
One-Sided Forfeiture Clauses in Apartment Buyer Agreements: An Unfair Trade Practice, Rules Supreme Court

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Introduction

In an important ruling in *Godrej Projects Development Ltd. v. Anil Karlekar* [2025 INSC 143] the Supreme Court examined the enforceability of forfeiture clauses in real estate agreements. The matter arose from an appeal challenging the order of the National Consumer Disputes Redressal Commission ("NCDRC") that directed the builder/ developer to refund a substantial portion of the buyer's payment after cancelling the allotment.

The Supreme Court's ruling strikes at the heart of whether contractual terms governing forfeiture of earnest money should be strictly enforced or subjected to judicial scrutiny for fairness and reasonableness.

The dispute concerned the cancellation of an apartment booking in the "Godrej Summit" project, where the buyers sought a refund after declining to take possession. The developer justified the forfeiture of 20% of the Basic Sale Price ("BSP") as earnest money under the agreement.

The NCDRC, however, intervened, reducing the forfeiture to 10% of the BSP and directing a refund of the balance amount with interest. The Supreme Court's ruling provides clarity on the principles governing such forfeitures and the circumstances under which Courts can intervene in contracts that appear onerous/ unconscionable or one-sided.

Brief Facts

The case originated from a real estate transaction in which the respondents (homebuyers) booked an apartment in the Godrej Summit project in Gurgaon, Haryana. On 10 January 2014, the respondents submitted an application along with Rs. 10,00,000 as an initial deposit. Subsequently, on 20 June 2014, the appellant (developer) allotted an apartment and executed an Apartment Buyer Agreement ("**Agreement**") with the respondents.

On 20 June 2017, the developer secured an Occupation Certificate and offered possession to the respondents. However, the respondents declined possession and, citing market recession and declining property values, sought cancellation of the allotment along with a full refund of Rs. 51,12,310. After the developer refused to refund the entire sum, the respondents approached the NCDRC, which ruled in their favour, holding that the forfeiture clause was unreasonable and reducing the forfeiture to 10% of the BSP.

Aggrieved by the NCDRC's decision, the developer approached the Supreme Court, arguing that the contractual terms were clear and enforceable and that the NCDRC had exceeded its jurisdiction by rewriting the agreement.

Arguments from Both Sides

The developer contended that the NCDRC had erred in interfering with the terms of the agreement, particularly when the forfeiture clause was contractually agreed upon. It was argued that the Agreement explicitly provided for the forfeiture of 20% of the BSP in the event of cancellation by the buyer. Since the respondents voluntarily opted to cancel their allotment, citing market fluctuations rather than any fault of the developer, the forfeiture should be upheld.

Reliance was placed on *Satish Batra v. Sudhir Rawal* [(2013) 1 SCC 345], where the Supreme Court upheld the forfeiture of earnest money in a real estate transaction, reasoning that such terms are integral to ensuring contractual performance. The developer further cited *Desh Raj v. Rohtash Singh* [(2023) 3 SCC 714] arguing that contractual clauses should not be lightly interfered with, especially when agreed upon between parties with equal bargaining power.

On the other hand, the respondents relied on precedents where the courts have intervened to strike down unfair and one-sided contractual terms. Respondents relied upon the decisions in *Ireo Grace Realtech Pvt. Ltd. v. Abhishek Khanna* [(2021) 3 SCC 241] and *Pioneer Urban Land and Infrastructure Ltd. v. Govindan Raghavan* [(2019) 5 SCC 725], where the Supreme Court held that real estate agreements are often one-sided and that forfeiture clauses must be reasonable and proportional.

The respondents argued that a 20% forfeiture of the BSP was manifestly excessive and constituted an unfair contract. They also cited the Haryana Real Estate Regulatory Authority ("HREERA") Regulations, 2018, which cap forfeiture at 10% of the BSP, to argue that the NCDRC's ruling was consistent with regulatory policy.

Findings of the Supreme Court

The Supreme Court undertook a detailed analysis of the contractual clauses, the parties' conduct, and the relevant legal principles governing forfeiture of earnest money. The key observations are summarised below.

On Validity of Forfeiture Clause

The Supreme Court reaffirmed the principle that forfeiture of earnest money is permissible if it constitutes a "*genuine pre-estimate of damages*" arising from breach of contract. The Court cited *Maula Bux v. Union of India* [(1969) 2 SCC 554], which held that if forfeiture is in the nature of a penalty, it must be examined for reasonableness.

On One-Sided Agreements

The Supreme Court distinguished the present case from *Satish Batra (supra)* and *Desh Raj (supra)*, observing that in those cases, the forfeiture clause applied equally to both parties. Here, however, the Agreement heavily favoured the developer. The Supreme Court noted that the developer imposed significant penalty on the buyer for default but provided itself wide latitude in delaying possession with minimal liability.

On Regulatory Considerations

The Supreme Court took into account HRERA's regulations limiting forfeiture to 10% of the BSP. While not determinative, the Supreme Court held that these regulations reflected a policy preference for limiting arbitrary forfeitures and protecting homebuyers from oppressive contractual terms.

Market Fluctuations as Grounds for Cancellation

The Supreme Court acknowledged that the respondents sought cancellation primarily due to a downturn in property prices. However, it held that economic downturns do not necessarily justify non-enforcement of contracts. Nonetheless, given the overall one-sided nature of the Agreement, the Apex Court found it appropriate to limit the forfeiture to 10% of the BSP, aligning with established regulatory norms and consumer protection principles.

On Interest on Refund

The Supreme Court partially overturned the NCDRC's order by ruling that the respondents were not entitled to interest on the refunded amount. The Apex Court reasoned that since the respondents voluntarily cancelled the allotment, awarding interest would amount to an unfair benefit.

Comment

The Supreme Court's ruling strikes a balance between enforcing contractual autonomy and preventing consumer exploitation. While the Supreme Court upheld the forfeiture clause in principle, it recognised that real estate transactions often involve inherent imbalances in bargaining power.

By limiting the forfeiture to 10% of the BSP, the judgment reinforces the need for fairness in commercial dealings without rendering contracts meaningless.

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