

GODREJ PROJECTS DEVELOPMENT LIMITED VS. ANIL KARLEKAR & ORS.

In January 2014 the complainants booked an apartment in the "Godrej Summit" project of the appellants in Gurgaon and paid Rs 10,00,000 as the initial deposit. On 20th June 2014 they were allotted apartment No. C-1501 on the 14th floor of Block C through an allotment letter. They also signed an Apartment Buyer Agreement. The construction was completed and a Completion Certificate received on 20th June 2017. On June 28th the appellants offered the complainant possession of the apartment but the complainants refused and asked for a full refund of Rs 51,12,310.

They sent a legal notice to the appellants on 29th September 2017 asking for the refund of the above-mentioned amount and also filed a consumer complaint with the National Consumer Disputes Redressal Commission (NCDRC) in November 2017 for the entire refund amount with 18% interest. On 25th October 2022 the NCDRC ruled that the appellant could only deduct 10% of the BSP which amounted to Rs 17,08,140 and refund Rs 34,04,170 with 6% interest. The appellant then filed a review petition which was dismissed in December 2022 prompting them to challenge the order in January 2023.

The Court stayed the NCDRC order on April 24th 2023 but instructed the appellant to refund the amount after deducting 20% of earnest money with 6% interest from cancellation date.

In the arguments, Counsel for the appellants argued that NCDRC had wrongly interfered with the contractual terms between the two parties. The Agreement clearly stated forfeiture of the entire earnest money, which amounted to 20% of BSP, in the eventuality of a cancellation. NCDRC admitted that the appellant could cancel the booking and forfeit the amount, but then reduced the forfeiture amount from 20% to 10% of BSP which was incorrect. The buyers opted out of the deal due to market recession so the appellants were justified in forfeiting the earnest money. To support his claims, counsel for the appellants quoted the case of *Satish Batra vs Sudhir Rawal*, and *Desh Raj vs. Rohtash Singh*.

Counsel for the Respondents on the other hand, said that NCDRC had consistently ruled that 20% forfeiture was unreasonable and cited the cases of *Komal Aggarwal v. Godrej*, *DLF v. Bhagwanti Narula*, *Ramesh Malhotra v. Emaar Mgf* where the forfeiture percentage had been reduced from 20% to 10%. Relying on previous Supreme Court judgements, like in the case of *Ireo Grace v. Abhishek Khanna*, *Pioneer Urban v. Govindan Raghavan*, the counsel vehemently opposed the 20% forfeiture, arguing that it was unfair and one-sided. As per *Real Estate (Regulation and Development) Act, 2016* and *Haryana RERA Regulations, 2018* forfeiture cannot exceed 10% of BSP.

After hearing arguments from both sides, the Supreme Court ruled that if forfeiture of earnest money in a contract is within reasonable limits then it does not amount to a penalty under Section 74 of the Indian Contract Act 1872 but if the forfeiture amount is excessive and acts as a penalty then Section 74 would be applicable. The Court also said that if a contract requires the party breaching the contract to pay or forfeit a sum already paid, it would be considered as penalty. Based on this, the NCDRC has consistently held the view since 2015 that forfeiture of 10% of BSP is within reasonable limits. The precedent was first set in the *DLF Ltd. Vs.*

Bhagwanti Narula case and followed in similar cases thereafter. Hence the Court did not find any reason to change it.

The Court, stating that though it did not consider it appropriate to interfere in the decision of the NCDRC of a refund beyond 10% of the BSP, it is of the view that awarding interest on the refunded amount was not justified. The buyers only cancelled the deal in 2014 when possession was offered, giving the excuse that property prices had dropped. There was a strong possibility the buyers used the refunded money to buy another property at a lower price.

After analysing the facts and circumstances, the Court was of the opinion that the NCDRC was not justified in awarding interest on the refund amount. Since the appellant has already refunded Rs 22,01,215 to the Respondents, the appellant still owes Rs 12,02,955, as the total amount due, after deductions was Rs 34,04,170. The Court instructed the appellants to pay this remaining sum within six weeks. The Appeal was partly allowed and any pending applications were considered disposed of.