

# Opting out of a project for delay in delivery?

Consumers can seek refund of money paid for property if they don't get possession on time and if there is no breach of agreement

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## htestates LEGAL REMEDIES

If a builder is unable to complete a housing project within time or is unable to deliver the project as agreed in the agreement it's had with the consumer; the latter has the right to seek refund of money paid for the property. This can be done provided the investor/consumer has not breached payment terms.

An appeal filed before the National Consumer Disputes Redressal Commission in December 2014 deals with one such circumstance. A reputed builder had launched a residential township in Jaipur, where the complainant had booked a plot for which he had paid a considerable sum. However, the project was not launched and the complainant insisted on a refund of the initial deposit despite the buyer offering to accommodate him in another project. The builder duly refunded the amount along with interest calculated for nine months which

was accepted by the complainant. Thereafter, in a complaint referred to the district forum, the complainant asserted that since the payment for the initial deposit was made at two different points of time, the interest should be paid for a longer period. Non-payment of interest for the entire period was claimed to be deficiency in service.

The district forum accepted the plea of the complainant and ordered that the payment of enhanced amount be made in form of interest. The state commission concurred with the findings and dismissed the builder's appeal.

The National Commission, on another appeal by the builder, took note of the fact that first the complainant had himself sought a refund and second, upon receiving the cheque for the amount along with interest,



**A consumer who had accepted a refund from a builder was not allowed by the Consumer Commission to claim an additional amount**

the complainant had accepted the cheque and in a letter to the builder, had promised to exchange the original allotment documents upon encashment of cheque. The Commission concluded this to be a final settlement of complainant's claim, disregarding his assertion that he had accepted the cheque in protest.

According to the

Commission, had the complainant accepted the cheque in protest, he would have recorded such protest in his letter to the builder and not simply promised to return the original allotment documents. The relationship of the consumer and the service provider had ended once he had encashed the refund and there was no deficiency in provision of services

on part of the builder as he had duly refunded the amount deposited by the complainant. The National Commission overruled the orders of the district forum and the state commission.

This judgment of the National Commission reaffirms the principle that to take action against a builder through consumer courts, the relationship of a consumer and service provider

should be clearly established and there should be an actual deficiency in provision of service by the builder.

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