



news flash

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PROPERTY BUYER CAN LOSE EARNEST MONEY

Supreme Court Ruling

The Hon'ble Supreme Court of India has recently in the case of *Satish Batra Vs. Sudhir Rawal* held that the earnest money given by the purchaser to the seller towards purchase of an immovable property can be forfeited by the seller if the transaction entered between them has not been completed due to failure or fault of the purchaser.

Brief facts

Satish Batra (“**Purchaser**”) had entered into an Agreement for Sale (“**Agreement**”) with Sudhi Rawal (“**Seller**”) for purchase of an immovable property in Delhi for a consideration of Rs. 70,00,000/-. While entering into the Agreement, the Purchaser paid Rs. 7,00,000/- (“**Earnest Money**”) to the Seller as a token amount. The balance amount of Rs. 63,00,000/- was to be paid within 3 months, pursuant to which parties had agreed to enter into a sale deed for absolute transfer of the property in favour of the purchaser. The Purchaser however failed to pay the balance amount of Rs. 63,00,000/- in terms of the Agreement. The Agreement entitled the Seller to forfeit the Earnest Money if the transaction was not completed on account of fault or failure by the Purchaser to pay the balance amount within the prescribed time. Accordingly, the Seller terminated the Agreement and forfeited the Earnest Money.

Being aggrieved with the forfeiture of the Earnest Money by the Seller, the Purchaser approached the civil court for recovery of the Earnest Money. The civil court held that the Seller has a right to forfeit the Earnest Money if the transaction has not been completed due to fault of the Purchaser. Thereafter, the Purchaser filed an appeal against the order of the trial court before the Hon'ble High Court of Delhi. In the appeal, the Delhi High Court relying on the judgment of *Fateh Chand v. Balkishan Dass* held that the seller is entitled to forfeit only a nominal amount and not the entire amount of Earnest Money.

The Seller being aggrieved by the order of the Delhi High Court approached the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India relying on various judgments stated that to justify the forfeiture of advance money being part of ‘earnest money’ the terms of the contract/agreement for sale should be clear and explicit. Earnest money is paid or given at the time when the contract is entered into and as a pledge for its due performance by the depositor, which is to be forfeited in case of non-performance by the depositor. Accordingly, the Supreme Court held that the Seller was justified in forfeiting the Earnest Money as per the Agreement, since the Earnest Money was primarily a security for due performance of the Agreement.

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Important Observations of the Court:

The earnest money (irrespective of the amount) paid by a purchaser of an immovable property as a guarantee for due performance of the contract can be forfeited by the seller, if the former fails to pay the balance amount. However, if the payment is made only towards part payment of consideration and not intended as earnest money, then such an amount cannot be forfeited.

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