

An allotment cannot be cancelled unilaterally



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Since owning a home is a dream for a major part of our population, there is a constant demand of residential and commercial property and a lot of projects are under development by builders and developers who offer special features to attract prospective buyers. In this regard, the first step towards the realisation of owning a dream home is the issuance of an allotment letter by the builder to the prospective buyer/ allottee. Subsequently, both the parties enter into an agreement containing the terms and conditions regarding the payment and delivery of the unit booked etc.

However, the dream of being the proud owner of a property in near future is often shattered when considerable delays are caused in the completion of the project and many times allotments are cancelled unilaterally by the builder.

Non delivery of possession on the time agreed at the time of allotment and the one-sided nature of agreement often compels the aggrieved party i.e. the prospective buyer/ allottee to approach the court of law to seek remedy for his grievance.

Although, many times such delays are caused due to late government approvals, delay in getting raw material, cement and steel procurement, manpower delay etc. but whatsoever be the reason, in recent times, the courts of law have been flooded with such cases of conflicts/ disputes due to the delay in completion of the project.

In a recent matter of Dr. Naren P. Sheth & Another vs M/s. Lodha Group & Another, that came up before the National Consumer Dispute Redressal forum (NCDRC), a flat was booked by two senior citizens ("Complainants"), in a project that was being developed in Thane, Mumbai.

They had paid nearly 95% of the sale consideration to the concerned builder and the balance consideration was to be paid at the time of hand over of the possession of the flat. However, further charges towards car parking



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and maintenance were demanded by the builder to which the Complainants protested by writing an e-mail to the builder but there was no response.

The Complainants first approached the district forum. Since the district forum had no jurisdiction to try this case, their complaint was dismissed but they were granted liberty to file the same before the appropriate forum. In the meanwhile, the builder cancelled the allotment of the flat in question and sold it to a third party, before the case was filed before the NCDRC.

The builder in his pleadings before the NCDRC stated that no concluded contract was made between it and the Complainants. The Complainants had desired rectification in the agreement to sell as the clauses in the agreement to sell did not suit the Complainants, therefore, it was not executed and concluded between the parties.

The NCDRC did not accept this contention of the builder and observed that although they had not executed the agreement to sell, the builder had already received and accepted lion's share towards construction and had also demanded further amounts from the Complainants.

The NCDRC referred to one of its another judgement in this regard where it was opined that terms of the agreement are pre-

pared and framed by the company i.e. the builder unilaterally, and once the builder had already received considerable amount from the applicants/ buyers, the buyers/ applicants have no option but to sign the agreement.

The NCDRC further observed that the allotment letter was also issued to the Complainants unilaterally and expressed its surprise on observing that although the builder had received almost the entire amount, it cancelled the allotment of the Complainants unilaterally, without giving delivery of possession.

NCDRC held that Complainants should have been warned and a notice should have been sent before the cancellation of the flat allotted to them.

Thus, the NCDRC held that the action of the builder unilaterally cancelling the allotment was arbitrary, high handed, despotic and arrogant in nature and therefore, directed the builder to refund the entire money paid by the Complainants along with interest of 18% p.a. from the date of its deposit till its realisation and also pay a compensation of ₹1,00,000.

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