

Punishment for non-fulfillment of promises

If the developer sells a project on the basis of certain features but fails to deliver those services, buyers have the right to seek legal recourse

Sunil Tyagi

htestates@hindustantimes.com

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Many people in India dream of owning a farmhouse. While many prefer investing in apartments for fear of issues with regard to land etc, there are some "brave hearts" who go ahead with the lavish purchase of a farmhouse. In an interesting case concerning farmhouses, the National Consumer Dispute Redressal Commission, granted compensation to the farm buyers in addition to imposing punitive damages against the developer who did not fulfill his promise of constructing a country club within the project.

The National Consumer Dispute Redressal Commission in its judgement of 2012 following a petition filed by the Farm Owners & Residents Welfare Association ('Association') acknowledged the authority of the association to file a consumer complaint and held that it would be covered within the meaning of "Person" as defined under the Consumer Protection Act, 1986.

The dispute arose from a

scheme promoted by a developer in the late 1970s for development of individual farms on which the developer had proposed to build farmhouses for individual buyers. The project details included developmental works like roads, water supply, electrification, sewage disposal etc. The scheme also contemplated maintenance of common areas, common facilities and other services by the maintenance company. One of the prominent and well-advertised features of the scheme was the construction of a country club comprising a swimming pool, tennis/badminton courts, sauna, steam bath and other modern facilities.

However, the developer did not construct the country club, a facility agreed to be provided and communicated to the farm buyers. The farm purchasers were told that the construction of the country club would not take place at all. The decision

was taken by the developer unilaterally.

An important issue that came up for consideration was whether the decision of the builder/developer not to provide a country club after making the farm buyers wait for such a long time amounted to deficiency in service.

The National Commission decided in favour of the Association and granted compensation to the farm purchasers in addition to imposing punitive damages against the developer. The National Commission held that the unilateral decision of the developer to drop the plan of constructing a country club was unfair to the farm purchasers. It held that the club was a special part of the scheme and the builder's unilateral decision to eliminate it from the scheme was unjustifiable, unfair and tantamount to "deficiency of service".

The Commission also observed that the club was the highlight of the project, a marketing strategy used by the developer to attract buyers. Had there been no club, not only would there have been less buy-



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ers but the price of the farmhouses would have also been lower. Not constructing the club was a big setback to the farm buyers.

Service providers and in most cases, the developers, should make it a point to keep

all the commitments made by them to the consumers. If there was a facility promised to a buyer which influenced his decision to buy that property and if it is not provided later, the buyer could seek recourse through an appropriate forum.

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