

When is the builder right in forfeiting earnest money?

Developers can refuse to pay the money to buyers failing to honour their commitment and not paying instalments on time

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In a case decided in 2015, the National Consumer Dispute Redressal Commission reaffirmed the principle that no one can take advantage of a wrong done by him or her. Anyone who approached a judicial forum should do so with clean hands.

In this case, the complainant and his wife booked an apartment in a project by a reputed builder and paid 10% of the total cost as booking amount or earnest money. The builder raised several demands for subsequent instalments and also asked the complainant to sign the buyers' agreement. However, the complainant did not pay the instalments as demanded, nor sign the buyers' agreement despite repeated letters and intimations from the builder. After a delay of approximately 18 months, the complainant through his lawyer sent a notice to the builder conveying his readiness to pay the instalments and in the alternative sought refund of the booking amount. The builder on the

other hand issued cancellation and forfeited the earnest money. The complainant then filed a complaint against the builder in the District Forum for delivering the apartment after accepting the subsequent instalments or in the alternative, cancelling the allotment and refunding the earnest money. The District Forum admitted the complaint and decided in favour of the complainant. On appeal, the State Commission upheld the order of the District Forum.

The National Commission relied on the Supreme Court's explanation regarding 'earnest money'. Earnest money is that amount out of the total purchase consideration which is a token to bind the purchaser to the contract. Accordingly, earnest money can be forfeited if the transaction falls through by reason of the default or failure of the purchaser in performing his obligations - which



Developers are not liable to return the booking amount to buyers who default on payments and want to opt out of a project

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basically concern payment of consideration, unless there is anything to the contrary in the terms of the contract. In this case, the complainant had defaulted in payment of instalment as per the schedule of payment of the total price of his apartment. Also, the complainant had not signed the buyer's agreement or returned

the signed copy to the builder within the time stipulated for it despite repeated reminders for it. Thus, the Commission held that the builder was not liable to refund the earnest money as the transaction had fallen through due to default by the complainant.

Thus, in the present case the National Commission decided in

favour of the builder, upholding the forfeiture of earnest money as it was rightfully forfeited as per the agreement between the builder and complainant and the default in payment of instalments as per the schedule of payment. This case highlights that the general perception of builders being wrong in all cases and that the right to forfeit earnest

money depends on the conduct of the parties irrespective whether he is a builder or a buyer.

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