Variation & revival of Deeds of Alienation

If the parties enter into a contract which has effect of any material terms of a Deed of alienation may be varied. That variation must be reduced to writing & signed. Any informal (oral) variation of a Deed of Alienation will be of no effect & will not affect the validity of the original deed. Other dicta say that such oral variation have not result & whole contract will not be in writing & a Deed of Alienation will become invalid.

A waiver by one party of a contract is not a variation & need not be in writing. Cancellation: Cancellation of Deed of Alienation releases a party from some duties or not variations, need not be in writing. A cancelled Deed of Alienation may be revived informally by the parties.

The “cooling off” right of a prospective purchaser or to revoke, terminate or scale back a contract confers on certain purchasers or prospective purchasers of residential land the right to terminate a Deed of Alienation or to revoke the Alienation or offer.

Consequence of non-compliance with formalities

1. Failure to comply with sec 2(r) of i Alienation of Land Act

When a or both parties renders partial or full performance before they are aware of a formal requirement are not met, sec 28 regulates party as follows:

(a) Valid retroactively: If a purchaser has rendered partial performance of a land has been transferred to her, the alienation is ab initio valid in every aspect even though a formal req. have been met. Neither party can reclaim their performance.

(b) Statutory enforcement claim: If a purchaser or prospective purchaser has rendered partial performance or has rendered full performance but a land has not yet been transferred to her. Parties are entitled to reclaim performance. Allene is also entitled to interest on any amount she paid in terms of a Deed of Alienation (calculated from date of payment to recovery & rate prescribed by the Government). Allene also incurs interest on alienation with land. Allene entitled to reasonable compensation for occupation, use, enjoyment. Allene may have had of a land as well as compensation for any damage caused to a land by Allene after person for whose actions i alienation is responsible.

2. Failure to comply with sec 2(2A) of i Alienation of land Act

No express determination. Allene is entitled to say what consequences are for failing to incorporate a “cooling of period” in a contract. Fails to make sec 28 applicable where both parties have rendered full/partial performance.

Conflicting Decisions: In Sayors v Khan Court held that such contracts are void. Any party who rendered a performance in terms of void contract may reclaim her performance. In Sec 3 Dolphin Coast Medical Centre V Contractor Investments held that it seems to be correct view. Cooling of right exclusively to benefit of a purchaser. When a purchaser cancels a contract parties must give back performances they have received.