



CIVIL

Godrej Case: Protecting Homebuyers and Ensuring Fairness—The Supreme Court’s Ruling on Earnest Money Forfeiture in Real Estate Contracts

AUTHOR Rahul Sundaram

PUBLISHED 4 February 2025

In a recent judgment delivered by the Supreme Court of India, the Court addressed the contentious issue of earnest money forfeiture in real estate transactions. The case, titled **Godrej Projects Development Limited vs. Anil Karlekar & Ors.**, involved a dispute over the cancellation of an apartment booking and the subsequent refund of payments made by the buyers. This article provides a comprehensive overview of the case, highlighting the key facts, rival contentions, and the Court's findings, particularly focusing on the treatment of earnest money.

Table of contents

- [Facts of the Case](#)
- [Rival Contentions](#)
- [NCDRC and Supreme Court Holdings](#)
- [Final Judgment](#)
- [Conclusion](#)

Facts of the Case

The dispute originated in January 2014 when the Complainants booked an apartment in the "Godrej Summit" project in Gurgaon, Haryana, and paid Rs. 10,00,000 as application money. An allotment letter was issued in June 2014, followed by an Apartment Buyer Agreement. The project was completed in June 2017, and possession was offered to the Complainants. However, due to a sharp decline in market prices, the Complainants sought cancellation of the booking and a full refund of the amount paid, totalling Rs. 51,12,310. The case eventually reached the National Consumer Disputes Redressal Commission (NCDRC) and subsequently the Supreme Court.

Rival Contentions

The Appellant, Godrej Projects Development Limited, argued that the Agreement allowed for the forfeiture of the entire earnest money (20% of the Basic Sale Price or BSP) in case of cancellation. They contended that the Complainants had cancelled the deal due to market recession, justifying the forfeiture. The Respondents, on the other hand, argued that the forfeiture of 20% of the BSP was unreasonable and should be reduced to 10%. They cited several NCDRC and Supreme Court judgments supporting the reduction of forfeiture clauses in one-sided agreements.

NCDRC and Supreme Court Holdings

The NCDRC initially held that the forfeiture of 20% of the BSP was unreasonable and reduced it to 10%, directing the Appellant to refund the balance amount with 6% interest per annum. The Supreme Court, while upholding the reduction to 10%, disagreed with the interest award. The Court found that the Agreement was one-sided and unconscionable, favouring the developer. It held that such clauses constituted an unfair trade practice under the Consumer Protection Act, 1986, and were not enforceable in law.

The Supreme Court's judgment emphasized the importance of fairness and reasonableness in contract terms. The Court held that while forfeiture of earnest money is permissible if the terms are clear and reasonable, one-sided clauses that unfairly disadvantage one party are not enforceable. The Court cited its earlier judgment in **Maula Bux v. Union of India**, affirming that a forfeiture of 10% of the BSP is reasonable and does not amount to a penalty.

Final Judgment

The Supreme Court partly allowed the appeal, directing the Appellant to refund the balance amount of Rs. 12,02,955 to the Respondents within six weeks, without interest.

The Supreme Court disallowed interest on the refund amount because the Complainants had sought cancellation due to a sharp decline in market prices, which likely allowed them to use the refunded money to purchase another property at a lower rate. Therefore, awarding interest would be unjustified and unfair in the context of the market conditions and the Complainants' actions.

The Court's decision underscores the need for balanced and fair contract terms, particularly in the context of real estate transactions where power imbalances between developers and buyers are common.

Conclusion

The judgment in **Godrej Projects Development Limited vs. Anil Karlekar & Ors.** provides clarity on the treatment of earnest money in real estate transactions. It reaffirms the principle that forfeiture clauses must be reasonable and not one-sided. The Supreme Court's decision to limit the forfeiture to 10% of the BSP and disallow interest on the refund amount reflects a commitment to fairness and consumer protection. This case serves as a reminder to developers and buyers alike of the importance of fair and transparent contractual terms in real estate dealings.

For further details write to contact@indialaw.in