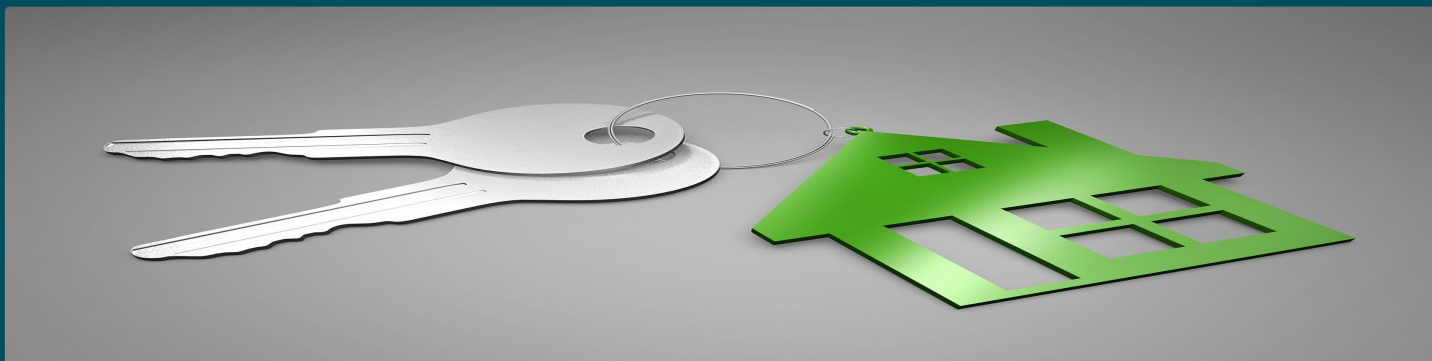




REAL ESTATE

The Hon'ble Supreme Court Clarifies Forfeiture of Earnest Money in Real Estate Disputes

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PUBLISHED 10 February 2025

The Hon'ble Supreme Court ("Court"), in the case of Godrej Projects Development Limited vs. Anil Karlekar & Ors.¹, delivered a significant ruling on the enforceability of forfeiture clauses in real estate agreements. The Court examined whether a builder could retain 20% of the Basic Sale Price ("BSP") as earnest money upon cancellation of a flat booking and whether such clauses could be considered one-sided and unfair under consumer protection laws.

Background and Factual Matrix

The case revolves around a dispute concerning the cancellation of an apartment booking in the Appellant's project located in Gurgaon. The Respondents booked an apartment on 10th January 2014, by submitting an Application Form along with Rs.10,00,000/- as application money. Subsequently, on 20th June, 2014, the Appellant issued an allotment letter, confirming the Respondent's apartment on the 14th floor of Tower C. This was followed by the execution of an Apartment Buyer Agreement, which governed the terms of the purchase.

Three years later, on 20th June, 2017, the Appellant obtained an Occupation Certificate for the project. Thereafter, on 28th June, 2017, the Appellant formally offered possession of the apartment to the Respondents. However, instead of taking possession, the Respondents requested cancellation of the allotment and sought a full refund of the amount paid. The reason for seeking cancellation was primarily the declining market prices of similar apartments.

Following this, on 29th September, 2017, the Respondents sent a legal notice demanding a refund of Rs. 51,21,310/- , being the total amount they had paid. As their demand was not met, they filed a consumer complaint bearing No. 262 of 2018 before the National Consumer Disputes Redressal Commission ("NCDRC"), seeking a refund with 18% interest per annum. The NCDRC, in its order dated 25th October, 2022, ruled that the Appellant could deduct only 10% of the BSP as earnest money, rather than the 20% stipulated in the agreement, and directed the Appellant to refund the remaining amount along with simple interest at 6% per annum. Aggrieved by this decision, the Appellant approached the Hon'ble Supreme Court.

Court's Observations

The Supreme Court noted that the agreement between the parties explicitly provided for a 20% forfeiture of BSP as earnest money in the event of cancellation. The Appellant argued that the NCDRC had improperly interfered with this contractual term, as the Respondents had voluntarily cancelled the booking due to market conditions rather than any fault on the Appellant's part.

The Court analysed previous rulings on forfeiture clauses and one-sided agreements, particularly *Satish Batra v. Sudhir Rawal*² and *Desh Raj v. Rohtash Singh*³, which upheld the enforceability of earnest money forfeiture when contractually agreed upon. However, the Court also considered cases such as *Pioneer Urban Land & Infrastructure Ltd. v. Govindan*⁴ *Raghavan* and *Ireo Grace Realtech Pvt. Ltd. v. Abhishek Khanna*⁵, which held that one-sided contracts favoring builders are unfair and unenforceable.

The Court emphasized that the Consumer Protection Act, 2019, now explicitly defines "unfair contracts", prohibiting clauses that impose disproportionate penalties on consumers. Applying this principle, the Court held that the forfeiture of 20% of the BSP was excessive and unreasonable, and therefore, only 10% should be deducted.

The Supreme Court ultimately upheld the NCDRC's decision, however, it disagreed with the award of 6% interest on the refund amount. The Court reasoned that since the Respondents had cancelled the booking due to market fluctuations and not any wrongdoing by the builder, they were not entitled to interest.

Author's Opinion

The Supreme Court's ruling affirms that while builders have the right to enforce forfeiture clauses, they cannot impose excessive penalties on buyers. By relying on consumer protection laws and precedents addressing unfair trade practices, the Court has upheld the principle that contractual terms must be fair and reasonable. Additionally, the Court's decision to deny interest on the refunded amount is noteworthy, as it establishes that buyers should be safeguarded against excessive forfeiture but cannot claim interest when they voluntarily cancel bookings due to market fluctuations. This judgment brings greater clarity and fairness to real estate transactions, ensuring a balanced approach that protects the interests of both consumers and developers.

¹ 2023 SCC OnLine SC 2324

²(2013) 1 SCC 345

³(2023) 3 SCC 714

⁴(2019) 5 SCC 725

⁵(2021) 3 SCC 241