 of the 1872 Act to the present case in line with Kailash Nath (supra), the forfeiture of the entire amount of advance money by the respondent nos. 1-4 would still be justified on the ground that there was breach of contract by the appellant, which led to financial losses for the respondent nos. 1-4. Such losses, as specifically pleaded and proved by the evidence led before the Trial Court, far exceeded the amount forfeited under the ATS, a position that was duly noted and accepted by the Trial Court.

7.26. The forfeiture of amount earnest money deposit the Defendant is not supported by mandate of law as there is no clause in the Agreement to sell dated 03.10.2020, which provides for forfeiture of earnest money deposit. ***Ergo, in view of the aforesaid discussions and deliberation the Issue no 1 & 2 is decided in favour of Plaintiff and against the Defendant.***

7.27. I am of the view that the there is no agreed rate of interest between the party to award interest in case of breach of agreement to sell. Ergo, in view of that it is propitious to award the Plaintiff pendent-lite simple rate of interest @ 6% per annum and future simple rate of interest @ 6% per annum till its realization and the same is also payable by the defendant from the date of filing of present suit till the actual realization of amount.

8. RELIEF

8.1. In view of totality of facts and circumstances of the present suit, the present suit of Plaintiff is decreed on following terms:

a) The Plaintiff is entitled for decree for a sum of ₹ 4,00,000/- (₹ Four Lakh Only) against the Defendant.

b) The plaintiff is granted pendent-lite simple rate of interest @ 6% per annum and future simple rate of interest @ 6% per annum till its realization and the same is also payable by the Defendant from the date of filing of present suit till the actual realization of amount.

c) Plaintiff is also entitled for cost of the suit.

8.2. Decree sheet be prepared accordingly.

8.3. Pending applications disposed of.

8.4. File be consigned to record room after due compliance.

Announced in open
Court on 06.07.2026

(Akbar Siddique)
DJ-04, North, Rohini Courts,
Delhi/ 06.07.2026

AKBAR
SIDDIQUE

Digitally signed by
AKBAR SIDDIQUE
Date: 2026.07.06
16:28:58 +0530