



FROM DREAMS TO REALTY

If you have questions or would like additional information on the material covered in this Newsletter, please contact the authors:

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A. NCDRC to the Rescue of Beleaguered Buyers

The National Consumer Disputes Redressal Commission (the “NCDRC”) has recently passed stringent directions¹ against a builder taking strong objection to delays in construction, coupled with failure of the builder to share the EMI of the flat buyers (“Complainants”) in agreed proportion.

The Complainants booked a flat with the builder in 2007. The builder assured to share 3/4th portion of the EMI to be paid to the bank, if the Complainants paid 95% of the basic sale price of the flat to the builder upfront, and availed a bank loan in such regard.

The Complainants took a loan and paid a total of 95% of the basic sale price of the flat upfront. The Complainants even received EMI payments from the builder for the initial few years. Thereafter, reportedly, the construction of the project stalled, and the builder even defaulted in EMI reimbursements.

The Complainants then approached the NCDRC. The builder cited various defences and offered to pay the construction delay penalty as per the flat buyer agreement. The NCDRC, while noting the undertaking of the builder to pay the construction delay penalty, passed various far reaching directions against the builder including the following:

- i). Builder shall complete the construction of the flat by 31.03.2017. Any revision of plans to be accommodated within this time at the cost of the builder;
- ii). Builder to obtain completion certificate by 30.06.2017;
- iii). Builder shall then offer possession of the flat to the Complainants by 31.07.2017;

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- iv). If the builder is unable to offer possession of the flat as above, it shall offer to the Complainants a similar flat of the same size and on the same floor, in a comparable locality at the same price which the Complainants had to pay for the flat booked by them;
- v). Builder to reimburse to the Complainants by 30.06.2016, the arrears towards agreed EMI share with 10% interest on delay;
- vi). Builder shall not increase the size of the flat sold to the Complainants without their consent; and
- vii). The Complainants would be entitled to seek execution of the order through the NCDRC.

B. Significance of the NCDRC's Order:

While the NCDRC's order validates the contractual rights and expectations of the Complainants, it has accorded additional remedies to the Complainants in the event of failure of the builder to comply with the directions of the NCDRC such as:

- i). Entitling the Complainants to ask the builder to buy a similar flat at the same price. There is no restriction that the alternate flat should be of the same builder.
- ii). The builder shall not increase the size of the flat without the Complainants' consent. Increase in flat size has been a common practice followed by many builders, which in turn not only sets off the construction delay penalty but also leads to demand of additional sums by builders from flat buyers.

This order shall pave the way for expeditious enforcement of flat buyer agreements against deficient builders.

Endnotes:

1. Case Referred: Shoibal Mukherjee & Anr. vs. Parsvnath Developers Ltd.

Feedback

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