* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on:12th February, 2026***

Pronounced on: 18th May, 2026

\+ **RFA 37/2020, CM APPL. 67118/2025 & CM APPL. 9723/2026**

M/S R. C. SOOD & CO. DEVELOPERS PVT. LTD.
(EROS GROUP)
S-1, American Plaza
International Trade Tower
Nehru Place, New Delhi. .....Appellant

Through: Mr. Vikas Mishra, Mr. Kartik Magar Karti, Mr. Sanchit Gawri and Mr. Krishna Dev Yadav, Advocates.

versus

1. SHRI SHARAD MAHESHWARI
S/o Shri Ram Babu Maheshwari
R/o C-5/31, Ground Floor
Safdarjang Development Area, New Delhi.

2. SMT. VANDANA MAHESHWARI
W/o Shri Sharad Maheshwari
R/o C-5/31, Ground Floor
Safdarjang Development Area, New Delhi. .....Respondents

Through: Mr. Manish Kaushik and Mr. Mishal Johari, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Regular First Appeal under Section 96 read with Order XLI CPC has been preferred against the *Judgment and Decree dated 30.09.2019*, whereby the Suit of the Plaintiff/Respondent *has been decreed for a sum of Rs.18,00,000/- along with pendente lite and future interest @ 6% per annum.*

2. The Plaintiff/Respondent had filed a Suit bearing No.9719/2016 *for Recovery of Rs.52,71,118/- along with pendent lite and future interest.*

3. The ***facts in brief***, are that the Defendant, a Real Estate Developer and owner of land in Village Ghasola Badshahpur, District Gurgaon, Haryana, launched a residential project known as *"Rosewood City"* consisting of Duplex independent villas called *"Grand Mansions"*. The Plaintiff applied for a built-up villa, *vide* Application dated 22.02.2008 and *paid Rs.10,00,000/-, as booking amount.*

4. Subsequently, an Agreement to Sell dated 27.02.2008 was executed in respect of Villa No. C-01, admeasuring approximately 510.39 sq. yds., having a super built-up area of about 4900 sq. ft., for a total consideration of Rs.2,50,00,000/-.

5. The Plaintiff *further paid a sum of Rs.25,00,000/- through cheque on 22.03.2008 and Rs.27,00,000/- through cheque on 30.06.2008*. The Plaintiff thus, made a *payment of total Rs.62,00,000/-, towards this Agreement dated 27.02.2008.*

6. It is the case of the Plaintiff that the original documents relating to the allotment were lost during transit, which was intimated to the Defendant vide letter dated 12.03.2009, requesting it to supply of complete documents.

Though some documents were supplied, the schedule of construction and specifications, were not provided despite repeated requests.

7. The Plaintiff alleged that upon visiting the site in September–October 2008, he found the construction to be slow and of inferior quality, whereupon he raised objections and sought either compliance with specifications or refund of his money.

8. The Defendant, however, assured completion of construction and persuaded the Plaintiff to continue with the project.

9. Although the payments were commensurate with the construction progress, the absence of an available construction schedule meant the Plaintiff could not determine the expected stage of completion, the actual work performed, or the specific due dates for instalments.

10. Despite this, the Defendant *via* letter dated 09.03.2009, unilaterally and arbitrarily cancelled the Plaintiff's allotment. The Defendant further forfeited the earnest money of Rs. 62,00,000/**-,** which was 25% of the Villa's composite price, in an illegal and wrongful manner.

11. "The Plaintiff sent reminders on 30.03.2009 and 15.04.2009, asking the Defendant to withdraw the cancellation and provide the necessary documents. However, the Defendant failed to take any action or even reply, leaving the Plaintiff's concerns completely unaddressed.

12. In the absence of any response, the Plaintiff was left with no choice but to send a letter dated 04.05.2009, claiming a refund of the entire amount of Rs. 62,00,000/-, along with **interest at the rate of 18%**.

13. Thereafter, *vide* letter dated 12.05.2009, the Defendant refused to refund the money and reiterated that the Plaintiff was left with no right, title, or interest in the Villa, following the cancellation of the Agreement dated 27.02.2008. The Defendant went to the extent of holding the Plaintiff liable for Rs. 50,000/-, as the balance amount of earnest money, that was allegedly due.

14. While the Plaintiff was in the process of initiating litigation, *Mr. Mohit Sharma, DGM (Sales & Marketing),* contacted the Plaintiff to propose a meeting regarding the Agreement to Sell. During this meeting, the Plaintiff requested that the Defendant rescind the cancellation and complete the Villa.

15. However, this proposal was outrightly rejected by the Defendant's official stating they were not in a position to reverse the cancellation decision. The Plaintiff then, requested a refund of Rs.62,00,000/-, along with interest, plus Rs.20,00,000/-, in damages which was also declined.

16. In *lieu* of the original Villa, Mr. Mohit Sharma offered the allotment of Villa No. B-69, situated on 430 square yards with a super built-up area of 4,800 square feet, for a total consideration of Rs.2,11,00,000/-. Under compelling circumstances and coercive bargaining, the Plaintiff was left with no option but to accept this one-sided proposal.

17. Mr. Mohit Sharma thereafter, summoned the Accounts Manager, Mr. Navin C. Shaily and informed him of the understanding, and requested that the details be recorded via email. The following day, Mr. Sharma provided the Application Form in duplicate, for the allotment of Villa No. B-69. The

Plaintiff signed the forms and completed all necessary procedures in the presence of Mr. Sharma, handing over one copy, while retaining the second.

18. On 24.06.2009, Mr. Shaily emailed the requisite papers to the Plaintiff. Mr. Sharma further confirmed via telephone that the detailed Agreement and other formalities would be finalized by 27.06.2009, in line with the understanding reached on 23.06.2009, which had been confirmed by the Minutes of the Meeting, emailed by the Plaintiff.

19. On 27.06.2009, the Plaintiff met with Mr. Mohit Sharma at his request, only to discover that the Defendant was again unilaterally and arbitrarily changing the Villa. Mr. Sharma stated there was no room for further discussion. He then insisted that the Plaintiff settle the entire claim for 44,00,000/**-.** He claimed that if the Plaintiff agreed, the Defendant would cooperate regarding two plots in Lake Wood City, Surajkund, Faridabad, and provide free membership to an "International Standard Spa & Club" proposed for that development.

20. The Plaintiff was threatened that failure to agree to this new proposal, would result in the total loss of the **62,00,000/-,** which was already paid under the first Agreement to Sell. Consequently, the Plaintiff was coerced into accepting this unilateral proposal and was forced to sign a "Full and Final Settlement" along with other documents. The Plaintiff was subsequently handed a cheque for **44,00,000/-,** against a total lawful claim of **62,00,000**/-.

21. Following the realization of the cheque for **44,00,000**/-, the Plaintiff sent an email dated **30.06.2009** lodging a formal protest regarding the

receipt of the payment and the Defendant's failure to pay the outstanding balance of **18,00,000/-**.

22. Mere acceptance of **44,00,000/-,** instead of the full claim of **62,00,000/,** ostensibly as a "full and final settlement" is "*non-est"* in the eyes of the law, as it was executed under undue influence and coercive bargaining.

23. Consequently, the Plaintiff filed the Suit claiming **18,00,000/-,** along with interest at the rate of 18% per annum compounded quarterly.

24. The **Defendant in its Written Statement**, raised a preliminary objection, asserting that the Plaint fails to disclose any cause of action.

25. The Defendant claimed that the Plaintiff failed to address the demands for instalments raised by the Defendant, for reasons best known to the Plaintiff. Consequently, the Plaintiff committed a breach of the Agreement to Sell dated **27.02.2008**. The Defendant emphasized that the Agreement to Sell contained a clear stipulation, requiring payments to be made strictly in accordance with the prescribed schedule.

26. The Defendant further asserted that multiple letters and reminders were sent to the Plaintiff, prior to the cancellation of the Villa allotment. Specifically, prior to the letter dated **09.03.2009**, a letter dated **19.02.2009** was dispatched to the Plaintiff. This correspondence clarified the Defendant's position and brought various terms of the Agreement to the Plaintiff's attention.

27. According to the Defendant, the Plaintiff ignored all the correspondence and instead, concocted a narrative to evade his contractual

obligations. As a result of the Plaintiff's repeated failure to remit the instalments, the Defendant was left with no option, but to cancel the provisional allotment and the Agreement to Sell.

28. It is asserted that the Plaintiff suppressed material facts which led to the cancellation of the provisional booking. Specifically, the Plaintiff concealed that on **18.06.2009**, he submitted a letter to the Defendant stating that due to the recession in the real estate and financial sectors, he was no longer interested in the Villa. In that letter, the Plaintiff sought the cancellation of the provisional reservation and requested a refund after the adjustment of **18,00,000/-,** cancellation fee. Notably, this letter was omitted from the Plaint.

29. Furthermore, the Plaintiff failed to disclose the execution of an Undertaking-cum-Indemnity Bond and a separate Undertaking at the time of receiving **44,00,000/-,** as part of a full and final settlement. Consequently, the Plaintiff has performed a complete reversal of their position, by concocting a false plea in a well-planned manner.

30. The Plaintiff has already received **44,00,000/-** in full and final settlement of the claim and is not entitled to any further amount. Having received the full payment under the terms of the settlement, the Plaintiff is now estopped from raising any plea regarding entitlement to additional funds. The suit is misconceived and is not maintainable.

31. **On merits**, all allegations made in the Plaint, were denied. The Defendant asserted that the Agreement contained a clear stipulation that payments were to be made in accordance with the Payment Schedule.

Clause 4 of the Agreement to Sell (ATS) provided that the Defendant was entitled to cancel the villa allotment and was entitled to **25%** of the sale price.

32. Despite repeated reminders, the Plaintiff failed to pay the outstanding instalments and issued only one cheque, dated **08.11.2008**, for a sum of **27,00,000/-**, which was subsequently dishonoured for "insufficient funds." Furthermore, despite receiving the cancellation letter dated **09.03.2009**, the Plaintiff did not raise any objection at that time. Instead, the Plaintiff began seeking copies of the property documents, under the pretext of having lost the originals. The Defendant maintained there was no obligation to supply these documents, as the Agreement to Sell had already been cancelled.

33. It is further asserted that the Plaintiff voluntarily entered into a full and final settlement and accepted the cheque for **44,00,000/-** in satisfaction of all claims. *The Defendant denied that the settlement was executed under any undue influence or coercion.*

34. Further, by executing the Undertaking-cum-Indemnity Bond and a separate Undertaking on **27.06.2009**, the Plaintiff waived all rights and titles under the **Agreement to Sell**. The Defendant reiterated that the Plaintiff had personally sought the cancellation of the provisional reservation via the letter dated **18.06.2009**. Consequently, *it was submitted that the Suit is devoid of merit and is liable to be dismissed.*

35. The **Plaintiff in the Replication** reaffirmed and reiterated the assertions made in the Plaint.

36. Based on the pleadings, the ***following issues were framed on 27.05.2011: -***

> *(i) Whether the cancellation of the allotment of the Villa in suit vide letter dated 09.03.2009 was illegal, as alleged? OPP.*
> *(ii) Whether the forfeiture of the earnest money by the defendant. was illegal as alleged by the plaintiff? If so, to what effect? OPP.*
> *(iii) Whether the defendant paid a sum of Rs. 44 Lakhs to the plaintiff in full and final settlement of all his claims and, therefore, the suit is not maintainable? OPD.*
> *(iv) Whether the plaintiff executed the receipt dated 18th June, 2009 under undue influence and compelling circumstances as alleged by the plaintiff? OPP.*
> *(v) Whether the plaintiff is entitled to claim any amount from the defendant? OPP.*
> *(vi) Whether the plaintiff is entitled to interest and if so at what rate, on what amount and for what period.*
> *(vii) Relief.*

37. **PW-1** Mr. Sharad Maheshwari, Plaintiff No. 1, tendered his evidence-in-chief by way of an affidavit Ex. PW1/A. Through the said affidavit, he proved the application form dated 22.02.2008 Ex. P-1, the Agreement to Sell dated 27.02.2008 Ex. P-2, and the receipts acknowledging payments made by the Plaintiff amounting to ₹62 lakhs Ex. P-3, Ex. P-4 and Ex. P-5. He further proved the correspondence exchanged between the parties, including the letter dated 09.03.2009 issued by the Defendant Ex. P-6, the reply dated 12.03.2009 sent by the Plaintiff Ex. P-7, and the subsequent letter dated 04.05.2009 seeking refund Ex. P-8, along with the reply dated 12.05.2009 issued by the Defendant Ex. P-9

38. The Defendant examined **DW-1** Shri Ashok Kumar Singh, Senior Manager (Accounts), who proved documents in support of the defence. These included the authority letter and affidavit in his favour Ex. DW-1/1, the letter dated 27.09.2008 requesting payment of ₹27,00,000/- towards Instalment-D Ex. DW-1/2, the letter dated 20.12.2008 demanding outstanding payment for Instalment-E Ex. DW-1/3, and the letter dated 19.02.2009 regarding the said instalments Ex. DW-1/4. He further proved Receipt No. 41 dated 04.03.2009 for ₹27,00,000/- Ex. DW-1/5 and the intimation regarding dishonour of the cheque for ₹27,00,000/- Ex. DW-1/6. The Defendant also relied upon the letter dated 09.03.2009 regarding cancellation of allotment Ex. D-1, the letter dated 04.05.2009 sent by the Plaintiff Ex. D-2, the letter dated 12.05.2009 along with acknowledgment Ex. D-3, and the letter dated 18.06.2009 written by the Plaintiff Ex. D-6

39. The **learned District Judge** held that the Plaintiff's testimony regarding the slow pace of construction, remained uncontroverted. It was further observed that the demand letters were required to be sent via Registered Post with acknowledgment due. However, the Defendant failed to produce any postal receipts to prove the delivery of the alleged demand letters to the Plaintiff regarding the payment of instalments.

40. *Consequently, the court held that the Defendant's cancellation of the villa allotment was illegal*.

41. It was further observed that the Defendant's deduction of 18,00,000/- constituted a forfeiture of earnest money, which could not be justified by seeking protection under the plea of a *"full and final settlement*." The court

held that this amount of 18,00,000/-, could not have been adjusted **under the pretext of a settlement,** as asserted by the Defendant.

42. The court found no evidence to demonstrate that the Defendant had suffered any actual financial loss due to the non-payment of instalments or the cancellation of the allotment. Accordingly, it was held that the sum of **18,00,000**/-, being in the nature of an illegal forfeiture of earnest money, was liable to be refunded to the Plaintiff.

43. The learned District Judge accepted *the Plaintiff's plea that the settlement was signed under undue influence and coercion*. The court held that a party may succumb to the pressure exerted by the other party to a bargain, when that party occupies a significantly stronger position. Consequently, it was held that the Settlement and Receipt dated **27.06.2009** were not voluntarily signed or agreed to by the Plaintiff.

44. Based on these findings, *the Suit was decreed in favour of the Plaintiff for the recovery of **18,00,000/-**, along with interest at the rate of 6% per annum from the date of the filing of the Suit*. However, the Plaintiff's claim for damages amounting to **20,00,000/-** was denied as the Plaintiff had failed to lead any evidence to establish or substantiate the claim for such damages.

45. ***Aggrieved by the Judgment and the Decree dated 30.09.2019, the Defendant/Appellant has preferred the present Appeal.***

46. The ***grounds for challenge,*** are that the dispute between the parties pertained to non-compliance with the terms and conditions of the Agreement to Sell, which ultimately culminated in a full and final settlement. It is contended that the Respondents/Plaintiffs committed a breach of the

Agreement to Sell dated 27.02.2008 by failing to pay the instalments stipulated in the payment schedule, despite several reminders and notices issued by the Appellant. The learned District Judge failed to appreciate that the Respondents/Plaintiffs did not adhere to the payment schedule and deliberately defaulted on the instalments, thereby compelling the Appellant to cancel the provisional allotment.

47. Under Clauses 2 and 3 of the Agreement to Sell dated 27.02.2008, the Appellant was entitled to forfeit 25% of the sale price as earnest money upon the cancellation of the provisional allotment, in case the Respondents/Plaintiffs fail to remit payments as per the schedule. The Appellant possessed an absolute right to forfeit said earnest money as liquidated damages, resulting from the non-performance of the Agreement

48. The learned District Judge failed to consider that, admittedly, *via* letter dated **18.06.2009**, the Respondents themselves expressed that they were no longer interested in the property due to the recession in the real estate and financial sectors. In that correspondence, they sought a refund of 44,00,000/-, as a full and final settlement after the adjustment of 18,00,000/- toward the earnest money. Consequently, the Respondents accepted the refund of 44,00,000/-, and the settlement was entered into voluntarily and willingly, without any coercion or pressure.

49. The learned District Judge erred by disregarding the Appellant's conduct and adopting a contrary view, erroneously observing that the parties were not on an equal footing at the time of the settlement.

50. Both, an Undertaking-cum-Indemnity Bond and a separate Undertaking, each dated 27.06.2009, were duly executed by the Respondents at the time of the settlement. They accepted a cheque dated 27.06.2009 for a refund of 44,00,000/-**,** as a full and final settlement in respect of the Suit Property. Once this payment was received and subsequently encashed by the Respondents, no further liability or claims remained outstanding against the Appellant.

51. It has not been considered that a well-planned and concocted narrative was spun by the Respondents, despite the *bona fide* conduct and intention of the Appellant to fulfil the terms of the Agreement to Sell and voluntarily refund the due amount of 44,00,000/-. The Appellant denied that this sum was received by the Plaintiffs/Respondents under protest or as a result of pressure tactics and undue influence.

52. It is further contended that the Respondents were the party in breach of the Agreement to Sell dated 27.02.2008. Despite repeated requests and reminders sent by the Appellant, the Respondents issued only one cheque, dated 08.11.2008, for 27,00,000/-, which was subsequently dishonored on 04.03.2009 due to *"insufficient funds"*.

53. Contrary to the facts on record, the learned District Judge drew an adverse inference against the Appellant based on the non-availability of postal or courier receipts, erroneously assuming a failure to prove the Letters of Demand or a default in payment by the Respondents.

54. Crucially, the payment schedule was explicitly time-linked, not construction-linked as alleged by the Respondents. Therefore, the contention

that construction was progressing at a slow pace, is irrelevant to the Appellant's right to demand instalments, as those payments were tied to a fixed timeline, rather than construction milestones.

55. It has not been considered that the Cancellation Letter dated 09.03.2009 was served by the Appellant upon the Respondents, and that the Respondents failed to raise any objection *in* their letter dated 12.03.2009. The Respondents falsely claimed to have lost all original documents pertaining to the Suit Property during transit; however, they provided no particulars, and no FIR or public notice was ever issued in this regard. Since it was the Appellant who cancelled the allotment of the Suit Property, there was no occasion to supply the documents afresh to the Respondents.

56. Following the issuance of the Cancellation Letter dated 09.03.2009, the Respondents never came forward to remit the instalments or to protest against the alleged deficiencies in construction. Furthermore, the Cancellation Notice has been erroneously held as illegal, arbitrary, and unjustified. The letter dated 12.05.2009 sent in response to the Respondents' letter dated 04.05.2009 duly informed the Respondents that the failure to pay instalments on time, would result in the cancellation of the allotment and the forfeiture of earnest money in terms of the Agreement to Sell. Ultimately, the Appellant accepted the request of the Respondents made via the letter dated 27.06.2009 and refunded the sum of 44,00,000/-. The Respondents are, therefore, guilty of the suppression of material and vital facts.

57. Reliance has been placed on Kailash Nath Associates vs. DDA, 2015 (4) SCC 136 and *Rakesh Kumar vs. Vinod Vats*, RFA 181/2017, decided by

a Co-ordinate Bench of this Court, wherein it was held that a seller cannot forfeit any amount except a nominal sum unless, actual loss is proven. However, these judgments are inapplicable to the present case, as the dispute does not pertain to a unilateral forfeiture, but rather to a full and final settlement voluntarily entered into by the parties.

58. Furthermore, in the case of *Satish Batra vs. Sudhir Rawal*, (2012) 132 DRJ 705, the Hon'ble Supreme Court of India observed that where earnest money is provided by the buyer to bind the contract as part of the purchase price, it shall be forfeited if the transaction falls through due to the default or failure of the purchaser.

59. In fact, the Appellant has not even forfeited 10% of the total sale consideration. The forfeited amount of **18,00,000/-,** is less than 10% of the total sale consideration of **2,50,00,000/-**.

60. Furthermore, it is denied that any undue pressure or coercion was exerted on the Respondents. The Supreme Court of India, in *New India Assurance Company Ltd. vs. Genus Power Infrastructure Ltd*., (2015) 2 SCC 424, held that a bald plea of fraud, coercion, duress, or undue influence is insufficient; the party raising such a plea must *prima facie* establish the same by placing cogent material before the deciding authority.

61. Reliance is placed on *Wishwa Mittar Bajaj & Sons vs. BPTP Ltd.*, OMP (Comm.) No. 427/2017 dated 21.12.2017, and *Mihir Buildcon Pvt. Ltd. vs. Ajnara Infrastructure (P) Ltd.*, (2016) SCC Online Del 5367. In these judgements, it was held that once an Indemnity-cum-Undertaking is executed between the parties, it is not open for them to subsequently

challenge its validity by alleging that it was entered into under duress or coercion.

62. Consequently, the Impugned Judgment is contrary to the settled position of law and is, therefore, liable to be set aside

63. **Written Submissions** have been filed by the Appellant on similar lines as the contentions raised in the Appeal.

64. ***The Respondents have filed their Written Submissions*** wherein, while the factual matrix remained largely undisputed. They asserted that the learned District Judge correctly found the cancellation of the allotment to be unilateral and illegal. This contention is based on the premise that no Demand notice was ever served upon the Respondents, nor was any instalment due as per the construction schedule.

65. Clause 45 of the Agreement to Sell dated 27.02.2008 expressly mandated that any communication between the parties must be served upon the allottee, by the Company through pre-paid registered acknowledgment post. Furthermore, Schedule 'A' of the Agreement to Sell stipulated that payments would become due only within 15 days of the issuance of a Demand Notice.

66. In the present case, although the Appellant alleged that Demand Notices were issued via letters dated 27.09.2008, 20.12.2008, and 19.02.2009, they failed to prove service of these Notices upon the Respondents. Consequently, the Respondents have asserted that in the absence of proof of service, no default can be attributed to them. The cancellation of the villa allotment on the grounds of non-payment of

instalments is, therefore, entirely unjustifiable, as the Appellant failed to fulfil the mandatory contractual prerequisites for demanding payment and subsequently terminating the allotment.

67. Furthermore, Schedule 'A' of the Agreement to Sell dated 27.02.2008, provided that /Defendant had failed to produce its Schedule of construction for the Villa. The payments were to be demanded, as per the schedule of construction. Thus, there was no question of payment of instalments, due to the delay and default of the Respondents/Plaintiffs, in raising the construction, as per the Schedule. Since the construction was not going on the site as per the agreed schedule of construction, the Respondents/Plaintiffs could not have demanded further instalments, which were linked with the progress of construction.

68. It is further contended that there were no sufficient grounds for the forfeiture of the earnest money or any other amount by the Appellant/Defendant. The Respondents/Plaintiffs further assert that the full and final settlement was signed under undue influence, coercion, and compelling circumstances, and was a result of the principle of "***necessitas non habet legem***". In support of this contention, reliance is placed on *Ambika Construction vs. Union of India*, (2006) 13 SCC 475, and *MD, NTPC Ltd. vs. Reshmi Constructions*, (2004) 2 SCC 663.

Submissions heard and the record perused.

69. The present Appeal is directed against the Judgment and Decree dated 30.09.2019, whereby the Suit of the Plaintiff/Respondent has been decreed for recovery of ₹18,00,000/-, along with the interest @6%.

70. It is an admitted case of the parties that the Respondents/Plaintiffs entered into an **Agreement to Sell** dated **27.02.2008** with the Appellant/Defendant, M/s R.C. Sood and Company Developers Pvt. Ltd., for the *purchase of Villa No. 01, Block C*, admeasuring approximately 510.39 square yards in 'Grand Mansions', Rosewood City, Gurgaon. As per the said Agreement, the total sale consideration was **2,50,00,000/-**, which was to be paid in instalments, via a 'cash down' plan, or in a manner and at such intervals as stipulated under Schedule 'A' annexed to the Agreement.

71. The Agreement further provided that the fully constructed Villa was to be delivered within 25 months from the date of execution, contingent upon the Respondents/Plaintiffs complying with the contractual terms and remitting all payments due and payable as per the payment plan.

72. The relevant Clause Nos. 3, 4 and 45 of the Agreement, read as under:-

> *"3. That the Company and the Allottee hereby agree that the amount paid on reservation and subsequent instalments as the case may be, will collectively constitute die Earnest Money which is 25% (Twenty five percent) of the composite price of the Villa.*
>
> *4. The payment of all dues of the Company in accordance with the dates and periods mentioned in the Agreement is the essence of the Agreement. All dues are payable at New Delhi in the Office of the Company. Payments by cheques and drafts shall be drawn on banks at New Delhi. The. Allottee shall make all payments in time without any reminders from the Company.*

The Allottee agrees, that in case of his failure to pay the Company the amounts due and as demanded by the Company in terms of this Agreement and. the schedules thereto the Company shall have the absolute right to cancel this Agreement at its sole discretion and in such a case the Earnest Money as paid by tine Allottee will stand. forfeited as liquidated damages for non- performance of the terms of the Agreement*. The Company would thereafter be free to deal with the said Villa in any manner at its sole discretion. The Allottee will however be entitled to refund of the balance money paid by him till that date only after resale of the Villa. The Company will however not be liable for payment of any Interest thereon.*

45. That all notices to be served on the Allottee and the company as contemplated by this Agreement shall be deemed to have been duly served if said to the allottee of the Company by pre-paid Registered Acknowledgement Due Post at their respective addresses as specified herein above.

It shall be the duty of the Allottee to inform the. Company of any subsequent change in the above address by Registered AD Post falling which all communications and letters posted at the above address shall deemed to have been received by the Allottee.

In case there are joint Allottees, all communications shall be sent by the Company to the Allottee whose name appears first and at the address given by him, which shall for all purposes be considered as served on all the Allottees.

It is hereby agreed between the parties that all letters posted to the Allottee by the Registered Post on the

address mentioned in this Agreement (or on the changed address) intimated by the Allottee to the Company in written by Registered Post) shall be deemed to have been delivered or sufficiently served whether the same are returned undelivered or refused delivery by the Allottee.

I. Whether the Payments of Instalments was Time-Linked or Construction-Linked:

73. The Appellant/Defendant contends that the Respondents/Plaintiffs failed to adhere to the payment timeline stipulated in Schedule 'A' of the Agreement to Sell dated 27.02.2008. It is the Appellant/Defendant's case that the transaction was governed by a **time-linked plan**, making instalments due on specific calendar dates, regardless of construction progress. The language of the Schedule mandated payments on or before specific calendar dates, thereby *establishing a time-linked obligation of payment, independent of site progress.*

74. They maintain that the failure to remit these payments constituted a material breach of contract, thereby justifying the subsequent cancellation of the allotment and the forfeiture of earnest money.

75. Conversely, the Respondents/Plaintiffs assert that the payment obligations *were commensurate with construction milestones*. They allege that during a site visit in late 2008, the construction was found to be progressing at a slow pace and inferior quality material, was being used.

76. Furthermore, the Respondents/Plaintiffs asserts that the loss of their original documents in transit, created a transactional gap regarding their

specific payment obligations, as the Respondent was not aware of the extent of construction and the instalment to be paid. They contend that the Appellant/Defendant failed to provide copies of the Construction and Payment schedule despite multiple requests, which he claim was a prerequisite for further payments.

77. Both parties anchor their respective positions on Schedule 'A' of the Agreement to Sell.

78. It is evident from Schedule 'A' that while a timeframe was provided for each instalment, the actual demand for payment was to be made based on the progress of construction. This is evident from the endorsement at the end, that "*the sequencing mentioned above is indicative; payments will be requested according to* ***the construction schedule****." Therefore, the responsibility* ***to pay the instalments was construction-linked,*** *as rightly claimed by the plaintiff.*

79. The Appellant, had examined **DW-1, Shri Ashok Kumar Singh**, who in his cross-examination admitted that payments were required to be made as per the actual progress of construction of the Villa in different phases. However, he was unable to produce the Actual Schedule of Construction, being followed at the site.

80. From the cross-examination of DW-1, Shri Ashok Kumar Singh, it emerged that he was not personally aware of either the contents of the Builder Buyer Agreement or the relevant facts pertaining to the construction. Furthermore, he was unaware of the stage the construction of the Villa had reached during the relevant period of September and October 2008.

81. The Plaintiffs' claim that construction progress was slow and materials were of inferior quality, remains uncontroverted as the Defendant failed to cross-examine the Plaintiffs, on these material aspects or to prove otherwise.

82. From the testimony of PW-1, Sharad Maheshwari as well as DW-1, Shri Ashok Kumar Singh, it is established that the allegation that the materials used were sub-standard in nature was not rebutted. It was clearly established that the construction at the site was slow and that sub-standard materials, were being used. The Defendant was unable to prove the actual extent of construction undertaken at the site, in September and October 2008.

83. It is evident that the construction-linked instalments could not be held to be due, given the deficit in construction and the lack of progress, as per the schedule. Therefore, the Defendant Company was not justified in demanding instalments in advance, without the actual completion of the construction stages, as envisaged in the Schedule of Construction. The failure of Defendant to produce the Schedule or even provide evidence regarding the extent of construction, fully supports this conclusion. *Consequently, the demands for instalments were not sustainable, as rightly observed by the learned District Judge.*

II. Whether the Demand Letters for Instalments, were required to be Issued:

84. The *second aspect* is that the Schedule 'A' to the Agreement to Sell EX. A-2, stipulated that payments would become due and payable, only

within 15 days, **as and when a Letter of Demand was issued by the Appellant**.

85. According to Defendant, they had issued Demand Letters dated 27.09.2008 Ex. DW-1/2, 20.12.2008 Ex. DW-1/3, and 19.02.2009 Ex. DW-1/4, though the plaintiff denied receiving any of the Demand Letters.

86. In terms of *Clause 45 of the Agreement Ex-P2*, all Notices were to be served by the Appellant via pre-paid Registered Acknowledgement Due Post, at the address mentioned in the Agreement. While these three Letters have been placed on record, but there are no corresponding postal or courier receipts for any of them. The Plaintiffs have denied receiving these letters; therefore, the onus was on the Defendant to produce the postal receipts or the Acknowledgment Cards, to prove that these letters were duly served upon the Plaintiffs.

87. The responsibility to pay instalments was, first, linked to construction progress and, second, contingent upon receiving a Letter of Demand. The Defendant has miserably failed to prove that the demands were raised in correlation to the construction carried out at the site, or that these Demand Letters Ex**.** DW-1/2 to Ex. DW-1/4 were ever served upon the Plaintiffs. It is significant to note that while general correspondence was conducted via email, the Defendant chose to send demand letters solely by post, with no electronic reminders ever issued.

88. Therefore, it cannot be said that the Plaintiffs were in default of payment, despite the alleged demands.

III. ***Whether* cancellation *of Agreement Ex. A-2 was justified:***

89. The Plaintiff **pleaded** that the cancellation of the allotment was arbitrary, unreasonable, and contrary to customary market practices. He further deposed in his Affidavit of Evidence, that the revocation of his right, title, and interest along with the illegal forfeiture of the earnest money and the threat to create third-party interests in the suit property, was wrongful.

90. Notably, the Plaintiff has not denied being served with the cancellation letter dated 09.03.2009 Ex. D-1, issued by the Defendant. The Defendant/ Appellant claimed cancellation of the Allotment, on the ground of non-payment of instalments by the Plaintiffs.

91. The Appellant relied upon **Clause 4 of the Agreement Ex-P2**, which provided: *"in case of failure to pay the company the amount due and as demanded by the company in terms of the Agreement and the schedule thereon, the company shall have the absolute right to cancel the Agreement at its sole discretion and in such a case, the earnest money paid by the allottee shall stand forfeited as liquidated damages for non-performance of the terms of the Agreement."*

92. ***Clause 31 further stipulated that interest at 18% p.a. compounded quarterly, was leviable on any delays***.

93. The Defendant argued that, pursuant to Clause 4 of the Agreement, *the payment schedule was of the essence of the contract*. It was their assertion that, under the terms of Clause 4, a failure to remit payment, rendered the allotment liable to cancellation and the earnest money subject to forfeiture.

94. The Appellant contended that prior to issuing the Cancellation Letter dated 09.03.2009, the Defendant had sent a letter dated 19.02.2009 Ex. DW-1/4 asserting that a demand for an instalment of Rs**.** 54,00,000/- had previously been made through letter dated 20.12.2008 Ex. DW-1/3.

95. However, the Defendant had failed to establish that any of these Demand letters were actually served upon the Respondents, as discussed above. In view of this lack of evidence regarding service of demand Letters, the plaintiff could not be held as a defaulter. There was no valid basis for the termination of the Agreement or the forfeiture of funds.

96. The cancellation of the Villa allotment vide letter dated 09.03.2009, was *rightly held by the learned District Judge to be illegal, arbitrary, and unjustified*.

IV. **Whether the Settlement dated 27.06.2009 was voluntary and Binding**:

97. The central question that arose was *whether the Settlement dated 27.06.2009 was voluntary, or whether it was executed under coercion and pressure, as asserted by the Plaintiff.*

98. It is undisputed that the Plaintiff had already paid **Rs. 62 lakhs** under the Agreement. Being dissatisfied with the progress of construction and the quality of materials which the Plaintiff alleged were inferior; he sought a full refund.

99. The Defendant, however, declined the refund by its letter dated 12.05.2009 Ex. P-9, reiterating that the allotment stood cancelled and the earnest money had been forfeited.

100. The Plaintiff **PW1, in his testimony,** deposed that subsequent to the cancellation, the Plaintiff issued a letter dated 30.03.2009 Ex. PW1/1 and a reminder dated 15.04.2009 Ex. PW1/2, calling upon the Defendants to withdraw the Letter dated 09.03.2009 and provide the requisite documents. As the Defendant failed to reply, the Plaintiff was left with no alternative but to seek a refund of the entire amount of Rs. 62 lakhs, with interest at 18% p.a. compounded quarterly, plus Rs. 20 lakhs as damages, via letter dated 04.05.2009 Ex. P-8.

101. It was the Plaintiff's case in the Plaint, though notably not deposed by him in his oral testimony as PW1, that while he was preparing the suit, Mr. Mohit Sharma, DGM (Sales & Marketing) of the Defendant, invited him to a meeting regarding the Villa allotment. During this meeting, the Plaintiff requested the withdrawal of the cancellation and the completion of the Villa, as per the construction schedule. This request was rejected, with the Defendant stating they were not in a position to review the cancellation decision.

102. However, when the Plaintiff insisted on a refund of his money with compound interest, Mr. Sharma offered an alternative Villa No. B-69, 430 sq. yds., for a total sale consideration of Rs. 2,11,00,000/-, suggesting that the Rs. 62 lakhs already paid, be adjusted toward this new allotment.

103. The Plaintiff accepted this proposition, as evidenced by the letter dated 18.06.2009. In that letter, the Plaintiff stated he was no longer interested in Villa No. C-01, but accepted the provisional allotment of Villa B-69 in Eros Grand Mansions, Rosewood City, requesting that the Rs. 62

lakhs be transferred to Nehru Place Hotels Ltd., for that purpose. *These averments and the correspondence of 18.06.2009 demonstrate that, following the cancellation, negotiations were undertaken to settle the matter*.

104. By letter dated 25.06.2009 Ex. PW1/6, the Defendant confirmed the allotment of the alternative villa and the adjustment of the funds previously received. However, the subsequent correspondence between the parties reveals that these negotiations ultimately failed to result in a fruitful settlement.

105. Consequently, through letter dated 27.06.2009, the Defendant informed the Plaintiff that, in view of the cancellation of the original booking for Villa No. C-01, a sum of Rs. 44 lakhs, out of the Rs. 62 lakhs received, was being returned in full and final settlement of the account.

106. The *Plaintiff admitted that once negotiations fell through, the parties entered into this settlement on 27.06.2009*, resulting in the refund of Rs. 44 lakhs. In conjunction with this payment, the Plaintiff executed an Indemnity Bond and two Undertakings Mark DX2 and DX3.

107. Subsequently, the Plaintiff sent an email dated 30.06.2009 Ex. PW1/7 acknowledging receipt of the Rs. 44 lakhs cheque, but asserting that the payment was accepted *"under protest."* The Plaintiff contended that the payment did not constitute a full and final settlement of the claims already made to the Defendant. It was alleged that the acceptance of the reduced amount, was the direct result of extreme pressure tactics, coercive bargaining, and unfair trade practices. *Accordingly, the Plaintiff requested*

the Defendant to refrain from selling Villa C-01 and demanded that the entire remaining balance be refunded within fifteen days.

108. It is well-settled that a plea of full and final settlement, must be founded on free consent. Where the acceptance of a lesser amount occurs under protest or coercive circumstances, it does not constitute a binding accord and satisfaction and, consequently, does not extinguish the original claim

109. The Plaintiff relied upon the maxim ***Necessitas non habet legem*** (meaning 'necessity knows no law'), a principle recognized by the Supreme Court in *Ambika Construction v. Union of India* (2006) 10 SCC 475 and *NTPC Limited v. Reshmi Construction*. Whether the Plaintiff was compelled to accept Rs. 44 lakhs as part of the Settlement under coercion or undue influence, is a question of fact that must be determined by examining the totality of the surrounding circumstances.

110. In these circumstances, it must be considered that the Defendant already in possession of Rs. 62 lakhs, occupied a dominant position. This is evidenced by its letter dated 09.03.2009 and subsequent correspondence, wherein the Defendant asserted its intent to forfeit the said amount, pursuant to **Clause 4** of the Agreement to sell. These facts establish that the Defendant, leveraging its dominant position, arbitrarily decided to withhold the said amount.

111. The Plaintiff, thus occupied a vulnerable position and was left with no viable alternative, but to accept whatever amount was offered. The learned District Judge correctly observed that the Plaintiff, when pitted against a

large developer with superior bargaining power, was effectively coerced into accepting the **Rs. 44 lakhs** offered by the Defendant.

112. The court rightly concluded that the Plaintiff's acceptance and even the encashment of the cheque, was vitiated by coercion and undue influence. ***Consequently, the acceptance of a partial sum, cannot be construed as a voluntary full and final settlement that would extinguish the Plaintiff's original claim.***

113. *To conclude*, the Defendant failed to prove that the cancellation of the Agreement, was rightful. On the contrary, the evidence reflects that the Defendant was unable to fulfil its contractual obligations under the Agreement. Consequently, the Defendant is liable to return the entire amount received from the Plaintiff in its entirety. There was no legal or factual justification for the Defendant to deduct **Rs. 18 lakhs,** from the total sum paid by the Plaintiff.

V. Whether Forfeiture of Rs. 18,00,000/- was justified:

114. It is admitted case that the plaintiff had paid Rs. 66,00,000/- out of which Rs. 44,00,000/- were returned by the Defendant, under the alleged voluntary settlement, while Rs. 18,00,000/- was forfeited. This forfeiture needs to be considered from the perspective of ***Section 74 of the Indian Contract Act, 1872***, which provides that the *party seeking to forfeit any amount, is required to prove the loss or damage caused on account of breach. Retention/Forfeiture of money, in absence of proof of loss, is not permissible.*

115. The Defendant's asserted that the deduction of Rs. 18 lakhs was made in terms of *Clause IV of the ATS*, which permitted the forfeiture of 25% of the sale consideration, as earnest money.

116. However, this is not a valid case for forfeiture, particularly as the breach has been shown to be on the part of the Defendant. Furthermore, by the Defendant's own admission, 25% of the total consideration does not equal Rs. 18 lakhs.

117. Further, the Defendant has neither pleaded nor adduced any evidence regarding any alleged financial loss arising from the allotment of the Villa. Under the principles of contract law, the onus rests squarely on the Defendant to prove that it sustained an actual loss to justify the forfeiture of funds; however, the Defendant has wholly failed to discharge this burden.

118. The evidence of the Appellant, in fact reveals that soon after the cancellation on 09.03.2009, the parties entered into negotiations during which the Defendant expressed its inability to revoke the cancellation of Villa No. C-01. Instead, the Defendant offered an alternative property, Villa B-69, in a different project. This refusal to restore the original allotment, strongly indicates that the Villa was no longer available, suggesting that the Defendant had already entered into a transaction with a third party. This sequence of events reinforces the conclusion that the Defendant suffered no loss; rather sought to benefit from the arbitrary cancellation of the Plaintiff's allotment.

119. Consequently, the learned District Judge correctly held that the retention of Rs. 18 lakhs by the Defendant was illegal and that the Plaintiff was entitled to a full refund of the amount, along with interest.

Conclusion:

120. The suit of the Plaintiff/Respondent has been correctly decreed for a sum of Rs. 18 lakhs, together with interest at the rate of 6% per annum, from the date of the institution of the suit till its actual realization.

121. The present Appeal is devoid of merit and is hereby**, dismissed**. All pending Applications, are disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 18, 2026/*va/RS*