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14.09.2016

To,
The Hon'ble Justice (Retd.) R. M. Lodha Committee,
Ashoka Hotel New Delhi

Subject: Objections against auction sale of First Floor of Residential Property no. 13, East Avenue, East Punjabi Bagh, New Delhi-110026.

Reference: Notification for auction sale posted at www.auctionpacl.com

Respected Sir,

We, the undersigned namely **(1) Anu Aggarwal Son of Sh. M. R. Aggarwal R/o 13, East Avenue, East Punjabi Bagh, New Delhi-110026 (2) Vibhu Aggarwal Son of Sh. M. R. Aggarwal R/o 14, East Avenue, East Punjabi Bagh, New Delhi-110026,** hereby respectfully submit as under:-

1. We are the lawful owners of the aforesaid property.

2. We are victims of the fraudulent practices and non-performance of obligations by PACL Limited, due to which we are continuously suffering harassment notwithstanding no fault on our part.

3. Our valuable aforesaid property was subject matter of an Agreement to Sell dated 17.05.2014 for sale of aforesaid property by us to M/s. PACL Limited, which was signed on 17.05.2014. Copy of the Agreement to Sell dated 17.05.2014 is attached. Total Sale Consideration for sale of the aforesaid property was mutually settled at Rs.11,00,00,000/- (Rupees Eleven Crores Only) to be paid to us by PACL Limited through M/s. Wittal See Marketing Limited as per the terms and conditions of said Agreement to Sell.

As per clause 3 (i) of said Agreement to Sell, initial payment of Rs.5,50,00,000/- (Rupees Five Crore Fifty Lakhs Only) was to be paid by PACL Limited to us within 30 days of signing of the Agreement to Sell dated 17.05.2014, which was paid by M/s. Wittal See Marketing Limited on behalf of PACL Limited.

As per clause 3 (ii) of said Agreement to Sell, M/s. PACL Limited through M/s. Wittal See Marketing Limited was required to make part payment of Rs. 3,00,00,000/- (Rupees Three Crores Only) to us within 60 days of signing of the Agreement to Sell.

As per clause 3 (iii) of said Agreement to Sell, M/s. PACL Limited through M/s. Wittal See Marketing Limited was required to make balance payment of Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakhs Only) to us within 90 days of

signing of the Agreement to Sell or 15 days from the date of clearance of loan by us with the Standard Chartered Bank, whichever is later.

Since the said Agreement was signed on 17.05.2014, therefore, the said part payment amount of Rs.3,00,00,000/- (Rupees Three Crore Only) was required to be paid by 16th July, 2014.

As per clause 6 of said Agreement to Sell, it had been mutually agreed by both the parties that in case of defaults in making payment as per the said schedule of sale consideration, the First Party (i.e. the Sellers) shall forfeit the entire amount received by it from the Second Party (Buyer). It was further agreed that in case the First Party (Sellers) commits any default it shall refund the double of the amount paid by the Second Party (Buyer).

4. Vide our letter dated 10th July, 2014 we reminded M/s. PACL Limited and M/s. Wittal See Marketing Limited to make the part payment of Rs.3,00,00,000/- (Rupees Three Crore Only) as per clause 3(ii) of Agreement to Sell on or before 16th July, 2014. However, M/s. PACL Limited and M/s. Wittal See Marketing Limited on its behalf failed to pay the said part payment amount of sale consideration i.e., Rs.3,00,00,000/- (Rupees Three Crores Only). Accordingly, as per clause 6 of the Agreement to sell, the initial amount of Rs.5,50,00,000/- (Rupees Five Crore Fifty Lakhs Only) paid to us by M/s. Wittal See Marketing Limited on behalf of PACL Ltd., stood forfeited in our favour, without any rights of PACL Limited or M/s. Wittal See Marketing Limited against us or our property in any manner whatsoever.

5. Since M/s. PACL Limited/M/s. Wittal See Marketing Limited failed to pay the part payment amount of sale consideration as per clause 3 (ii) of the Agreement to Sell, therefore as per clause 6 of Agreement to Sell, the aforesaid initial amount of Rs.5,50,00,000/-(Rupees Five Crore Fifty Lakhs Only) was forfeited in our favour. Vide our letter dated 24.07.2014, we had duly communicated M/s. PACL Limited and M/s. Wittal See Marketing Limited about the default in payment of part payment of Rs.3,00,00,000/- (Rupees Three Crore Only), as aforesaid, and further communicated vide the said letter that the initial payment Rs.5,50,00,000/- (Rupees Five Crore Fifty Lakhs Only) paid to us by M/s. Wittal See Marketing Limited on behalf of PACL Ltd., pursuant to aforesaid Agreement to Sell dated 17.05.2014, stood forfeited and the said Agreement to Sell dated 17.05.2014 stands cancelled and that now PACL Limited or M/s. Wittal See Marketing Limited have no rights against us or our said property in any manner whatsoever. No reply was sent by PACL Limited to any of our aforesaid two letters, which were duly served. Thus PACL Limited (Buyer) accepted the aforesaid correct factual position, which is the consequence of terms and conditions of said Agreement to Sell dated 17.05.2014. Accordingly, all matters relating to said Agreement to Sell dated 17.05.2014 relating to our said property stood closed more than two years ago.

6. In view of the above factual and legal position, non disputed by PACL Limited in any manner, the said Agreement to Sell dated 17.05.2014 stood cancelled and became invalid, non-operative against our said property or against us, at the instance of PACL Limited in any manner whatsoever, upon default in making payment of sale consideration amount, as aforesaid.

7. It is respectfully submitted that a **Hon'ble Division Bench of the Hon'ble Supreme Court of India in CIVIL APPEAL NO. 7588 OF 2012 [Arising out of SLP (Civil) No. 4605 of 2012] in the case titled as "Satish Batra Versus Sudhir Rawal" vide its judgment dated 18.10.2012**, while dealing with a similar matter relating to a property in Delhi, has decided that non payment of balance sale consideration by the purchaser within the time fixed in the Agreement shall result in forfeiture of initial payment including earnest money in favour of the Seller, if the terms of the Agreement so provide. It is further held in the said judgment that upon forfeiture, the Agreement to sell stands cancelled. Copy of aforesaid judgment is attached herewith for your ready reference.

8. The aforesaid mandate of the Judgment of the Hon'ble Supreme Court is squarely applicable to the facts of the present case also. In our case also, the Agreement to Sell dated 17.05.2014 clearly mentions in clause 6 that if the part payment and balance sale consideration as per schedule of payment mentioned in clause 3 is not paid, then the initial payment of Rs.5,50,00,000/- (Rupees Five Crore Fifty Lakhs Only) shall stand forfeited in favour of the sellers.

9. In view of the above undisputed facts, supported by judgment of the Hon'ble Supreme Court of India in similar facts, it is clear that w.e.f. 17.07.2014, the said initial payment of Rs.5,50,00,000/- (Rupees Five Crore Fifty Lakhs Only) made by PACL Limited through M/s. Wittal See Marketing Limited to us vide Agreement to Sell dated 17.05.2014 against our said property stood forfeited and the said Agreement to Sell stood cancelled and became invalid/non-operative. Our said property became free from all commitments or obligations under the said Agreement to Sell dated 17.05.2014 and M/s. PACL Limited was left with no right, title, interest or claims against us or our said property in manner whatsoever.

10. In view of the aforesaid position, any attempt to auction/sale our said property is illegal, unlawful, contrary to principles of natural justice and also in violation of the mandate of the Hon'ble Supreme Court of India.

We, therefore, respectfully submit and pray that our said property i.e., First Floor of Residential Property no. 13, East Avenue, East Punjabi Bagh, New Delhi-110026, may kindly be released from all proceedings held under your office and be released from any auction/sale/coercive actions.

It is further respectfully prayed that in order to clear all doubts about title of our said property it may also be declared/held that PACL Limited has no subsisting rights against our said property on the basis of said Agreement to Sell dated 17.05.2014, which stood cancelled due to non-payment of part payment as per clause 3(ii) of the Agreement to Sell by the Buyer (i.e. PACL Limited) and that the initial payment of Rs.5,50,00,000/- (Rupees Five Crore Fifty Lakh Only) paid under the said Agreement to Sell dated 17.05.2014 stood forfeited in our favour (i.e. the Seller) as per clause 6 of the Agreement to Sell.

AND FOR THIS ACT OF KINDNESS WE SHALL REMAIN EVER OBLIGED.

Thanking you

Yours faithfully

Owners/Objectors

Aggarwal

(Anu Aggarwal)
Son of Sh. M. R. Aggarwal
R/o 13, East Avenue, East Punjabi Bagh,
New Delhi-110026
mobile number:
Email ID:

V#Aggarwal

(Vibhu Aggarwal)
Son of Sh. M. R. Aggarwal
R/o 14, East Avenue, East Punjabi Bagh,
New Delhi-110026
mobile number:
Email ID:

Annexures: (1) Copy of Agreement to Sell dated 17.05.2014;
(2) Copies of letters dated 10.07.2014 & 24.07.2014;
(3) Copy of Judgment of Hon'ble Supreme Court of India referred in para 7 above.

(22)

INDIA NON JUDICIAL

Government of National Capital Territory of Delhi

e-Stamp

सत्यमेव जयते

Certificate No.	:	IN-DL85602090651842L
Certificate Issued Date	:	02-Mar-2013 01:12 PM
Account Reference	:	IMPACC (IV)/ dl717503/ DELHI/ DL-DLH
Unique Doc. Reference	:	SUBIN-DLDL71750370652576773167L
Purchased by	:	PACL LTD
Description of Document	:	Article 5 General Agreement
Property Description	:	7th Floor, Gopal Das Bhawan, Connaught Place, New Delhi
Consideration Price (Rs.)	:	0 (Zero)
First Party	:	PACL LTD
Second Party	:	Not Applicable
Stamp Duty Paid By	:	PACL LTD
Stamp Duty Amount(Rs.)	:	50 (Fifty only)

THE SEAL OF NOTARY PUBLIC * GOVT. OF INDIA *

Please write or type below this line

THE SEAL OF NOTARY PUBLIC * GOVT. OF INDIA *

AGREEMENT TO SELL

This AGREEMENT TO SELL is executed at **New Delhi** on 17th May, 2014.

BETWEEN

17 MAY 2014

Statutory Alert

1 The authenticity of this Stamp Certificate can be verified at Authorised Collection Centers (ACCs), SHCIL Offices and Sub-registrar Offices (SROs)
2 The Contact Details of ACCs, SHCIL Offices and SROs are available on the Web Site www.shcilestamp.com

BETWEEN

(i) **Sh. Anu Aggarwal , S/o Sh. M.R. Aggarwal, R/o 13, East Avenue, East Punjabi Bagh, New Delhi-110026**

(ii) **Sh.Vibhu Aggarwal, S/o Sh. M.R. Aggarwal, R/o 14, East Avenue, East Punjabi Bagh, New Delhi-110026**

(hereinafter collectively called the **"SELLER/ FIRST PARTY"**) which expression shall unless it be repugnant to the context or meaning thereof, be deemed to mean and include their successors, legal heirs, assigns, executors, authorized representatives etc. which may be included subsequently or its successors-in-interest and assigns, of **ONE PART.**

AND

PACL Limited, a company incorporated under the Companies Act, 1956 having its registered office at **22, 3rd Floor, Amber Tower, Sansar Chand Road, Jaipur-302004 and having its Corporate office at 7th Floor Gopaldas Bhawan, 28 Barakhamba Road, New Delhi-110001 through its Authorized Signatory Sh. Arun Bhati, Sr. AGM-I &P** (hereinafter called the **"PURCHASER/SECOND PARTY"**) which expression shall unless it be repugnant to the context or meaning thereof, be deemed to mean and include their successors, legal heirs, assigns, executors, authorized representatives etc. which may be included subsequently or its successors-in-interest and assigns, of OTHER PART.

The First Party and the Second Party are hereinafter jointly referred to as the "Parties" and singularly referred to as the "Party".

IT IS HEREBY SPECIFICALLY DECLARED, that the terms **"SELLER/FIRST PARTY"** used in the deed shall mean to include all the its Authorized Sigantory, Legal heirs , Representatives, Successors, assigns, attorney etc. and **"PURCHASER/SECOND PARTY",** used in this agreement shall mean to include his legal heirs, representatives, successors assigns, transferees, attorneys etc., as and when the context so require for the best interpretation of these terms :

Aggarwal

17 MAY 2016

WHEREAS:

A. The First Party is the absolute owner and in possession of First Floor of residential Property No. 13, East Avenue, East Punjabi Bagh, New Delhi-110026 hereinafter called the **"Said Property"**

B. The Second Party is interesting in buying a residential property in the area of Punjabi Bagh and have approached the First Party for purchase of the **'Said Property"**

C. The First Party has agreed to sell and transfer the said property to the Second Party and the Second Party agreed to purchase the same for the total consideration of Rs.11,00,00,000/- (Rupees Eleven Crores Only) and both the parties have agreed to reduce the terms and conditions in writing, reservations, exceptions and stipulations set out hereunder:

NOW THEREFORE THIS AGREEMENT TO SELL WITNESSETH AND IT IS HERBY AGREED BY AND BETWEEN THE PARTIES HERETO AS HEREUNDER:

1. That it has been agreed between both the parties that M/s Wital See Marketing Limited will pay entire sale consideration to the First Party on behalf of the Second Party and the same is hereby endorsed by the M/s Wital See Marketing Limited, and the First Party has no objection for the same.
2. That the Second Party shall separately settle the account of M/s Wital See Marketing Limited (after adjustment of previous account, if any) pertaining to said payment of sales consideration, pertaining to the said property.
3. That it has been agreed between both the parties that M/s Wital See Marketing Limited shall make payment on behalf of the Second Party, of the said Sales Consideration to the First Party in the following manner:
   (i) Initial Payment of Rs.5,50,00,000/- (Rupees Five Crores Fifty Lacs Only) within 30 days (Thirty Days) of signing this agreement.
   (ii) Part payment of Rs. 3,00,00,000/ (Rupees Three Crores Only) within 60 (Sixty) days of signing this agreement.
   (ii) Balance payment of Rs.2,50,00,000/- (Rupees Two Crores Fifty Lacs Only) within 90 days from the signing of this agreement or 15 days from the date of clearance of the loan by the First Party with the Standard Chartered Bank whichever is later.
4. The First Party has informed the Second Party that the "Said Property" is mortgaged

Aggarwal

THE SEAL OF NOTARY PUBLIC GOVT. OF INDIA Archana Sharma Regd. No. 2672/04

17 MAY 2014

with Standard Chartered Bank, New Delhi against housing loan of Rs.1,00,00,000/ (One Crore Only) and the First Party undertakes to get the said loan repaid after receiving part payment of Rs.3,00,00,000/(Rupees Three Crores Only) as mentioned in Clause No.3(ii) and get the clearance from the said Bank. Subject to this mortgage, the First Party assures the Second Party that the "Said Property" is free from all other kinds of encumbrances, such as prior sale, gift, will, litigations, lien, disputes court cases or any other registered or unregistered encumbrances.

5. That the First Party has delivered to the Second Party photocopies of the title documents pertaining to the "Said Property" at the time of execution of this Agreement to Sell and the Second Party has examined the same, personally visited and verified the said property to its entire satisfaction. The First Party shall deliver all the original Sale Deeds/ GPAs/SPAs/Maps and all other revenue records pertaining to the said property at the time on or before of execution/ registration of Sale Deed to the Second Party.
6. It has been agreed amongst both the parties that in case of defaults in making payment of the said schedule of the sale consideration the First Party shall forfeit the entire amount received by it from the Second Party. In case the First Party commits any default it shall refund the double of the amount paid by the Second Party.
7. That the First Party has agreed to handover peaceful and vacant physical possession of the said property to the Second Party at the time on or before the execution/registration of Agreement to Sell/Sale Deed.
8. That it has also agreed that the First Party shall execute Transfer Documents of the said Property, in favor of the Second Party and get the same registered in the office of Sub-Registrar, Delhi.
9. That it has agreed that the stamp duty and other charges for registration of the said property shall be borne by the Second Party only.
10. That the First Party agrees with the Second Party that all the charges, i.e. House Tax, Electricity & water Charges, shall be borne by the First Party till the date of the receipt of the entire sales consideration and thereafter all these charges shall be borne by the Second Party.
11. That it has agreed by and between both the parties that they shall fully abide by the terms and conditions of this agreement and there shall be no deviation of the terms at any time.
12. That in the event of there being any dispute or difference arising between the parties or in connection with the terms and conditions of these present or any of the related writing or document in connection with these presents, the matter shall be referred to the Arbitrator whose decision shall be final and binding upon both parties. The arbitration proceeding shall be conducted in accordance with the Arbitration &

Aggarwal

VKAggarwal

GOVT OF INDIA * THE SEAL OF NOTARY PUBLIC * Archana Sharma Regn. No. 22/2004

17 MAY 2014

Conciliation Act, 1996 and both the parties hereby agreed that the place of performance under this agreement is at New Delhi and Delhi Court shall have jurisdiction to entertain and try any such dispute and/or difference.

IN WITNESSES WHEREOF THE PARTIES HAVE HEREUNTO SET AND SUBSCRIBED THEIR RESPECTIVE HANDS ON THE DATE, MONTH AND YEAR FIRST HEREIN MENTIONED ABOVE

WITNESSES:

1. Harjit Singh
B-33 Chander Vihar
Nilothi Extn. Delhi-41

Aggarwal VK Aggarwal

FIRST PARTY

2. (Rajeev Chawla)
7th Floor, Hotel Ashoka Bhawan
Bahadur Shah Zafar Marg, N.D.

SECOND PARTY

ATTESTED

Notary Public
Govt. of India

THE SEAL OF NOTARY PUBLIC * GOVT. OF INDIA * Aradhana Sharma Regn. No. 2007/04

17 MAY 2014

(17)

From:
Anu Aggarwal & Vibhu Aggarwal,
13, East Avenue, East Punjabi Bagh,
New Delhi-110026
To,

PACL Limited,
Gopal Dass Bhawan,
28, Barakhamba Road,
New Delhi-110001

10th July, 2014

Dear Sirs,

Sub: Part Payment as per Agreement to Sell dated 17th May, 2014.

As per clause No.3(ii) of the above agreement to sell, part payment of Rs.3,00,00,000/ (Three Crores Only) is due to be paid by you within 60 days of the signing of the Agreement to Sell dated 17th May, 2014 which is expiring on 16th July, 2014. We wish to remind you to make this payment positively by 16th July, 2014 either through Cheque, Demand Draft or RTGS. You may send the cheque/DD at the above address or may send RTGS to our account whose details are already with you.

You are further informed that non-payment of Rs.3,00,00,000/ (Rupees Three Crores Onlyh) as per clause no. 3(ii) of the Agreement to Sell dated 17th May, 2014 by 16th July, 2014 would as per clause No.6 of the said Agreement to Sell, result into forfeiture of amount of Rs.5,50,00,000/ (Rupees Five Crores Fifty Lakhs Only) already paid to us by M/s Wital See Marketing Limited on your behalf.

Thanking you,

Yours Sincerely,

Aggarwal Vibhu Aggarwal

(Anu Aggarwal) (Vibhu Aggarwal)

C.C. M/s Wital See Marketing Limited for information and records

PACL LIMITED
28, 7th Floor, Gopal Dass Bhawan
Jeewan

From:
Anu Aggarwal & Vibhu Aggarwal,
13, East Avenue, East Punjabi Bagh,
New Delhi-110026
To,
PACL Limited,
Gopal Dass Bhawan,
28, Barakhamba Road,
New Delhi-110001

24th July, 2014

Dear Sirs,

Sub: Non receipt of Part Payment as per Agreement to Sell dated 17th May, 2014.

Please refer to our letter dated 10th July, 2014 and various verbal & telephonic conversations advising you to make part payment of Rs.3,00,00,000/(Rupees Three Crores Only) by 16th July, 2014 as per clause no. 3 (ii) of the Agreement to Sell dated 17th May, 2014 but we regret to inform you that neither we have received the said part payment nor any definite reply so far.

Since you have failed to make part payment of Rs.3,00,00,000/ (Rupees Three Crores Only) within 60 days from the date of Agreement to Sell dated 17th May, 2014 and as per clause no.6 of the said Agreement to Sell, the amount of Rs.5,50,00,000/ (Rupees Five Crores Fifty Lakhs Only) paid by M/S Wital See Marketing Limited to us on your behalf as per clause no.3(i) of the said Agreement to Sell dated 17th May, 2014 stands forfeited with immediate effect and the said Agreement to Sell stands cancelled.

Further, now in this regard, you do not have any claim of whatsoever nature against us.

Contd.....2

This is for your information and records.

Thanking You,

Yours Sincerely,

Aggarwal VK Aggarwal

(Anu Aggarwal) (Vibhu Aggarwal)

C.C. M/s Wital See Marketing Limited for information and records

PACL LIMITED
28, 7th Floor, Gopal Dass Bhawan

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7588 OF 2012
[Arising out of SLP (Civil) No. 4605 of 2012]

Satish Batra .. Appellant

Versus

Sudhir Rawal .. Respondent

J U D G M E N T

K. S. Radhakrishnan, J.

1. Leave granted.

2. The question that has come up for consideration in this appeal is whether the seller is entitled to forfeit the earnest money deposit where the sale of an immovable property falls through by reason of the fault or failure of the purchaser.

3. An Agreement for Sale of property bearing No. 14/11, 2nd Floor, Punjabi Bagh, New Delhi was entered into between the appellant (Seller) and the respondent (Purchaser) on 29.11.2005 for a total consideration of Rs.70,00,000/- to be paid on or before 5.3.2006 and,

towards earnest money, an amount of Rs.4,00,000/- was paid on 29.11.2005 and another Rs.3,00,000/- on 30.11.2005, that means, altogether Rs.7,00,000/- was paid, being 10% of the total sale consideration. The purchaser, however, could not pay the balance amount of Rs.63,00,000/- before 5.3.2006, consequently, the sale deed could not be executed. Seller, therefore, did not return the earnest money to the purchaser.

4. Consequently, the purchaser, as plaintiff, instituted a suit No. 764/08/06 before the Additional District Judge, Delhi for recovery of Rs.7,00,000/- from the seller-defendant of the earnest money paid by him. Defendant contested the suit stating that, as per the agreement, he is entitled to forfeit the amount of earnest money, if there was a failure on the part of the purchaser-plaintiff in paying the balance amount of Rs.63,00,000/-.

5. The trial Court dismissed the suit holding that the defendant is entitled to retain the amount of earnest money since the plaintiff had failed to pay the balance amount of Rs.63,00,000/- before 5.3.2006.

6. Aggrieved by the judgment of the Additional District Judge, Delhi, plaintiff took up the matter in appeal before the High Court of Delhi by

filing R.F.A. No. 137 of 2010. The High Court, placing reliance on the judgment of this Court in ***Fateh Chand v. Balkishan Dass*** AIR 1963 SC 1405, took the view that the seller is entitled to forfeit only a nominal amount and not the entire amount of Rs.7,00,000/-. The High Court further held that the seller can forfeit an amount of Rs.50,000/- out of the amount of Rs.7,00,000/- and he is bound to refund the balance amount of Rs.6,50,000/- to the purchaser. To this extent, a decree was also passed in favour of purchaser against the seller. It was also held that the purchaser is also entitled to interest @ 12% per annum from 29.11.2005 till the amount is paid.

7. Aggrieved by the said judgment of the High Court, the seller has come up with this appeal.

8. We have heard the learned counsel on either side at length. Facts are undisputed. The only question is whether the seller is entitled to retain the entire amount of Rs.7,00,000/- received towards earnest money or not. The fact that the purchaser was at fault in not paying the balance consideration of Rs.63,00,000/- is also not disputed. The question whether the seller can retain the entire amount of earnest money depends upon the terms of the agreement.

Relevant clause of the Agreement for Sale dated 29.11.2005 is extracted hereunder for easy reference:

> "e) If the prospective purchaser fail to fulfill the above condition. The transaction shall stand cancelled and earnest money will be forfeited. In case I fail to complete the transaction as stipulated above. The purchaser will get the DOUBLE amount of the earnest money. In the both condition, DEALER will get 4% Commission from the faulty party."

The clause, therefore, stipulates that if the purchaser fails to fulfill the conditions mentioned in the agreement, the transaction shall stand cancelled and earnest money will be forfeited. On the other hand, if the seller fails to complete the transaction, the purchaser would get double the amount of earnest money. Indisputedly the purchaser failed to perform his part of the contract, then the question is whether the seller can forfeit the entire earnest money.

9. The question raised is no more *res integra*. In ***(Kunwar) Chiranjit Singh v. Har Swarup*** AIR 1926 P.C. 1, it has been held that the earnest money is part of the purchase price when the transaction goes forward and it is forfeited when the transaction falls through, by reason of the fault or failure of the purchaser. In ***Fateh Chand*** (supra), this Court was interpreting the conditions of an agreement dated 21.3.1949. By that agreement, the plaintiff

contracted to sell his rights in the land and the building to Seth Fateh Chand (defendant). It was recited in the agreement that the plaintiff agreed to sell the building together with 'pattadari' rights appertaining to the land admeasuring 2433 sq. yards for Rs.1,12,500/- and that Rs.1,000/- was paid to him as earnest money at the time of the execution of the agreement. The conditions of the agreement were as follows:

> "(1) I, the executant, shall deliver the actual possession, i.e. complete vacant possession of kothi (bungalow) to the vendee on the 30th March, 1949, and the vendee shall have to give another cheque for Rs. 24,000/- to me, out of the sale price.
>
> (2) Then the vendee shall have to get the sale (deed) registered by the 1st of June, 1949. If, on account of any reason, the vendee fails to get the said sale-deed registered by June, 1949, then this sum of Rs. 25,000/- (twenty-five thousand) mentioned above shall be deemed to be forfeited and the agreement cancelled. Moreover, the vendee shall have to deliver back the complete vacant possession of the kothi (bungalow) to me, the executant. If due to certain reason, any delay takes place on my part in the registration of the sale-deed, by the 1st June 1949, then I, the executant, shall be liable to pay a further sum of Rs. 25,000/- as damages, apart from the aforesaid sum of Rs. 25,000/- to the vendee, and the bargain shall be deemed to be cancelled."

Plaintiff, on 25.3.1949, received Rs.24,000/- and delivered possession of the building and the land in his occupation to the defendant.

10. Alleging that the agreement was rescinded because the defendant committed default in performing the agreement and the sum of Rs.25,000/- paid by the defendant stood forfeited. Plaintiff instituted a suit. The defendant resisted the claim contending *inter alia* that the plaintiff having committed breach of the contract could not forfeit the amount of Rs.25,000/- received by him. The matter ultimately came to this Court. This Court considered as to whether the plaintiff could forfeit the amount. Noticing that the defendant had conceded that the plaintiff was entitled to forfeit the amount which was paid as earnest money, the Court held as follows:

> "(16) .....The contract provided for forfeiture of Rs. 25,000/- consisting of Rs. 1000/-paid as earnest money and Rs. 24,000/- paid as part of the purchase price. The defendant has conceded that the plaintiff was entitled to forfeit the amount of Rs. 1,000/- which was paid as earnest money. We cannot however agree with the High Court that 10 per cent of the price may be regarded as reasonable compensation in relation to the value of the contract as a whole, as that in our opinion is assessed on arbitrary assumption. The plaintiff failed to prove the loss suffered by him in consequence of the breach of the contract committed by the defendant, and we are unable to find any principle on which compensation equal to ten percent of the agreed price could be awarded to the plaintiff. The plaintiff has been allowed Rs. 1,000/-which was the earnest money as part of the damages. Besides he had use of the remaining

> sum of Rs. 24,000/-, and we can rightly presume that he must have been deriving advantage from that amount throughout this period. In the absence therefore of any proof of damage arising from the breach of the contract we are of opinion that the amount of Rs. 1,000/- (earnest money) which has been forfeited, and the advantage that the plaintiff must have derived from the possession of the remaining sum of Rs. 24,000/-during all this period would be sufficient compensation to him. It may be added that the plaintiff has separately claimed mesne profits for being kept out of possession for which he has got a decree and therefore the fact that the plaintiff was out of possession cannot be taken into account in determining damages for this purpose.' The decree passed by the High Court awarding Rs. 11,250/- as damages to the plaintiff must therefore be set aside."

11. We are of the view that the High Court has completely misunderstood the dictum laid down in the above mentioned judgment and came to a wrong conclusion of law for more than one reason, which will be more evident when we scan through the subsequent judgments of this Court.

12. In ***Shree Hanuman Cotton Mills and Others v. Tata Air Craft Limited*** 1969 (3) SCC 522, this Court elaborately discussed the principles which emerged from the expression "earnest money". That was a case where the appellant therein entered into a contract with the respondent for purchase of aero scrap. According to the contract, the buyer had to deposit with the company 25% of the total amount

and that deposit was to remain with the company as the earnest money to be adjusted in the final bills. Buyer was bound to pay the full value less the deposit before taking delivery of the stores. In case of default by the buyer, the company was entitled to forfeit unconditionally the earnest money paid by the buyer and cancel the contract. The appellant advanced a sum of Rs.25,000/- (being 25% of the total amount) agreeing to pay the balance in two installments. On appellant's failure to pay any further amount, respondent forfeited the sum of Rs.25,000/-, which according to it, was earnest money and cancelled the contract. Appellant filed a suit for recovery of the said amount. The trial Court held that the sum was paid by way of deposit or earnest money which was primarily a security for the performance of the contract and that the respondent was entitled to forfeit the deposit amount when the appellant committed a breach of the contract and dismissed the suit. The High Court confirmed the decision taken by the trial Court. This Court, considering the scope of the term "earnest", laid down certain principles, which are as follows:

> "21. 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 the 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."

13. In ***Delhi Development Authority v. Grihstrapana Cooperative Group Housing Society Ltd.*** 1995 Supp (1) SCC 751, this Court following the judgment of the Privy Council in ***Har Swaroop*** and ***Shree Hanuman Cotton Mills*** (supra), held that the forfeiture of the earnest money was legal.

14. In ***V. Lakshmanan*** v. ***B.R. Mangalgiri and others*** (1995) Suppl. (2) SCC 33, this Court held as follows:

> "The question then is whether the respondents are entitled to forfeit the entire amount. It is seen that a specific covenant under the contract was that respondents are entitled to forfeit the money paid under the contract. So when the contract fell through by the default committed by the appellant, as part of the contract, they are entitled to forfeit the entire amount."

15. In ***Housing Urban Development Authority and another v. Kewal Krishan Goel and others*** (1996) 4 SCC 249, the question that came up for consideration before this Court was, where a land is

allotted, the allottee deposited some installments but thereafter intimated the authority about his incapacity to pay up the balance installments and requested for refund of the money paid, was the allotting authority entitled to forfeit the earnest money deposited by the allottee or could be only entitled to forfeit 10% of the total amount deposited by the allottee till the request is made? Following the judgment in ***Shree Hanuman Cotton Mills*** (supra), this Court held that the allottee having accepted the allotment and having made some payment on installments basis, then made a request to surrender the land, has committed default on his part and, therefore, the competent authority would be fully justified in forfeiting the earnest money which had been deposited and not the 10% of the amount deposited, as held by the High Court. In that case, this Court took the view that the earnest money represented the guarantee that the contract would be fulfilled.

16. This Court, again, in ***Videocon Properties Ltd. v. Dr. Bhalchandra Laboratories and others*** (2004) 3 SCC 711, dealt with a case of sale of immovable property. It was a case where the plaintiff-appellants had entered into an agreement with the respondents-defendants on 13.5.1994 to sell the landed property

owned by the respondents and a sum of Rs.38,00,000/- was paid by the appellants as deposit or earnest money on the execution of the agreement. In that case, this Court examined the nature and character of the earnest money deposit and took the view that the words used in the agreement alone would not be determinative of the character of the "earnest money" but really the intention of the parties and surrounding circumstances. The Court held that the earnest money serves two purposes of being part-payment of the purchase money and security for the performance of the contract by the party concerned. In that case, on facts, after interpreting various clauses of the agreement, the Court held as follows:

> "15. Coming to the facts of the case, it is seen from the agreement dated 13.5.1994 entered into between parties - particularly Clause 1, which specifies more than one enumerated categories of payment to be made by the purchaser in the manner and at stages indicated therein, as consideration for the ultimate sale to be made and completed. The further fact that the sum of Rs. 38 lakhs had to be paid on the date of execution of the agreement itself, with the other remaining categories of sums being stipulated for payment at different and subsequent stages as well as execution of the sale deed by the Vendors taken together with the contents of the stipulation made in Clause 2.3, providing for the return of it, if for any reason the Vendors fail to fulfill their obligations under Clause 2, strongly supports and strengthens the claim of the appellants that the intention of the parties in the case on hand is in effect to treat the sum of Rs. 38 lakhs to be part of the prepaid purchase-money and not pure and simple earnest money deposit of the restricted sense and tenor,

wholly unrelated to the purchase price as such in any manner. The mention made in the agreement or description of the same otherwise as "deposit or earnest money" and not merely as earnest money, inevitably leads to the inescapable conclusion that the same has to and was really meant to serve both purposes as envisaged in the decision noticed supra. In substance, it is, therefore, really a deposit or payment of advance as well and for that matter actually part payment of purchase price, only. In the teeth of the further fact situation that the sale could not be completed by execution of the sale deed in this case only due to lapses and inabilities on the part of the respondents - irrespective of bonafides or otherwise involved in such delay and lapses, the amount of rupees 33 lakhs becomes refundable by the Vendors to the purchasers as of the prepaid purchase price deposited with the Vendors. Consequently, the sum of rupees 38 lakhs to be refunded would attract the first limb or part of Section 55(6)(b) of the Transfer of Property Act itself and therefore necessarily, as held by the learned Single Judge, the defendants prima facie became liable to refund the same with interest due thereon, in terms of Clause 2.3 of the agreement Therefore, the statutory charge envisaged therein would get attracted to and encompass the whole of the sum of rupees 38 lakhs and the interest due thereon....."

In the above mentioned case, the Court also held as follows:

"14. .....Further, it is not the description by words used in the agreement only that would be determinative of the character of the sum but really the intention of parties and surrounding circumstances as well, that have to be baked into and what may be called an advance may really be a deposit or earnest money and what is termed as 'a deposit or earnest money' may ultimately turn out to be really an advance or part of purchase price. Earnest money or deposit also, thus, serves two purposes of being part payment of the purchase money and security for the performances of the contract by the party concerned, who paid it."

17. Law is, therefore, clear that to justify the forfeiture of advance money being part of 'earnest money' the terms of the contract should be clear and explicit. Earnest money is paid or given at the time when the contract is entered into and, as a pledge for its due performance by the depositor to be forfeited in case of non-performance, by the depositor. There can be converse situation also that if the seller fails to perform the contract the purchaser can also get the double the amount, if it is so stipulated. It is also the law that part payment of purchase price cannot be forfeited unless it is a guarantee for the due performance of the contract. In other words, if the payment is made only towards part payment of consideration and not intended as earnest money then the forfeiture clause will not apply.

18. When we examine the clauses in the instant case, it is amply clear that the clause extracted hereinabove was included in the contract at the moment at which the contract was entered into. It represents the guarantee that the contract would be fulfilled. In other words, 'earnest' is given to bind the contract, which is a part of the purchase price when the transaction is carried out and it will be forfeited when the transaction falls through by reason of the default or

failure of the purchaser. There is no other clause militates against the clauses extracted in the agreement dated 29.11.2011.

19. We are, therefore, of the view that the seller was justified in forfeiting the amount of Rs.7,00,000/- as per the relevant clause, since the earnest money was primarily a security for the due performance of the agreement and, consequently, the seller is entitled to forfeit the entire deposit. The High Court has, therefore, committed an error in reversing the judgment of the trial court.

20. Consequently, the appeal is allowed and the impugned judgment of the High Court is set aside. However, there will be no order as to costs.

.....J
(K. S. RADHAKRISHNAN)

.....J.
(DIPAK MISRA)

New Delhi,
October 18, 2012