

JUDICIARY GRANTS RELIEF TO HOME BUYERS



In the recent past the Real Estate industry suffered severe recession. This was a result of the spiral effect of the builders facing a money crunch, crashing real estate prices and lack of interested buyers. During the recession period in the Real Estate business in India, thousands of Home Buyers suffered a setback, as their hard-earned money was blocked in incomplete construction projects. When the Buyers claim their money back, builders make fake promises and fail to return their money back.

This situation left the Home Buyers with no option but to initiate recovery proceedings which invariably led to delays for several reasons including the fact that builders delayed the proceedings further by either not appearing or taking multiple adjournments. To make the matter worse, the Home Buyers invariably got caught in technical grounds which sometimes even resulted in dismissal of their case. What was even more worrying was that builders approached the courts to declare themselves as bankrupt/insolvent causing even further problems for the Home Buyers. What was even more difficult for the Home Buyers was that in insolvency proceedings they were not considered as Financial Creditors or as Operational Creditors.¹

The Home Buyers, to their relief, saw a silver lining in the dark clouds when Supreme Court of India in the case of **Chitra Sharma & Anr. Vs. Union of India², Writ Petition (Civil) No 782 of 2017** stated that the Home Buyers should be considered as the Financial Creditors as the amount submitted by them to the builders are used for the development of the buildings. After this case the status of Home Buyers has been recognized as Financial Creditors and now, they can initiate insolvency proceedings against the corporate debtor under Section 7 of the Insolvency and Bankruptcy code, 2016 as amended thereof (IBC).

¹ Col Vinod Awasthy V. AMR Infrastructures Ltd., C.P NO. (IB)-10(PB)/2017

Although the above-mentioned Judgment gave relief to the Home Buyers but they were still very far from recovering the amounts paid by them to the corrupt builders. The mounting interest on home loans added to their woes. The fact that they had to service their loan and were still not in possession of their home only made things more difficult. In most cases the Home Buyers were looking for a refund rather than possession, but the builders always evaded this by citing contractual provisions, in the buyer's agreement, that the Home Buyers had entered with the builder. These agreements invariably did not consider refund of the buyer's money but only had a clause that allowed them a small interest by way of penalty. This led to a nightmarish situation for the Home Buyers as they were trapped in a home loan which they could not foreclose as the money was with the builders.

The National Consumer Dispute Redressal Commission (NCDRC) passed a final order in the case of **Ajai Kumar & Anr. V. Supertech Ltd., CC/1639/2017** dated 22-04-2019, stating that in case where the builder has delayed in handing over the occupancy certificate to the home buyers, then in such a case the whole amount shall be refunded to them along with the interest decided by the court. The complainants in the above mentioned case relied upon **Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan Civil Appeal No. 12238 of 2018 decided on 02.4.2019** in which the Supreme Court has stated:

"6.1 In the present case, admittedly the appellant – Builder obtained the Occupancy certificate almost two years after the date stipulated in the Apartment Buyer's Agreement. As a consequence, there was a failure to hand over possession of the flat to the respondent – Flat Purchaser within a reasonable period. The Occupancy Certificate was obtained after a delay of more than two years on 28.8.2018 during the pendency of the proceedings before the National Commission.

In Lucknow Development Authority V. M.K. Gupta, AIR 1994 SC 787 this court held that when a person hires the services of a builder, or a contractor, for the construction of a house or a flat, and the same is for a consideration, it is a "service" as defined by Section 2(o) of the Consumer Protection Act, 1986. The inordinate delay in handing over possession of the flat clearly amounts to deficiency of service.

In Fortune Infrastructure & Anr. Vs. Trevor D'Lima & Ors., Civil Appeal No(s). 3533-3534 of 2017 this Court held that a person cannot be made to wait indefinitely for possession of the flat allotted to him, and is entitled to seek refund of the amount paid by him, along with compensation.

6.2 The Respondent – Flat Purchaser has made out a clear case of deficiency of service on the part of the Appellant – Builder. The respondent – flat purchaser was justified in terminating the Apartment Buyer’s Agreement by filing the Consumer Complaint, and cannot be compelled to accept the possession whenever it is offered by the Builder. The Respondent – Purchaser was legally entitled to seek refund of the money deposited by him along with appropriate compensation.”

The NCDRC vide its order dated 16.04.2019 in **CC No.2335 of 2017 STUC Awasiya Grahak Kalyaan Association Vs. Supertech Ltd.**, held that the general excuses made by the builders for the delay is not acceptable, unless they can show a direct causal link, and held as under:

"5.In case, there was an order restraining the OP from extracting ground water for construction purposes, it was for the OP to arrange water for construction purposes from alternative sources and the flat buyers cannot be made to suffer on account of such an order, if any.

6. As far as challenge to the acquisition of land is concerned, even according to the OP, the writ petition filed by the farmers in Allahabad High Court came to be decided on 21.10.2011. Though, Civil Appeals were later filed before the Hon’ble Supreme Court, which eventually upheld the order passed by Allahabad High Court, admittedly, no order was passed by the Hon’ble Supreme Court at any point of time, restraining the builders, particularly the builders in YEIDA from raising construction on the land, which were subject matter of the civil appeals pending before the Hon’ble Apex Court. Moreover, the agreements with the allottees on whose behalf this complaint has been instituted came to be executed much later than the decision of the Allahabad High Court on 21.10.2011.

9. As far as the alleged agitation by the farmers is concerned, no direct evidence has been led by the OP to prove the dates on which and the period during which the farmers had actually prevented the construction work on the project in which allotment was made to the consumers, on whose behalf this complaint is instituted, or the period during which the OP was actually prevented by the farmers from starting the construction on the said plot. In the absence of such an evidence, it cannot be known how much delay in the commencement and / or progress of the construction can be attributed to the alleged agitation by the farmers.”

In the case of **Ajai Kumar (supra)**, NCDRC has ordered the builders to refund the home buyers the total deposited amount along with interest @ 10% p.a. and Rs. 25,000 for the cost of litigation.

In a recent NCDRC case of **Amal Ganguli Vs. Unitech Ltd., CC/2712/2017** dated 09-05-2019, the NCDRC held that home buyers ought to be refunded the amount paid by them along with interest @ 10%. The facts of the case are similar to the one cited above. In this case also the payment was taken and the possession of the flat had to be given to the home buyers after 36 months from the execution of the Apartment Buyer Agreement. The NCDRC noted that it has been more than 3 ½ years after the completion of the 36 months contractual period and till date the builders have not given the possession of the desired flat even after around Rs.1,77,95,300/- was paid to the builders. The builders in this present case also gave the same set of excuses and dumped their fault on the Government Policies but the Commission dismissed all their excuses. The Complainant in this case placed the reliance upon the decision of the NCDRC in **CC No. 1100 of 2015 Vibha Gupta Vs. M/s Unitech Ltd. & other connected matters** which was decided on 28.11.2016 and which stated the following:

"6. The next question which arises for consideration is the quantum of compensation which should be paid to the complainants for the delay in completion of the villas. As far as the prohibition on use of underground water in construction is concerned, the learned counsel for the complainant has drawn my attention to the order dated 21.08.2012 passed by a Divisional Bench of Punjab & Haryana High Court in Civil Writ Petition No. 20032 of 2008 wherein the High Court noted that the public notice issued under Section-5(3) of the Environment Protection Act, 1986 was published in the newspaper on 26.12.2000. It further shows that the said notice had imposed a complete ban upon the use of underground water in the construction without prior approval of the competent authority. It was noted by the High Court that despite publication of the aforesaid notice, the builders continued to use underground water for construction purposes. If there was a complete ban on use of underground water for construction and the said prohibition was notified on 26.12.2000, the opposite party must have taken into account, the impact of the said prohibition while entering into Buyers Agreements with the complainants. Therefore, it is not open to the opposite party to rely upon the said prohibition in order to justify the delay in construction of the villas sold to the complainants. The opposite party knew at the time of entering into

agreements with the complainants that it will not be able to use underground water for construction of the villas and therefore, will have to make alternative arrangements from authorized sources for making the water available for the said construction. Therefore, the aforesaid prohibition on use of the underground water for construction purpose does not justify the delay in completion of the construction. In any case, no material has been placed by the opposite party on record to show that efforts were made by it during the relevant period to procure water from alternative sources but it was unable to obtain the water from the said sources. More importantly, in the Buyers Agreement executed between the parties, it was not disclosed to the buyers that since no underground water can be used for construction purpose, the developer will have to arrange water from alternative sources and in case it is not able to arrange water, the construction would be delayed and in that case, it will not be held responsible for the delay in completion of the construction.”

Conclusion:

Due to the recent judgments discussed above, Home Buyers are now protected from corrupt builders and can claim their money back. The various judgments of the Supreme Court, High Courts, NCDRC etc. ensure protection to the Home Buyers and the builders cannot get away by citing flimsy grounds for delay. The fact that the courts are now granting interests on the money paid by the Home Buyers has given them further hope. In short, finally, the Home Buyers are now protected.

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