What is a ‘rouwkoop’ clause?

A ‘rouwkoop’ clause in a contract of sale provides for the purchaser to pay a deposit to the seller that is not refundable should the purchaser withdraw from the contract. Most contracts of sale, that provide for the payment of a deposit by the purchaser, also contain a provision that such deposit will not be paid back in such circumstances. Such a clause can also be a penalty clause, which is applicable where the contract is cancelled as a result of the purchaser’s breach. It is therefore a very effective manner to ensure that the purchaser is serious about the transaction.

The purchaser does, however, have a remedy in terms of the Conventional Penalties Act, 1962. He can indeed approach the court and convince it that the penalty amount exceeds the actual damages suffered by the seller, in which event the difference will have to be paid back by the seller.