



Acceptance of Deposit Bond in Lieu of Deposit Leads to Termination of Off the Plan Contract

The Supreme Court of Victoria has found that payment to a Vendor under a deposit bond for security of deposit money in a contract for the sale of land was in breach of section 9AA of the Sale of Land Act 1962 (Vic) (Act).

Section 9AA of the Act provides that where a plan of subdivision has not yet been registered, lots can only be sold to persons other than statutory bodies or authorities where the contract of sale provides for the deposit moneys to be paid by the purchaser to a legal practitioner, conveyancer or licensed estate agent acting for the vendor, or into a special purpose bank account. The deposit money is then held on trust for the purchaser until the plan of subdivision is registered.

In the case of Everest Project Developments Pty Ltd v Mendoza & Ors 52 purchasers claimed to rescind contracts for the sale of “off the plan” apartments when the vendor received monies secured by deposit bonds prior to the registration of the plan of subdivision. The Supreme Court of Victoria upheld the claims of the purchasers even though there was clear evidence that all money received by the vendor was repaid to the purchasers or transferred to the vendor’s solicitor to be held on trust pending registration of the plan.

Importantly, the Supreme Court confirmed that deposit moneys and money paid as a result of a claim against a deposit bond are separate and inconsistent and must be dealt with independently of each other in a contract for the sale of land.

This case serves as a timely reminder that the provisions of the Act must be strictly observed where deposit bonds, or bank guarantees for deposit moneys are accepted by vendors in off the plan sales and contracts must be drawn accordingly.

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