

IN THE COURT OF SH. ABHITOSH PRATAP SINGH RATHORE  
DISTRICT JUDGE-05, SOUTH WEST DISTRICT,  
DWARKA COURTS, NEW DELHI.

CS DJ ADJ 57/2020  
CNR No. DLSW01-000562-2020

**Ram Deni Bhagat**  
S/O Sh. D.Bhagat,  
R/O. 143, DDA Janta Flats,  
Pocket-09, Navdeep Awasiya Colony  
Nasirpur, Palam Village  
New Delhi-110045

...Plaintiff

VERSUS

**Smt. Sangeeta Mani**  
W/O Shri Rakesh Kumar,  
R/O House No.742,  
Sector 5, R.K.Puram,  
New Delhi-110022

...Defendant

Date of institution of the suit	:	18.01.2020
Final arguments concluded on	:	16.03.2026
Judgment pronounced on	:	30.03.2026

**SUIT FOR RECOVERY OF ARREARS OF RS 7,50,000 ALONGWITH  
INTEREST @ 18%**

**PLAINT**

1. The present suit has been filed for recovery of Rs.7,50,000/-, which was paid by the plaintiff to the defendant in lieu of a property that was to be sold by the defendant to the plaintiff.

2. As per the plaint, the plaintiff and the defendant agreed and entered into an Agreement to Sell with respect to property bearing No. 148, DDA Janta Flats, Pocket-09, Navdeep Awasiya Colony, Palam Village for a total sale consideration of Rs. 37,40,000/-, out of which the plaintiff paid Rs. 1,50,000/- as bayana. The bayana receipt was executed by the defendant on 30.06.2019.

The plaintiff also paid Rs. 4,50,000/- by way of DD bearing No. 22525 dated 05.07.2019 drawn on IDBI Bank. The formal 'Agreement to Sell' was executed between the plaintiff and the defendant on 08.07.2019, which was notarized. It was agreed between the parties that the sale deed was to be executed on or before 08.10.2019 after payment of the balance sale consideration.

Thereafter, the plaintiff requested the defendant to provide complete documents of the aforesaid property. However, the defendant stated that certain documents pertaining to the property were with the bank and could only be retrieved after clearing the outstanding dues.

Subsequently, the plaintiff made a further payment of Rs. 1,50,000/- out of which Rs. 1,00,000 /- was paid in cash and Rs. 50,000/- was paid by way of cheque. After receiving photocopies of the documents of the said property, the plaintiff applied for a home loan from HDFC Bank. However, when the plaintiff inquired about the status of the loan, he was informed that the loan could not be sanctioned as certain clarifications regarding the allotment-cum-demand letter dated 10.07.2003 issued by DDA in favour of Gurucharan Singh and Surjeet Singh were required.

In addition, the bank also demanded a copy of the Agreement to Sell. An email dated 26.09.2019 was sent by the legal team of HDFC Bank to the

plaintiff, wherein it was specifically mentioned that certain legal issues were involved in the matter and that, upon receipt of requisite documents, the same would be discussed with the legal team of HDFC.

However, the defendant failed to provide even a photocopy of the allotment-cum-demand letter. Aggrieved by the conduct of the defendant, the plaintiff sent a legal notice dated 04.10.2019 to the defendant. A reply to the said notice was received, wherein the defendant declined the request of the plaintiff to supply further documents and stated that the documents already provided were complete. It was further stated that if the plaintiff failed to pay the balance consideration within one month, the amount of Rs.7,50,000/- paid in advance would be forfeited.

In light of the aforesaid facts and circumstances, since the plaintiff neither received a refund of the advance amount nor were the documents supplied by the defendant sufficient to establish a clear title, it became imperative for the plaintiff to institute the present suit.

### **WRITTEN STATEMENT**

3. The written statement was filed on behalf of the defendant. In the written statement, it was stated that the plaintiff has not disclosed the correct facts. It was stated that the defendant, while purchasing the property, did not have enough funds, and therefore a home loan of Rs.3,50,000/- was taken from HDFC Bank and Rs.3,00,000/- was taken for construction.

The said home loan was sanctioned after due verification of the property and the title. The said property was purchased by a sale deed dated 25.01.2005. However, the documents were retained by HDFC Bank as security towards the loan.

The defendant has admitted that the agreement with the plaintiff was signed, and the plaintiff has paid Rs.7,50,000/- as earnest money and promised that he would pay the balance on or before 08.10.2019. It is also admitted that the total consideration of the said property was Rs.37,40,000/-.

It is stated that as the defendant was expecting to receive the entire consideration amount by 08.10.2019, she had plans to repay the loan. The defendant had also booked a plot with Mr. Gaurson's Real Tech Private Limited and had paid an initial amount of Rs.1,00,000/-.

It is stated that it is only due to the fall in property prices that the plaintiff did not come forward. It is further submitted that the defendant also gained knowledge that the plaintiff's loan application was rejected by HDFC Bank due to his unsatisfactory CIBIL score.

Due to non-payment of the consideration amount by the plaintiff, the defendant and her husband were not able to make payment towards the booked plot with Gaurson's at Greater Noida, for which a default notice was received by them. The said Gaurson's has also not refunded their Rs.1,00,000/-. As the plaintiff did not make the payment as promised, the defendant and her husband suffered huge monetary loss.

In parawise reply para no.2,3,4,5,6 & 7 have been responded to as "Need No Reply". Para No. 8 is admitted. It is admitted that a formal agreement was executed between the parties on 08.07.2019. It is admitted that plaintiff had paid Rs.7,50,000/- as earnest money. The contents of paras 10 and 11 have been responded to as "need no reply." The contents of para 12 are denied as false and wrong. The contents of para 13 of the plaint are admitted to the extent that a legal notice was served upon the defendant and a reply to the same was given by the defendant to the plaintiff. It is stated that the defendant gave one month's time to the plaintiff to make the balance

payment and get the required documents executed. It is further stated that the defendant visited the Sub-Registrar's office on 07.10.2019 and also on 09.10.2019, as 08.10.2019 was Dussehra holiday.

It is stated that the contents of Para No. 14 of the plaint are wrong, false and hence denied. It is submitted that the plaintiff failed to make the payment as promised, due to which the defendant was compelled to discharge various loans and consequently suffered substantial financial losses. The defendant and her husband were further constrained to avail a personal loan at a high rate of interest from Bajaj Finance. In view of the above, it is prayed that the suit be dismissed.

#### REPLICATION

4. The replication was filed on behalf of the plaintiff. In the replication, the contents of the plaint were reiterated, while the averments made in the written statement were denied.

It was denied that the plaintiff's loan was rejected on account of a low CIBIL score. It was reiterated that certain legal issues were involved in the matter, hence the bank had asked to produce certain documents. It was further pointed out that, the response received from the bank was, "some legal issues are involved in this case, and upon receipt of the aforementioned document, we will need to discuss the matter with the legal team of HDFC and will update you thereafter"

#### ISSUES

5. Vide order dated 14.07.2022 following issues were framed:

***1. Whether plaintiff is entitled for decree for recovery of the suit amount of Rs. 7,50,000/-, as prayed for? OPP***

***2. Whether the plaintiff is entitled for damages alongwith pendente-***

*lite and future interest, if so, at what rate and for what period? OPP*

**3. Relief.**

**PLAINTIFF'S EVIDENCE**

6. Plaintiff examined himself as PW-1. He tendered his evidence by way of affidavit. He relied upon following documents:-

- 1) Copy of demand letter No. 26579. Mark A
- 2) Copy of Possession Letter dated 07.06.2004. Mark B
- 3) Copy of NOC of electricity and water connection slip Mark C (colly)
- 4) Copy of Possession slip dated 27.08.2004. Mark D
- 5) Copy of sale deed dated 05.01.2005. Mark E (colly)
- 6) Copy of agreement to sell dated 17.01.2005 Mark F (colly)
- 7) Copy of Bayana receipt dated 30.06.2019. Ex. PW-1/7 (OSR)
- 8) Copy of Demand draft dated 05.07.2019. Mark G
- 9) Copy of agreement to sell dated 08.07.2019. Ex. PW-1/9
- 10) Copy of cash receipt dated 27.07.2019. Ex. PW-1/10
- 11) Copy of cheque receipt dated 15.08.2019 Ex. PW-1/11
- 12) Copy of Email from the HDFC Bank legal team Ex. PW-1/12
- 13) Certificate U/s 65B of Indian Evidence Act. Ex. PW-1/13

PW-1 was cross examined by the defendant on two dates.

Plaintiff did not examine any other witness.

**PE was closed on 03.04.2025.**

**DEFENDANT'S EVIDENCE**

7. Defendant examined herself as DW-1. She tendered her evidence by way of affidavit. She has relied upon following documents:-

- 1) Copy of the sale deed dt. 25.01.2005 in favour of Smt. Sangeeta Mani. Mark A

- 2) Copy of the letter dt. 01.08.2019 of HDFC bank confirming the repayment of the loan. Ex. DW1/B (OSR) (colly)
- 3) Copy of the letter to the sub-registrar dt. 07.10.2019. Ex. DW1/C (OSR).
- 4) Copy of the undertaking alongwith receipt before sub-registrar dt. 09.10.2019. Ex. DW1/D (OSR)
- 5) Copy of two certificates from Arthi Co-Op (U) Thrift & Credit Society Ltd. dt. 09.03.2020. Ex. DW1/E (OSR) (colly) (2 pages)
- 6) Copy of the Loan account statement of the husband of the defendant of Delhi cooperative Commercial thrift & Credit society Ltd. Ex. DW1/F (OSR)
- 7) Account statement of the defendant of the State Bank of India showing the payment made towards the outstanding credit card and other loan accounts. — Mark B
- 8) Account statement of the husband of the defendant of SBI showing the loan taken and payments made towards the outstanding credit card and other loan accounts. — Mark C
- 9) Copy of the credit card statement of the ICICI bank. — Mark D
- 10) Copy of the credit card statement of the IndusInd bank. — Mark E
- 11) Copy of the credit card statement of the Kotak Mahindra Bank. — Mark F
- 12) Copy of the letter dt. 11.02.2020 by Bajaj finance confirming the approval of the loan. — Ex. DW1/L (OSR) (2 pages)
- 13) Copy of the letter confirming the loan from the SBI. — Ex. DW1/M (OSR) (2 pages)
- 14) Copy of demand draft issued by the SBI. Mark G
- 15) Copy of the payment receipt dt. 04.09.2019 made to Gaursons Real Tech Pvt. Ltd. — Mark H (3 pages)
- 16) Copy of the e-mail dt. 15.11.2019 sent in regarding the booking made with Gaursons Real Tech Pvt. Ltd. — Mark I (3 pages)
- 17) Copy of the demand letter dt. 25.12.2019 issued by Gaursons Real Tech Pvt. Ltd. — Mark J
- 18) Copy of the cancellation letter dt. 17.03.2020 — Ex. DW1/Q (OSR)
- 19) Copy of the fees receipt of the daughter of the defendant. — Mark K
- 20) Copy of office order dt. 22.10.2019 asking the husband of the defendant to submit no demand certificate. — Mark L
- 21) Copy of office order dt. 05.11.2019 asking the husband of the

- defendant to submit no demand certificate. — Mark M
- 22) Copy of the salary certificate for the month of September and November 2019. — Ex. DW1/U (OSR)

DW-1 was cross examined by the Plaintiff on one date.

Defendant did not examine any other witness.

**DE was closed on 13.03.2026.**

Arguments Heard. Record Perused.

My issue wise findings are given below:-

### **ISSUE NO.1 & 2**

***1. Whether plaintiff is entitled for decree for recovery of the suit amount of Rs. 7,50,000/-, as prayed for? OPP***

***2. Whether the plaintiff is entitled for damages alongwith pendente lite and future interest, if so, at what rate and for what period? OPP***

Both issues are taken up together as being inter-connected in nature.

The case of the plaintiff is that he had entered into an agreement to sale with defendant. He was to obtain a loan for the purchase of property. He had already paid Rs.7,50,000/- in advance. As defendant could not supply all the property documents, his loan could not be sanctioned. And thereafter, the agreement could not be executed. Defendant's stand is that she had supplied whatever documents she had at her disposal. She had already informed plaintiff about all the documents she had with her. And as plaintiff did not buy the property and paid the remaining consideration, they suffered a huge loss in their bookings for another house.

Plaintiff has stated in his cross-examination that the defendant did not provide him any document at the time of execution of the agreement to sell. All the documents filed by him qua the property in question were given to

him by the defendant after the receipt of the legal notice. He has stated in his cross-examination that he demanded the documents from the defendant at the time of execution of the agreement to sell, as he had applied for a loan from HDFC. He did not know whether the defendant had a loan on the property from the same bank. The defendant had also told him that she was not having any document and would get it and give it to him later.

Regarding other documents that he was confronted with during his cross-examination, he has stated that the same were for identification purposes only. There is no loan pending on him from the period 2017 till the present date, other than the loan mentioned by him pertaining to IDBI Bank. He has stated in his cross-examination that he had filed the loan application for an amount of Rs. 30 lakhs. He has expressed his lack of knowledge regarding whether the defendant has subsequently sold the property. He has denied the suggestion that he had not applied for the loan and had purposely filed a defective loan application, and that the loan was not granted to him due to a low CIBIL score.

Plaintiff has produced an email sent to him by the legal team of HDFC, which reads as follows:-

*Dear Sir/Madam*

*We have received the documents provided by you through HDFC and on perusal of said documents, we would require following documents/clarifications in order to enable us to finalize the report opinion:*

*Allotment cum Demand Letter dated 10.07.2003 issued by DDA in favour of Gurucharan Singh and S. S. Surjeet Singh and further documents was issued by DDA in favour of Virender Singh.*

PLEASE CLARIFY THE SAME along with supporting documents. And also confirm the availability of said Original allotment cum demand letter.

There is no mention of the CIBIL score of the plaintiff in the entire

mail.

Defendant in cross-examination has stated that she had signed the agreement to sell that bears her signature. She has stated that, as per the said agreement, she was to provide documents related to the suit property to the plaintiff. She has admitted that she had provided all the photocopies related to the suit property to the plaintiff. However, she does not remember whether the original allotment-cum-demand letter dated 10.07.2003, in favour of Gurcharan Singh and Surjeet Singh, was supplied or not. She has stated that she had taken a loan from HDFC Bank at the time of purchase of the suit property. She does not have the original documents, as she has sold the property now and the documents have been given to the purchaser. She has stated that she had sold the property for Rs. 42 lakhs and that it was sold around one to two years ago. She has denied the suggestion that she has not suffered any loss.

The agreement to sell dated 08.07.2019 is admitted. There is no dispute with respect to this document. As this is the basic document on the basis of which the rights and obligations of the parties have arisen, it would be pertinent to go through this document in detail.

**AGREEMENT TO SELL**

*This AGREEMENT TO SELL is made at New Delhi on this 08th day of July, 2019 between Sangeeta Mani W/o Shri Rakesh Kumar R/o House No. 742, Sector-5, R.K. Puram, New Delhi-110022, (hereinafter called the **FIRST PARTY**).*

AND

*Ram Deni Bhagat S/o Shri D. Bhagat resident of 143, DDA Janta Flats, Pocket-9, Navdeep Awasiya Colony, Nasirpur, Palam Village, New Delhi-110045, (hereinafter called the **SECOND PARTY**).*

*THE EXPRESSION first party and second party shall mean and include their respective heirs, successors and assigns.*

**WHEREAS** the first party is the owner and in physical possession of property No. Flat No. 148, DDA Janta Flats, Pocket-9, Navdeep Awasiya Colony, Nasirpur, Palam Village, New Delhi-110045.

**WHEREAS** the first party has agreed to sell the above mentioned property to second party for a total sale consideration of Rs. 37,40,000/- (Rupees Thirty Seven Lakhs Forty Thousand Only).

**NOW THIS AGREEMENT TO SELL WITNESSETH AS UNDER:-**

1. That out of the above said total sale consideration is Rs. 37,40,000/- (Rupees Thirty Seven Lakhs Forty Thousand Only) to the second party and the same is duly acknowledged by the First Party and second party pay a sum of Rs. 4,50,000/- (Rs. Four Lakhs Fifty Thousand only) by Demand Draft bearing no. 022525 on dated 05/07/2019 by IDBI Bank, Palam, A-1/20, Vinay Enclave, Palam Dabri Road, Delhi-110045 and Rs. 1,50,000/- (Rs. One Lakh Fifty Thousand only) by cash on dated 30/06/2019 and balance amount Rs. 31,40,000/- (Rs. Thirty One Lakhs Forty Thousand only) paid by cash/cheque on or before 08/10/2019.
2. That all liabilities such as House Tax, Electricity and Water Charges etc., up to the date of finalization of deal will be paid by the First Party.
3. That the First Party shall not create any charge over the said property after the execution of this agreement and First Party has no right to sell it to anybody else after signing this Agreement.
4. That Second Party has agreed to purchase the said property from First Party on the condition that First Party undertakes to bear all losses which may be suffered by the Second Party, in case the Ownership Title of First party if found to be defective.
5. That all the original ownership papers as well as vacant physical possession of the said property will be handed over by the First Party to the Second Party at the time of full and final payment and registration of necessary Sale Deed in favour of the Second Party or in favour of his nominee or in favour of any prospective buyer.
6. If First Party fails to execute and back out of this Agreement, the First Party will pay double amount of the earnest money to the Second Party.
7. That First Party has given his consent to the above condition of

- his free will and without any outside influence, coercion, pressure or threat of any account and both the Parties hereby further confirms and declare that this agreement is IRREVOCABLE.*
- 8. That First Party shall be liable to provide all the connected documents pertaining to the above said property of all the previous ownership papers etc., if required by the Second Party.*
  - 9. That the first party shall get no claim title or interest in the said property and the second party has become its sole and absolute owner and is/are at liberty to utilize the same in any manner.*
  - 10. That the first party hereby assures the second party that the said property under sale is free from all sorts of encumbrances such as lease, mortgage, gift, lien, decree, etc. there is no loan on the said property.*
  - 11. That whenever and wherever the presentation of the first party will be required for the completion of any acts, deeds and things regarding the said property the first party will execute and present for the same*
  - 12. That if the first party violate and infringe the terms and conditions laid down in the agreement to sell, the second party shall be entitled to get the said transaction to complete through the court of law under the suit for specific performance at the costs and expenses of the first party.*
  - 13. That all the terms & conditions are binding on both the parties.*

From the perusal of the agreement to sell, it is evident that it contains an acknowledgement that an amount of Rs. 6 lakh was paid. It also provides that all original ownership papers were to be handed over by the first party to the second party at the time of full and final payment.

However, Clause 8 also requires that the first party shall be liable to provide all the connected documents pertaining to the aforesaid property, including all previous ownership papers, etc., if required by the second party. There is no forfeiture clause in the agreement. There is no clause providing for return of a double amount in the agreement.

At this stage, from the pleadings of the parties, documents provided by them, and their evidence, including cross-examination, the following factual propositions stand firmly established:

- a. The plaintiff and defendant had entered into an agreement to sell.*
- b. A sum of Rs.7,50,000/- was paid by the plaintiff to the defendant as earnest money.*
- c. As per the agreement, the defendant was to supply and provide all the connected documents pertaining to the said property, including all previous ownership papers, if required by the second party.*
- d. One document pertaining to the July 2003 allotment-cum-demand letter in favour of Gurucharan Singh and Surjeet Singh was not available with the defendant, and the same was demanded by HDFC bank for approving house loan.*
- e. It is also evident from the perusal of the agreement to sell that there is no forfeiture clause in the said agreement.*

### **FORFEITURE**

At this stage, it would be pertinent to refer to the reply of the defendant given in response to the plaintiff's legal notice. In the said reply, the defendant stated that if the plaintiff failed to clear the balance payment of Rs. 29,90,000/- within one month of receipt of the reply, the earnest money would be forfeited. Plaintiff on the other hand has argued that as the defendant didn't supply the documents to him, he couldn't obtain loan, hence earnest money can't be forfeited.

During the course of arguments both parties relied on certain judgments such as :

*1.Fateh Chand v. Balkishan Dass AIR 1963 SC 140.*

**2. Satish Batra v. Sudhir Rawal (2013) 1 SCC 345**

**3. ONGC Ltd. v. Saw Pipes Ltd. (2003) 5 SCC 705**

I have perused the said judgments.

In *ONGC Ltd. v. Saw Pipes Ltd. (2003) 5 SCC 705* Hon'ble Supreme Court of India observed as following:-

*"From the aforesaid discussions, it can be held that: (1) Terms of the contract are required to be taken into consideration before arriving at the conclusion whether the party claiming damages is entitled to the same. (2) If the terms are clear and unambiguous stipulating the liquidated damages in case of the breach of the contract unless it is held that such estimate of damages/compensation is unreasonable or is by way of penalty, party who has committed the breach is required to pay such compensation and that is what is provided in Section 73 of the Contract Act. (3) Section 74 is to be read along with Section 73 and, therefore, in every case of breach of contract, the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree. The court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of a contract. (4) In some contracts, it would be impossible for the court to assess the compensation arising from breach and if the compensation contemplated is not by way of penalty or unreasonable, the court can award the same if it is genuine pre-estimate by the parties as the measure of reasonable compensation."*

In *Satish Batra v. Sudhir Rawal (2013) 1 SCC 345* Hon'ble Supreme Court of India observed as following:-

*"This Court, considering the scope of the term "earnest", laid down certain principles, which are as follows: (Shree Hanuman Cotton Mills case (1969) 3 SCC 522)*

*"From a review of the decisions cited above, the following principles emerge regarding 'earnest':*

- '(1) It must be given at the moment at which the contract is concluded.*
- (2) It represents a guarantee that the contract will be fulfilled or, in other words, "earnest" is given to bind the contract.*
- (3) It is part of the purchase price when that transaction is carried out.*
- (4) It is forfeited when the transaction falls through by reason of the default or failure of the purchaser.*
- (5) Unless there is anything to the contrary in the terms of the contract, on default committed by the buyer, the seller is entitled to forfeit the earnest."*

In *Fateh Chand v. Balkishan Dass AIR 1963 SC 1405* Hon'ble Supreme Court of India observed as following:-

*“10. Section 74 of the Indian Contract Act deals with the measure of damages in two classes of cases (i) where the contract names a sum to be paid in case of breach and (ii) where the contract contains any other stipulation by way of penalty. We are in the present case not concerned to decide whether a contract containing a covenant of forfeiture of deposit for due performance of a contract falls within the first class. The measure of damages in the case of breach of a stipulation by way of penalty is by Section 74 reasonable compensation not exceeding the penalty stipulated for. In assessing damages the Court has, subject to the limit of the penalty stipulated, jurisdiction to award such compensation as it deems reasonable having regard to all the circumstances of the case. Jurisdiction of the Court to award compensation in case of breach of contract is unqualified except as to the maximum stipulated; but compensation has to be reasonable, and that imposes upon the Court duty to award compensation according to settled principles. The section undoubtedly says that the aggrieved party is entitled to receive compensation from the party who has broken the contract, whether or not actual damage or loss is proved to have been caused by the breach. Thereby it merely dispenses with proof of “actual loss or damage”; it does not justify the award of compensation when in consequence of the breach no legal injury at all has resulted, because compensation for breach of contract can be awarded to make good loss or damage which naturally arose in the usual course of things, or which the parties knew when they made the contract, to be likely to result from the breach.*

*11. Before turning to the question about the compensation which may be awarded to the plaintiff, it is necessary to consider whether Section 74 applies to stipulations for forfeiture of amounts deposited or paid under the contract. It was urged that the section deals in terms with the right to receive from the party who has broken the contract reasonable compensation and not the right to forfeit what has already been received by the party aggrieved. There is however, no warrant for the assumption made by some of the High Courts in India, that Section 74 applies only to cases where the, aggrieved party is seeking to receive some amount on breach of contract and not to cases where upon breach of contract an amount received under the contract is sought to be forfeited. In our judgment the expression “the contract contains any other stipulation by way of penalty” comprehensively applies to every covenant involving a penalty whether it is for payment on breach of contract of money or delivery of property in future, or for forfeiture of right to money or other property already delivered. Duty not to enforce the penalty clause but only to award reasonable compensation is statutorily imposed upon courts by Section 74. In all cases, therefore, where there is a stipulation in the nature*

*of penalty for forfeiture of an amount deposited pursuant to the terms of contract which expressly provides for forfeiture, the court has jurisdiction to award such sum only as it considers reasonable, but not exceeding the amount specified in the contract as liable to forfeiture. We may briefly refer to certain illustrative cases decided by the High Courts in India which have expressed a different view.”*

In all the cases Hon’ble Supreme Court attached special importance to the terms of the agreement parties have agreed to. Forfeiture was allowed when it was included in the terms of the agreement, unless it was penal in nature.

However, in the present case the situation is different.

It is undisputed that the agreement to sell did not contain any forfeiture clause. The defendant’s line of questioning during the plaintiff’s cross-examination also reflects an admission of this fact. The defendant’s counsel put a question to the plaintiff that usually agreements to sell contain forfeiture clauses. The question was subsequently disallowed by the court. However, the position remains the same, that there is no forfeiture clause in the agreement which the parties have admittedly signed.

It is a settled position of law that any agreement between parties, to have binding effect, must be based on a meeting of minds, i.e., *consensus ad idem*. If the parties, in the written agreement, have intentionally omitted forfeiture or double payment clauses, which are usually part of an agreement to sell, the court must respect that. A legal notice or a reply thereto cannot unilaterally add any term or condition that was not part of the original agreement. In the present case, there was no forfeiture clause in the agreement. There was also no clause providing for return of double the amount in case the defendant was at fault for non-execution of the sale deed.

## DAMAGES SUFFERED BY THE DEFENDANT AND PLAINTIFF

Although, both plaintiff and the defendant have alleged that they have suffered damages due to the non-execution of the sale deed, the defendant has been particularly vehement in her stand that she has suffered more loss due to the non-execution of the sale deed. She has produced certain documents relating to her personal loan taken from Bajaj Finance and the amount that she had deposited with *Gaursons Realtech* with respect to another booking, and has also shown several correspondences that took place between the defendant and *Gaur Realtech* Pvt. Ltd. However, none of them conclusively establishes that this loss was on account of the non-execution of the sale deed.

The defendant has also not claimed any set-off, nor has she filed any counterclaim. She has retained Rs.7,50,000/- and has provided no explanation whatsoever.

In para 8 of the evidence affidavit, DW-1 Sangeeta Mani has categorically stated that the plaintiff had paid Rs.7,50,000/- as earnest money. However, in the entire evidence affidavit, except for the Rs.1 lakh that became disputed with respect to their booking with Gaur Yamuna City, no explanation has been given as to why this amount was not returned. All miseries related to defendant's financial condition, including how she had to take a loan from Bajaj Finance and another loan from the State Bank of India to repay the Bajaj Finance loan, have been attributed to the non-execution of the sale deed. Although, in para 18 of the evidence affidavit, she has stated that the plaintiff had spread rumours in the locality that the said property was under litigation and that he was threatening he would not allow anyone to purchase the said property unless the defendant and her husband paid him

Rs.10 lakhs, and no person was purchasing the said property, in her cross-examination she has admitted that the property has been sold for Rs.42 lakhs. Considering that the previously agreed price between the plaintiff and the defendant was Rs.37 lakhs and the property has now been sold for Rs.42 lakhs, it is difficult to say that the defendant has suffered any kind of loss.

In the present case, there was **no forfeiture clause in the agreement**. The defendant has been unjustly enriched by Rs. 7,50,000/-. Although defendant claimed that she suffered loss, she has failed to prove that she suffered any loss. No set-off has been claimed, no damages have been quantified, and no conclusive evidence has been provided that would unmistakably point to the conduct of the plaintiff as the sole factor responsible for losses, if any caused to the defendant. In such a scenario, equity and good conscience demand that the amount paid by the plaintiff be returned to him.

The plaintiff has successfully shown that an agreement to sell was entered between him and the defendant, and that he paid Rs.7,50,000/- as earnest money. He also showed that he applied for a home loan, but it could not be approved because the defendant failed to provide certain documents. However, apart from the amount already paid, the plaintiff has not shown that he suffered any additional damages. On this point, plaintiff's evidence is even more deficient than defendant's.

In view of the above discussion, **Issue No.1 and 2 are decided with the finding that plaintiff is entitled for refund of Rs. 7,50,000/- and not for any other damages.**

**RELIEF:**

**8. In view of the findings of the issue no.1 and 2, suit of plaintiff is**

decreed. Plaintiff is held entitled to a decree of Rs.7,50,000/- alongwith interest @ 6% per annum from the date of filing of suit till the satisfaction of the decree.

Cost of the suit is also awarded to the Plaintiff.

Decree Sheet be drawn accordingly.

File be consigned to Record Room thereafter.

Typed to the dictation directly,  
corrected and pronounced in the  
open Court on 30.03.2026.

(Abhitosh Pratap Singh Rathore)  
District Judge-05, South-West District  
Dwarka Courts, New Delhi