

Having problems with your society's lifts?

Developers failing to deliver services promised in company brochures and charging maintenance fees can be taken to task by homebuyers having problems with common facilities

Sunil Tyagi

htestates@hindustantimes.com

htestates LEGAL REMEDIES

One of the things that most buyers check before buying an apartment in a group housing project are the services like water, electricity, power backup, security, elevators, open areas for recreation, etc and the quality of maintenance of these services by the developer or any other agency appointed for the purpose. Any default or lacunae with respect to these services and their maintenance hampers the peaceful use and enjoyment of the dwelling unit.

In a judgment by the National Consumer Dispute Redressal Commission decided in 2013, the poor maintenance service problem of aggrieved consumers were resolved. A complaint was filed in the National Commission by flat owners of certain blocks of a multi-storied building complex in Gurgaon, which were allotted in the year 2002. They complained about the false representations made by the builder and promoter of the flats and the elevator company. In advertisements and other promotional material

for sale of flats, one high-speed elevator was promised for every ten flats. However, there was only one elevator installed for every 20 flats. Also, these were not 'high-speed' elevators.

The complainants also had an issue with the non-maintenance of elevators. It was brought to the commission's notice that the elevators sometimes stopped a few feet above the designated floors and the residents had to jump out, risking injury. Also, the elevators were not equipped with automatic rescue device, thus, during power cuts the elevators did not stop at the next closest floor. During a power cut, the elevators would stop mid way till power backup facilities resumed power supply. Instances were highlighted where the elevators abruptly came to a stop after free falling to a few floors due to lack of effective and regular maintenance.

There were two main issues which were discussed by the

National Commission. The first issue was the number and quality of elevators that were promised in the advertisements. The second issue was the regular and efficient maintenance of the elevators which was required to be maintained by the promoter/builder and the elevator company and maintenance charges with respect to the same.

The promoter/builder charged ₹1.50 per sq ft, which was later raised to ₹2.26 per sq ft for maintenance of elevators. No record was produced regarding the visit of any engineer or official for maintenance of the elevators and no reason was given for not keeping the records. The maintenance allowance was, however, charged from the residents regularly. The correspondence letters between the promoter/builder and the residents welfare association proved that the promoter/builder had accepted, that elevators needed to be replaced. The Commission noticed that operating license of the elevators company was also not renewed despite the poor state of the elevators. This violated the laws of Haryana



where such an operating license is mandatory for use of elevators. The promoter/builder was directed to pay back 70% of the maintenance charged with interest at the rate of 9% per annum. The commission further directed that records be maintained regarding maintenance of elevators. The pro-

motor/builder appealed to the Supreme Court which was dismissed in August 2014, thereby, upholding the decision of the National Commission.

The lesson that buyers can draw is that those living in group housing complexes can enforce their right of maintenance of common areas and

facilities if they are being charged for the same.

The author is senior partner at Zeus Law, a corporate commercial law firm. One of its areas of specialisations is real estate transactional and litigation work. If you have any queries, email us at ht@zeus.firm.in