

**IN THE COURT OF SH. DEEPANKER MOHAN
DISTRICT JUDGE-04, SHAHDARA DISTRICT,
KARKARDOOMA COURTS, DELHI**

CS No.233/2016

IN THE MATTER OF:

**Sh. Shayam Sunder Sharma
S/o Sh. Brij Mohan Sharma
R/o 1/11014, Gali No.8/4,
Saptrishi Marg, Subhash Park,
Naveen Shahdara,
Delhi-110032**

.... Plaintiff

Versus

**Sh. Ashish Goel
S/o Sh. Bhagwan Goel
R/o 62-A, Radhey Puri Extension,
Delhi-110051.**

....Defendant

- | | | | |
|----|-----------------------|---|---|
| 1. | CS No. | : | 233/2016 |
| 2. | Under Section | : | Suit for recovery of
Rs.13,76,500/-. |
| 3. | Date of institution | : | 05/08/2013 |
| 4. | Reserved for judgment | : | 04/05/2026 |
| 5. | Date of Judgment | : | 15/07/2026 |

JUDGMENT

1. Vide this judgment, this Court shall adjudicate the suit for recovery of an amount of Rs.13,76,500/- filed by plaintiff against defendant.

2. An application under Order VI Rule 17 r/w Section 151 CPC for amendment of plaint was filed and the same was allowed vide order dated 20.04.2017 and proposed amended plaint dated 04.05.2014 was taken on record.

AVERMENTS OF THE AMENDED PLAINT

3. Plaintiff was intending to purchase a property in the area of Naveen Shahdara, Delhi.
4. In the month of October, 2010, defendant represented himself to be the absolute owner of property bearing No.1/10951, plot No.155, ad-measuring 46 sq. yards, situated at Subhash Park, Naveen Shahdara, Delhi. Defendant further assured the plaintiff that the construction on the aforesaid property was being carried out in accordance with MCD rules and regulations, and also expressed his intention to sell the said first floor.
5. Upon believing the defendant, plaintiff agreed to purchase the first floor of the aforesaid property, which was under construction at that time, for a total sale consideration of Rs.18,00,000/-. Accordingly, an Agreement to Sell was executed between the parties on 25.10.2010 at the residence of plaintiff in the presence of witnesses Sh. Amit Sharma and Sh. Rohit Jain. At the time of execution,

plaintiff paid Rs.4 lakhs to defendant as an earnest money in the presence of said witnesses.

6. It was agreed between the parties that defendant would complete the construction within eight months and execute the registered sale deed in favour of plaintiff. However, defendant failed to complete the construction within the stipulated period and the date for execution of sale deed was extended from time to time. During this period, defendant has received a total sum of Rs.13,76,500/- from plaintiff which includes (1) Rs.4,00,000/- in cash on 25.10.2010; (2) four cheques of Rs.49,000/- each (total amounting to Rs.1,96,000/-) in favour of defendant which was transferred in his account on 24.11.2010; (3) a cheque of Rs.2,90,000/- in favour of Sh. Amit Sharma (son of owner of the subject property); (4) cheque of Rs.4,10,000/- in favour of Sh. Vishnu Dutt (owner of the subject property); and (5) Rs.80,500/- in cash to defendant. The cheque of Rs.2,90,000/- and Rs.4,10,000/- were given to Sh. Amit Sharma and Sh. Vishnu Dutt by plaintiff on the instructions of defendant.
7. On the assurance of defendant, plaintiff purchased the stamp papers of Rs.34,200/- for the purpose of sale deed of the first floor of the property but defendant failed to

execute the sale deed in favour of plaintiff.

8. In the month of September, 2012, defendant stated to the plaintiff that the flat is almost complete and he is ready to execute the sale documents on an enhance amount i.e. Rs.18,25,000/-. A fresh agreement to sell was executed between plaintiff and defendant in the presence of marginal witness on 25.09.2012 at the house of plaintiff and Rs.13,76,500/-, already paid, was considered as earnest money for the agreement dated 25.09.2012. It was agreed that the sale document was to be executed on or before 25.10.2012. Defendant took the original agreement dated 25.10.2010 on 25.09.2012. Defendant further failed to get execute the sale documents of the property in question in favour of plaintiff for one pretext or another and orally extended the date of execution. Defendant asked the plaintiff to purchase the stamp paper for the purpose of the sale deed, therefore, plaintiff again purchased the stamp paper.
9. On 20.12.2012, plaintiff along with his one friend visited the property in question and requested defendant to allow him and his friend to inspect/enter into the subject flat but despite request, defendant refused to show the flat. Even, defendant has avoided to hand over the keys of the flat to

plaintiff stating that he is not carrying the same.

10. On 22.12.2012, plaintiff again went to the afore-said property where he met Sh. Amit Sharma who told him that defendant had already got executed the sale document of the afore-said flat from his father namely Sh. Vishnu Dutt in favour of one Sh. Amit Garg on 23.07.11 and now, Sh. Amit Garg is the owner of the afore-said property. When plaintiff asked the same from defendant, he did not tender any satisfactory reply.
11. On 15.04.2013, plaintiff demanded his money from the defendant but he clearly refused to give the same. On 28.04.2013, defendant came to the house of plaintiff along with pre-drafted cancellation of agreement to sell wherein he mentioned about the cancellation of agreement to sell dated 25.09.2012 and asked the plaintiff to sign the same as he is ready to return the part sale consideration amount of Rs.13,76,500/-. Defendant has put his signature and thumb impression on the said agreement and also asked plaintiff to put his signature and thumb impression on the same but firstly plaintiff asked him to return the amount of Rs.13,76,500/- then only he will put his signature and thumb impression on the said agreement. Defendant has not paid the amount of Rs.13,76,500/- to plaintiff,

therefore, he has not executed the same. The cancellation agreement was left by defendant with plaintiff and he never turned up to pay the afore-said amount to the plaintiff.

12. On 05.06.2013, plaintiff has given a written complaint to SHO, PS Shahdara but police did not take any action against defendant. On 10.06.2013, plaintiff gave a written complaint to the DCP North-East, Delhi but they also did not take any action against defendant. Plaintiff has also filed a criminal complaint case against defendant which is pending before the Court of Sh. Sanjay Bansal, the then Ld. CMM, Shahdara, KKD Courts, Delhi. Plaintiff is entitled to money decree for recovery of Rs.13,76,500/- along with interest against defendant. Thus, the present suit.

SERVICE OF SUMMONS

13. Summons of the present suit was issued to defendant vide order dated 06.08.2013. The summons were duly served upon defendant on 17.08.2013. Written statement was filed on 17.09.2013. Written statement to the amended plaint was filed on 12.07.2017.

AVERMENTS OF THE AMENDED WRITTEN STATEMENT

OF DEFENDANT TO THE AMENDED PLAINT.

14. Defendant in his written statement has specifically denied the averments of the plaint and claim of plaintiff except existence and execution of sale agreement dated 25.10.2010. It is further pleaded that Sh. Amit Sharma is the son of Sh. Vishnu Dutt Sharma. Both of them are relatives/friend of plaintiff and his associates namely Sh. Sunil and Sh. Rohit Jain.
15. Since 2005, defendant knows that Sh. Amit Sharma and Sh. Vishnu Dutt Sharma are the property dealer and builders by profession. They have introduced the plaintiff, Sh. Sunil and Sh. Rohit Jain to the defendant as their relatives, friends and associates.
16. In the month of September, 2010, all the afore-said persons approached the defendant at his office 187, Gali No.8, East Azad Nagar, Delhi-110051 and represented to him that the afore-said persons had the first floor (along with car parking facility on its ground floor) of their property bearing No.1/10951, out of plot No.155, ad-measuring 46 sq. yards (15'x25'), situated at Subhash Park, Naveen Shahdara, Delhi-110031 and they wanted to sell the same. After negotiation, defendant was agreed to purchase the first floor for a valuable consideration from

Sh. Vishnu Dutt Sharma under an oral sale agreement.

17. In the month of October, 2010, all the afore-said persons approached the defendant at his Office and proposed him to sell the afore-said floor to plaintiff. Considering the relations and other prevailing circumstances, sale agreement dated 25.10.2010 in respect of the afore-said floor was executed between defendant and plaintiff for a total sale consideration of Rs.18 lakhs.
18. Plaintiff paid Rs.4,00,000/- as an earnest money to defendant. It was also agreed that part sale consideration amount of Rs.12,00,000/- was to be paid by 25.12.2010. The construction was to be completed within 08 months and the sale deed in respect to the aforesaid flat was executable after one year by defendant in favour of plaintiff on receipt of the balance consideration amount of Rs.2 lakhs from him.
19. Plaintiff has further paid an amount of Rs.8 lakhs to defendant till 25.09.2012. Defendant has received a total sum of Rs.12 lakhs from plaintiff in pursuance of the afore-said sale agreement dated 25.12.2010. But the deal could not be materialized due to the plaintiff's default and ultimately, this sale agreement was agreed to be cancelled.

20. On 25.09.2012, the sale agreement dated 25.12.2010 was mutually cancelled by parties and plaintiff has received the entire payment of Rs.12 lakhs under the afore-said sale agreement dated 25.10.2010 from defendant.
21. In the month of September, 2012, all the afore-said persons along with one more person namely Sh. Amit Garg S/o Sh. Preetam Singh approached him at his office.
22. Plaintiff and his afore-said associate represented to the defendant that Sh. Amit Sharma and his father Sh. Vishnu Dutt Sharma had another flat i.e. built up first floor portion upto ceiling level area measuring 41.6 sq. yards, comprising of whatsoever therein, with all fixtures and fittings fitted therein, along with common stairs, passage and entrance and one scooter parking space at stilt with the rights to install the T.V. Antenna and water tank on roof of top floor, with all common facilities/amenities provided in the building with the proportionate share in the land underneath, bearing property No.1/10951, situated in the Abadi of Gali No.6 and 7, Subhash Park, Naveen Shahdara, Delh-110031. Plaintiff and his afore-said associates further represented that Sh. Amit Sharma and Sh. Vishnu Dutt Sharma had entered into the sale agreement in respect to the afore-said flat with Sh. Amit

Garg. Plaintiff and his afore-said associates represented to defendant that Sh. Amit Garg wanted to sell the afore-said flat without profit because he was unable to arrange the balance consideration amount. Plaintiff and his afore-said associates further induced defendant to purchase the afore-said flat from Sh. Amit Garg stating that it will give huge profit to him.

23. The agreement to sell was executed between defendant and Sh. Amit Garg in respect to the afore-said flat on 25.09.2012. Cancellation of sale agreement dated 25.10.2010 had also been executed between plaintiff and defendant on 25.09.2012. Plaintiff and his afore-said associates have already got prepared the drafts of the afore-said agreements on the stamp papers.
24. Defendant had paid an amount of Rs.13,76,500/- to the said Sh. Amit Garg at the time of execution of sale agreement dated 25.09.2012. The sale deed was to be executed by Sh. Amit Garg in favour of defendant on receipt of the balance sale consideration amount of Rs.4,48,500/- on or before 25.10.2012.
25. Plaintiff has received an amount of Rs.12 lakhs from defendant at the time of execution and signing of

cancellation deed dated 25.09.2012 of the sale agreement dated 25.10.2010 in respect to the subject property. The said agreement was executed at the office of defendant.

26. Defendant requested plaintiff and his associates to execute the sale deed in his favour in pursuance of the sale agreement dated 25.09.2012 executed between defendant and Sh. Amit Garg but they avoided the same. Despite efforts made by defendant, he was unable to trace the whereabouts of Sh. Amit Garg.
27. In the month of June, 2013, defendant came to know that Sh. Vishnu Dutt Sharma had already got executed a registered sale deed dated 25.07.2011 in favour of Sh. Amit Garg in respect to subject property. The said sale deed dated 25.07.2011 has also been witnessed by the son of Sh. Vishnu Dutt Sharma i.e. Sh. Amit Sharma. Thereafter, defendant came to know about the conspiracy played by plaintiff in connivance with his associates Sh. Amit Sharma, Sh. Vishnu Dutt Sharma, Sh. Sunil and Sh. Rohit Jain. They have played fraud upon defendant and cheated huge amount of money from him by introducing an unknown imposter as Sh. Amit Garg. Plaintiff and his associates have also raised threats upon defendant.

28. Thereafter, on 17.08.2013 and 27.08.2013, defendant has received the summons of the suit along with paper book. After perusing the paper book, defendant was shocked on coming to know that plaintiff and his associates fraudulently, secretly and deceptively obtained the signatures of defendant on the agreement to sell dated 25.09.2012, cancellation deed dated 25.09.2012 and sale-agreement dated 25.09.2012. Defendant has also filed a criminal complaint against plaintiff and his associates and FIR has also been registered on his complaint.
29. Sh. Vishnu Dutt Sharma and his son Sh. Amit Sharma were constructing the property bearing No.1/10951, plot No.155, ad-measuring 46 sq. yards, Subhash Park, Naveen Shahdara, Delhi under a collaboration agreement with one Sh. Naresh Bansal R/o Vaishali, District Ghaizabad, U.P. Defendant had no role in the construction of the afore-said property.
30. Defendant has denied the receipt of a sum of Rs.13,76,500/- from plaintiff. Defendant has admitted that he has received an amount of Rs.1,96,000/- from plaintiff through four cheques amounting to Rs.49,000/- each. However, he further pleaded that he has returned the said amount of Rs.1,96,000/- to plaintiff in cash. The sale

agreement dated 25.10.2010 was cancelled and plaintiff had received the payment from defendant, therefore, defendant has no obligation to execute the sale deed of the subject property in his favour or that defendant is not liable to pay the suit amount to plaintiff in any manner whatsoever.

AVERMENTS OF THE REPLICATION

31. Replication to the written statement of defendant was filed on behalf of plaintiff on 07.11.2013 wherein plaintiff has specifically denied the averments of written statement and re-affirmed the averments of the plaint. However, plaintiff has not filed replication to the written statement of amended plaint.

FRAMING OF ISSUES

32. Upon completion of pleadings, following issues were framed on 10.01.2014 which are as under:-

- 1. Whether the plaintiff is entitled to recover Rs.13,76,500/- with interest against the defendant as claimed? (OPP)*
- 2. Relief.*

EVIDENCE OF PLAINTIFF

33. Plaintiff to prove his case has examined three witnesses

i.e. (1) Himself as **PW-1**, (2) Sh. Amit Sharma as **PW-2**, and (3) Sh. Rattan Pal, Naib Tehsildar, SDM Office, Shahdara, Delhi as **PW-3**.

34. PW-1/plaintiff filed his evidence affidavit in English language and he was partly examined on 30.04.2019 and his further examination-in-chief was deferred as he wanted to file his evidence affidavit in Hindi language.
35. PW-1/plaintiff filed his evidence affidavit in Hindi language and tendered it as exhibited as **Ex.PW1/A** on 24.09.2022 and he relied upon the following documents i.e. (1) **Ex.C1-** Agreement to sell dated 25.10.2010, (2) **Ex.C2-** Cancellation of agreement to sell dated 25.09.2012, (3) **Ex.PW1/1-** agreement to sell dated 25.09.2012, (4) **Mark A-** Stamp Duty of Rs.34,200/-, (5) **Mark B(Colly.) (Running into 03 pages)-** Bank statement for the period 2011-12 and (6) **Mark C-** Cancellation of agreement to sell (signed only by defendant). On 12.12.2023, PW-1 was cross examined by Ld. counsel for defendant.
36. An application under Order XVIII Rule 17 r/w Section 151 CPC was filed and the same was allowed subject to cost of Rs.3,000/- vide order dated 05.02.2024.

37. PW-1 was again cross examined by Ld. counsel for defendant on 05.02.2024.
38. **PW-2/Sh. Amit Sharma** filed his evidence affidavit and tendered it as exhibited as **Ex.PW2/A** on 01.04.2024 and he relied upon the following document which is already exhibited i.e. (1) **Ex.C-1-** Agreement to sell. On the same day, PW-2 was cross examined by Ld. counsel for defendant.
39. On 20.05.2024, **PW-3 Sh. Rattan Pal, Naib Tehsildar, SDM Office, Shahdara, Delhi** has deposed that the summon records i.e. receipt of refund voucher of Rs.28620/- has already been stolen along with other documents and e-FIR bearing No.80041524 dated 22.04.2024, PS Nand Nagri has already been registered in this regard. Report in this regard was exhibited as **Ex.PW3/1** and copy of FIR was exhibited as **Ex.PW3/2**.
40. On 02.07.2024, PW-3 further deposed that the summon records i.e. receipt of refund vouchers of Rs.31,800/- and Rs.34,200/- have already been stolen along with other documents and e-FIR bearing No.80041524 dated 22.04.2024, PS Nand Nagri has already been registered in this regard. The reports and copy of FIR were exhibited as

Ex.PW3/3(Colly.) (Running into 02 pages), Ex.PW3/4 (Running into 02 pages), Ex.PW3/5(Colly.) (Running into 02 pages) and Ex.PW3/4 (Running into 02 pages) respectively. On the same day, he was cross examined by Ld. counsel for defendant.

41. On 30.08.2024, plaintiff's evidence was closed.

EVIDENCE LED BY DEFENDANT

42. Defendant has examined eight witnesses i.e. (1) Himself as **DW-1**, (2) W/Ct. Anuradha, Belt No.1989/NE, DCP Office Seelampur, Delhi, Complaint Branch as **DW-2**, (3) SI Mumtaz Ali, Belt No.D-2213, PS Shahdara as **DW-3**, (4) SI Dalip Kumar Sharma, Belt No.587/D, Police Headquarter, Jai Singh Road, New Delhi as **DW-4**, (5) HC Anuj Kumar, Belt No.556/SHD, Reader to SHO, PS Krishna Nagar as **DW-5**, (6) ASI Gajender Singh, Belt No.1335/East, Posted as Record Clear, DCP Office, East District, Delhi as **DW-6**, (7) Sh. Ajit, Posted as Ahlmad in the Vacant Court, Ld. CJM, KKD Courts, Shahdara District, Delhi as **DW-7** & (8) Sh. Jaspal, Posted as ASO in the Office of Sub-Registrar-IV-A, Shahdara/Seemapuri District Shahdara, Delhi as **DW-8**.

43. DW-1/Sh. Ahish Goyal filed his evidence affidavit and

tendered it as exhibited as **Ex.DW1/1** on 12.11.2024 and he relied upon the following documents i.e. (1) **Mark D1-** Copy of the FIR No.370/2014 dated 27.06.20214 U/s 419/420/468/471/120-B/34 IPC, PS Shahdara. On 21.01.2025 and 29.04.2025, he was cross examined by Ld. counsel for plaintiff.

44. On 18.09.2025, **DW-2/W/Ct. Anuradha, Belt No.1989/NE, DCP Office Seelampur, Delhi, Complaint Branch** deposed that the requisite record of complaint dated 02.07.2013 and 30.08.2013 is not available as the record from 01.01.2013 to 31.12.2013 has been handed over to Assistant Director Delhi Khadi and Village Industries, Government of NCT of Delhi, Nigam Bham vide order dated 14.09.2017. The report in this regard was exhibited as **Ex.DW2/1**. He was not cross examined by Ld. counsel for plaintiff despite opportunity granted.
45. On 18.09.2025, **DW-3/SI Mumtaz Ali, Belt No.D-2213, PS Shahdara** deposed that requisite record for the period of 01.01.2013 to 31.12.2016 has been handed over to Assistant Director Delhi Khadi and Village Industries, Government of NCT of Delhi, Nigam Bham vide order No.4542-4617/HAR/Shahdara District dated 26.07.2019. The report in this regard along with documents (Running

into 03 pages) was exhibited as **Ex.DW3/1**. He deposed that he had brought true copy of FIR bearing No.370/2014 and case diary. Same was exhibited exhibited as **Ex.DW3/2(Colly.) (Running into 05 pages)**. On the same day, he was cross examined by Ld. counsel for plaintiff.

46. On 18.09.2025, **DW-4/SI Dalip Kumar Sharma, Belt No.587/D, Police Headquarter, Jai Singh Road, New Delhi** brought the complaint diary register. He deposed that the complaint dated 02.07.2013 filed by Ashish Goyal was received in the office of Commissioner of Police Delhi and the same was sent to Joint CP, South East Range vide diary No.6905 for further necessary action. Same was exhibited as **Ex.DW4/1(OSR) (Running into 04 pages)**. On the same day, he was cross examined by Ld. counsel for plaintiff.

47. On 18.09.2025, **DW-5/HC Anuj Kumar, Belt No.556/SHD, Reader to SHO, PS Krishna Nagar** deposed that the summon record has already been destroyed. The record pertaining to the complaint and register used to be destroyed after 02 years from the date of last entry. Office has no particulars regarding the summon record. The letter enclosed with the order was exhibited as **Ex.DW5/1(Running into 09 pages)**. On the same day, he

was cross examined by Ld. counsel for plaintiff.

48. On 18.09.2025, **DW-6/ASI Gajender Singh, Belt No.1335/East, Posted as Record Clear, DCP Office, East District, Delhi** deposed that the summon record has already been destroyed vide order dated 301-370/HAR/East District dated 05.01.2022. The certificate enclosed with the order was exhibited as **Ex.DW6/1(Running into 02 pages)**. On the same day, he was cross examined by Ld. counsel for plaintiff.
49. On 18.09.2025, **DW-7/Sh. Ajit, Posted as Ahlmad in the Vacant Court, Ld. CJM, KKD Courts, Shahdara District, Delhi** brought the judicial file bearing FIR No.370/2014 containing the photocopy of statement of Sh. Amit Garg S/o Sh. Preetam Singh U/s 161 Cr.P.C. Same was marked as **Mark DW7/1**. On the same day, he was cross examined by Ld. counsel for plaintiff.
50. On 18.09.2025, **DW-8/Sh. Jaspal, Posted as ASO in the Office of of Sub-Registrar-IV-A, Shahdara/Seemapuri District Shahdara, Delhi** brought the summon records i.e. sale deed registered before Sub-Registrar-IV-A vide registration No.3301, Book No.1, Vol. No.1035, page No.150 to 155 dated 10.08.2011 in favour of Sh. Amit

Garg by Sh. Vishnu Dutt Sharma. His authorization letter was exhibited as DW8/1 and the sale deed was exhibited as DW8/2 (OSR) (Running into 10 pages). On the same day, he was cross examined by Ld. counsel for plaintiff.

51. On 16.03.2026, defendant's evidence was closed.
52. Final arguments were heard on 02.05.2026 and 04.05.2026. Written arguments/submissions was filed on behalf of defendant on 04.05.2026.

APPRECIATION OF EVIDENCE AND DETERMINATION OF THE CASE ISSUE WISE.

Issue No.1:-Whether the plaintiff is entitled to recover Rs.13,76,500/- with interest against the defendant as claimed? (OPP)

53. The civil cases are to be decided on the basis of preponderance of probabilities. Preponderance means the evidence that persuades a judge to lean to one side as opposed to other, during the course of litigation. Preponderance of the evidence means the greater weight of the evidence, superior evidentiary weight; that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

54. When a party has burden of proof it means they must be able to persuade by the evidence that the claim is more probable true than not. The evidence of one side is perceived outweighing the other, if the evidence on one side is more persuasive and impressive than the evidence of other side. The concept of 'preponderance of probabilities' can be visualized as a scale representing the burden of proof, with the totality of evidence presented by each side resting on the respective trays on either side of the scale. If the scale tips ever so slightly on one side or the other, the weightier side will prevail. If the scale does not tip towards the side of the party bearing the burden of proof, party cannot prevail.
55. The agreement to sell dated 25.10.2010 **Ex.C-1** is not in dispute between plaintiff and defendant. The agreement to sell **Ex.C-1** specifically denotes that defendant has received an amount of Rs.4 lakhs from plaintiff as earnest money. Defendant in his written statement has admitted that he has further received an amount of Rs.8 lakhs from plaintiff till 25.09.2012. As per amended written statement, defendant has received an amount of Rs.12 lakhs from plaintiff.
56. Defendant in his written statement has taken the defence

that he has returned the amount of Rs.12 lakhs to plaintiff on 25.09.2012 at the time of execution of cancellation deed dated 25.09.2012 for cancelling the sale agreement dated 25.12.2010. The entire amended written statement is silent about the mode of payment of Rs.12 lakhs purportedly made by defendant to plaintiff on 25.09.2012. The cancellation of agreement to sell **Ex.C-2** also does not reflect the mode through which defendant has paid an amount of Rs.12 lakhs to plaintiff. Defendant has also not examined any independent witness to prove that he has paid an amount of Rs.12 lakhs to plaintiff on 25.09.2012. Even, defendant has not examined Sh. Sunil to prove and corroborate his version.

57. Defendant has admitted his signatures on the document **Ex.PW1/1**, however, he has taken the defence that his signatures were taken on the said document by plaintiff and his associates fraudulently, secretly and deceptively. The onus to prove such fraud is upon defendant.
58. Defendant has not produced any cogent, reliable, probable and independent material on record which can establish that the agreement to sell **Ex.PW1/1** is a forged and false document. Defendant has failed to curved out any substantial material during the cross examination of

plaintiff's witnesses which can establish that the agreement **Ex.PW1/1** is a forged and false document.

59. DW-8 has produced the sale deed dated 25.07.2011 (registered on 10.08.2011) **Ex.DW8/2** which has been executed between Sh. Vishnu Dutt Sharma and Sh. Amit Garg in respect to the subject property. The said sale deed has been witnessed by the wife of defendant namely Smt. Shikha Goyal. Defendant has not disclosed the said fact in his amended written statement that the sale deed **Ex.DW8/2** has been witnessed by his wife. Defendant has not taken the stand that he is not having a cordial relations with his wife or that he is having matrimonial discord with her on the date of execution of the sale deed **Ex.DW8/2**. The fact that the sale deed **Ex.DW8/2** executed by Sh. Vishnu Dutt Sharma in favour of Sh. Amit Garg in respect to the subject property has been witnessed by the wife of defendant Smt. Shikha Goyal clearly establishes that the execution of sale deed **Ex.DW8/2** was well within the knowledge of defendant at the time of its execution.

60. Defendant in his amended written statement has specifically pleaded that he has entered into an agreement to sell with Sh. Vishnu Dutt Sharma in respect to the

subject property. Defendant has not pleaded in his amended written statement that the agreement to sell executed between him and Sh. Vishnu Dutt Sharma in respect to the subject property has been cancelled prior to execution of sale deed **Ex.DW8/2**. The fact that sale deed **Ex.DW8/2** has been witnessed by the wife of defendant during the subsistence of agreement to sell between defendant and Sh. Vishnu Dutt Sharma clearly establishes that the sale deed **Ex.DW8/2** has been executed by Sh. Vishnu Dutt Sharma in favour of Sh. Amit Garg at the instance of defendant.

61. It is not the case of defendant that prior to execution of sale deed **Ex.DW8/2**, he has cancelled the agreement to sell dated 25.10.2010 **Ex.C-1** with plaintiff and has returned the part sale consideration amount received by him from plaintiff. Rather, defendant has pleaded that he has received the amount of Rs.12 lakhs from plaintiff till 25.09.2012 which means he has received part sale consideration amount from plaintiff even after execution of sale deed **Ex.DW8/2**.
62. The sale deed **Ex.DW8/2** has been executed in favour of Sh. Amit Garg by Sh. Vishnu Dutt Sharma on 25.07.2011 which means that defendant has already met Sh. Amit

Garg prior and also on 25.07.2011. The stand taken by defendant that plaintiff and his associates have introduced an imposter person as “Sh. Amit Garg” to him on 25.09.2012 has no substance in it because defendant has already met Sh. Amit Garg prior to 25.09.2012 i.e. prior as well as at the time of execution of sale deed **Ex.DW8/2**. The defence taken by defendant in his amended written statement does not inspire the confidence of this Court to believe it probable and true.

63. During cross examination, DW-1/defendant has admitted his signatures and thumb impression on the cancellation of agreement to sell dated 28.04.2013 **Ex.DW1/P** executed between him and plaintiff. Defendant has not explained as to how his signatures and thumb impressions have come upon the said document.
64. Plaintiff in para No.12A of the amended plaint has specifically pleaded that on 28.04.2013, defendant came to his house along with pre-draft cancellation of agreement to sell wherein defendant has mentioned about the cancellation of agreement dated 25.09.2012 and asked plaintiff to sign the same as he is ready to give the amount of Rs.13,76,500/- to him. It is also pleaded by plaintiff that defendant has put his signatures and thumb

impressions on the said agreement. It is further pleaded that plaintiff has refused to put his signature on the said agreement stating that he will put his signature and thumb impression on the same only after receiving the payment. It is further pleaded that plaintiff has kept the original of the said agreement. Even, plaintiff/PW-1 has mentioned the said fact in his evidence affidavit **Ex.PW1/A**. It is pertinent to mention here that defendant has neither replied to the para No.12A of the amended plaint in his amended written statement nor specifically denied the authenticity and existence of the agreement **Ex.DW1/P**. Even, no suggestion has been put to PW-1 during his cross examination disputing the genuineness and authenticity of the agreement **Ex.DW1/P** or disputing the version of PW-1 in respect to agreement **Ex.DW1/P**.

65. During cross examination of DW-1, he has voluntarily stated that he has signed the original agreement **Ex.DW1/P** when it was blank. Defendant has not specifically pleaded in his amended written statement that he has put his signatures and thumb impressions on the blank papers which were later on converted into cancellation of agreement to sell dated 28.04.2013. It is pertinent to mention here that defendant has never taken

the defence that plaintiff has obtained his signatures and thumb impression on blank papers at any point of time. It is pertinent to mention here that even, defendant has not filed any complaint against plaintiff stating that plaintiff has taken his signatures and thumb impressions on blank pages/papers which were later on converted into cancellation of agreement to sell dated 28.04.2013. It is further worthwhile to mention here that even, the FIR No.370/2014, PS Shahdara **Ex.DW3/2** got registered by defendant does not mention that plaintiff has obtained signatures and thumb impression of defendant on blank pages. Defendant has failed to give any plausible and probable explanation as to how his signatures and thumb impressions have come upon the agreement **Ex.DW1/P**. An adverse inference is drawn against defendant for non-explanation to the fact as to how his signatures and thumb impressions have come upon the agreement **Ex.DW1/P**.

66. The agreement **Ex.DW1/P** states that defendant has received an amount of Rs.13,76,500/- from plaintiff under the agreement to sell executed on 25.09.2012. It also mentions that plaintiff has received his paid amount of Rs.13,76,500/- as an earnest money in respect to the subject property from defendant in full and final

settlement. It shows the intention of defendant that he wants the signatures of plaintiff on the document **Ex.DW1/P** acknowledging receipt of payment of Rs.13,76,500/- by plaintiff.

67. Plaintiff has pleaded that on 25.09.2012, an agreement to sell **Ex.PW1/1** was again executed between him and defendant in respect to the subject property for a total consideration of Rs.18,25,000/-. Defendant has admitted his signatures on the agreement **Ex.PW1/1**. Defendant has failed to prove that the agreement **Ex.PW1/1** is a forged document. It is pertinent to mention here that the said agreement has been executed between plaintiff and defendant on 25.09.2012 i.e. on the same day when defendant has taken the signatures of plaintiff on the cancellation agreement **Ex.C-2**. The execution of sale deed **Ex.DW8/2** without cancelling the agreement to sell with plaintiff clearly shows the mala-fide intention of defendant. The conduct of defendant does not seem to be bona-fide. Defendant has not given any reason why he has not cancelled the agreement **Ex.C-1** with plaintiff prior to execution of sale deed **Ex.DW8/2** and has not returned the part sale consideration amount already taken by him from plaintiff forthwith after execution of sale deed **Ex.DW8/2**.

Defendant has further not explained why he has executed cancellation of agreement to sell dated 25.09.2012 **Ex.C-2** when he has already sold the subject property without informing the plaintiff. It is not the stand of defendant that he has informed plaintiff about the execution of sale deed **Ex.DW8/2** to plaintiff prior to execution of cancellation of sale deed **Ex.C-2**.

68. The conduct of defendant clearly establishes his mala-fide intention to cheat the plaintiff. The conduct of defendant and material came on record clearly infers that defendant has again executed the agreement to sell dated 25.09.2012 **Ex.PW1/1** with plaintiff in respect to the subject property without disclosing about the sale deed **Ex.DW8/2**. The material came on record further infers that defendant has put his signatures and thumb impressions on the agreement **Ex.DW1/P** in order to deceive the plaintiff and further induced him to execute the said agreement for cancelling the agreement to sell **Ex.PW1/1**. The agreement **Ex.DW1/P** came into existence only in order to cancel the agreement to sell **Ex.PW1/1**.
69. The agreement to sell **Ex.PW1/1** clearly stipulates that defendant has received an amount of Rs.13,76,500/- from plaintiff in respect to subject property. The agreement

Ex.DW1/P also corroborate the fact that defendant has taken an amount of Rs.13,76,500/- from plaintiff in respect to the subject property.

70. Defendant has not produced any cogent, positive and independent material on record to establish that he has returned an amount of Rs.12 lakhs and Rs.1,96,000/- to plaintiff. Defendant has also failed to establish that the agreement **Ex.PW1/1** is a false and forged document.
71. Plaintiff has paid an amount of Rs.2,90,000/- to Sh. Amit Sharma on 08.04.2011 and Rs.4,10,000/- to Sh. Vishnu Dutt Sharma on 15.04.2011 through cheques. The said amount has been paid to Sh. Amit Sharma and Sh. Vishnu Dutt Sharma prior to execution of sale deed **Ex.DW8/2**. As per plaintiff, the afore-said amount has been paid to Sh. Amit Sharma and Sh. Vishnu Dutt Sharma at the instance of defendant. Defendant has not disputed the afore-said payment made by plaintiff to Sh. Amit Sharma and Sh. Vishnu Dutt Sharma. He has only taken the stand that they should also be made parties to the suit or that Sh. Amit Sharma and Sh. Vishnu Dutt Sharma are liable to pay such amount to plaintiff. Defendant in his amended written statement admitted that he has received an amount of Rs.12 lakhs from plaintiff. Defendant has not taken the

stand in his amended written statement that the afore-said amounts of Rs.2,90,000/- and Rs.4,10,000/- paid by plaintiff to Sh. Amit Sharma and Sh. Vishnu Dutt Sharma are not included in the amount of Rs.12 lakhs purportedly received by the defendant from plaintiff or that the afore-said amounts received by Sh. Amit Sharma and Sh. Vishnu Dutt Sharma from plaintiff are the separate transactions from the transactions vide which defendant has admitted receipt of Rs.12 lakhs from plaintiff.

72. Considering the factual matrix of the case, material came on record and above discussions, this Court concludes that defendant has failed to establish that the agreement **Ex.PW1/1** and agreement **Ex.DW1/P** are the forged and false documents. Defendant has further failed to establish that he has returned an amount of Rs.12 lakhs and Rs.1,96,000/- to plaintiff as alleged by him in his amended written statement. This Court further concludes that plaintiff has proved his entitlement for the decree of Rs.13,76,500/- against defendant by leading cogent, probable and independent evidence.

73. In view of the above findings, plaintiff is found entitled for recovery of an amount of Rs.13,76,500/- against defendant because defendant has not returned the afore-

said amount to plaintiff and has utilized the same for his own use and purpose.

74. Considering the facts and circumstances of the case, nature of transaction and conduct of defendant, this Court is of the considered view that interest @ 9% amount on the amount of Rs.13,76,500/- from the date of filing of the suit till its realization would be an appropriate rate of interest to be awarded to meet ends of justice. **Issue No.1 is hereby decided in favour of plaintiff and against defendant.**

75. **Final judgment**

I. A money decree for recovery of Rs.13,76,500/- is hereby passed in favour of plaintiff and against defendant.

II. An interest @ 9% per annum on the amount of Rs.13,76,500/- from the date of filing of the suit till its realization, is awarded in favour of plaintiff and against defendant.

III. Cost of the suit is also awarded in favour of plaintiff and against defendant.

76. Present suit is hereby decreed and accordingly disposed of.

77. Decree sheet be prepared accordingly.

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

Announced in the open Court
on this 15th of July, 2026

(DEEPANKER MOHAN)
DISTRICT JUDGE-04,
SHAHDARA DISTRICT
KKD COURTS, DELHI