

When are buyers denied compensation?

National Consumer Disputes Redressal Commission rules out compensation for those wanting to exit a project because of delays in delivery

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htestates LEGAL REMEDIES

The compensation provision in builder-buyer agreements has been drafted to cover events/instances of delay in completion of project, specifically where the investors/buyers/consumers are willing to continue with the investment and stay on in the project.

Moreover, the compensation amount is often in the range of ₹5 to ₹10 per square feet which is nominal considering the huge investment made and the interest the consumer pays to the bank for a home loan. However, the consumer is unable to take advantage of this provision of compensation if he exits from the project because of delays in construction.

One such issue was brought up in a case decided by the National Consumer Disputes Redressal Commission this year. The Commission heard three complaints against a leading builder.

In all complaints, the complainants had booked one flat respectively in different projects by the developer in

Greater Noida and paid 95% of the total sale consideration under a down payment plan. The complainants took loans from banks for the apartments and were paying interest on the amount. In these complaints the flatbuyers' agreements were executed in the time span ranging from 2007 to 2008 with a promise to complete construction in 36 months.

However, till the date of filing the complaint, ie in the year 2014, the construction was nowhere near completion.

On account of this alleged inordinate delay in construction, the complainants were no longer interested in waiting for possession of the apartments and sought refund of the sale consideration paid by them with an interest at 18% or 24% per annum. Since the developer refused to listen to them they approached the National Commission and pleaded for a refund with interest for the

delayed period.

The developer rejected to their demands on the ground that the interest rate sought was excessive and that the complainants should be refunded the amount and compensation according to the builder-buyer agreement.

The commission held that the clause for compensation in the flatbuyers agreement may apply only in cases where construction of the apartment is delayed and despite the delay the buyer is willing to accept possession. Thus, the clause regarding compensation will not be applicable to the complainants in the current case as the complainants are not interested in the apartments and are seeking a refund.

Regarding the percentage of interest to be paid to the complainants, the commission was of the opinion that since the developer demanded an interest at the rate of 24% in case of delay on the buyer's part, if the project was delayed by the developer, the rate of interest should be the same (24%).

However, the commission (keeping in mind the escalation in the price of land and other



Only homebuyers who stay invested in a project are eligible for compensation if it gets delayed.

factors) decided that a rate of interest at 18% would be sufficient compensation along with refund of the sale consideration paid by the complainants.

The aforesaid order comes as a big relief for consumers/investors whose investment

is stuck in projects which are stalled and are undelivered due to some reasons. The investor on his part is also wary of exiting the project due to nominal penalty as per the compensation clauses in the flatbuyers agreements.

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htestates LAW BOOK Sunil Tyagi

I have a property in Delhi which I decided to sell to somebody who resides in Mumbai. We agreed to pay the consideration in installments. He paid the first installment but defaulted in payment of the remaining consideration despite repeated reminders. What remedy do I have?

— Sidharth Singh
You may cancel the agreement to sell entered into between the buyer and you, by giving him a notice of termination. If there is a provision for forfeiture in the agreement to sell, you can forfeit the advance/earnest money as has been agreed.

We are a Hindu Undivided Family (HUF). My father, who was the karta, passed away recently. Now, my elder brother has become the karta and being the eldest member is trying to sell properties of the HUF without consent of other members. Can he do so?

— Shaivik Arora
As head of the family, a karta's power of management of the family is absolute. But he cannot deny maintenance or use and occupation of the HUF property to any coparcener. A karta has power to alienate the joint family property only in three cases: legal necessity,

benefit of estate or for performance of indispensable duties. Thus, if the sale of properties is not for any of the three reasons, you may approach the appropriate court and seek relief.

I have invested in an under construction apartment in a project in Gurgaon. At the time of possession by the builder, I discovered that the super area of the unit was reduced from what was agreed. I have already paid the total consideration towards the flat. What legal recourse do I have?

— Pratik Babu
If the sale price charged from you was on the basis of super area and admittedly the super area has been reduced, then you are entitled to excess consideration that you have paid. If the developer refuses to refund, you can approach the consumer forum or a civil court for recovery of the excess amount.

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htestates CHEQUE BOOK Harsh Roongta

I took a home loan at a floating rate of interest. But as is the common practice, banks increase the rate of interest immediately after the rate is increased but when rates go down they ask for conversion fees. Should we pay this fee? What are RBI's guidelines in this regard?

— Subroto Pandit
First, changes in RBI policy rates do not automatically mean changes in the lender's reference rates for lending. But it is a common practice among lenders to increase their reference rates more quickly by citing RBI

increase in policy rates as an excuse. It is a known fact that lenders are hesitant to reduce the base rate/PLR when interest rates fall and hence consumers rarely get the benefit of reduced interest rates as quickly as they should get. So, the benefit of lower rate will accrue to you as and when the lenders reduce their base rate/PLR and not otherwise.

The current (March 2015) competitive rate in the market is around 10.10% to 10.25%. You can check with

your bank if it is willing to reduce the interest rate to 10.10% to 10.25% (their current floating rate) even if it means paying a fee of 0.28% (inclusive of service tax) on the disbursed amount. This will avoid the logistics of transferring documents from one lender to another.

If your bank is not willing to reduce the rate of interest to 10.10% to 10.25% pa, you can evaluate the option of switching your loan to another lender.

Since the NHB has already instructed housing finance companies not to levy prepayment charges in respect of floating loans, you will not have to pay any penalty for shifting such loans. However, you may

have to pay some processing fee to the prospective lender. In fact, most lenders will agree to take over the loan from the existing lender without any significant processing fees. So effectively there will be no charge for shifting the loan to another lender.

You need to have a good track record of paying EMIs on time to be able to get an offer from another bank to take over your existing loan.

I took a home loan from a bank for a 3BHK under construction flat of area 1,310 sq ft. Barring the final disbursement, the rest of the amount has been given. Now I want to change to a flat of size 1,450 sq ft in the same project and the builder has agreed to it and has given

me an estimate of the additional amount that I have to pay. But the bank has refused to give permission for this shift. How can I make the bank agree to my terms?

— Sanjiv Arora
There is no such thing as a transfer of loan or change of property under the existing home loan. You will have to foreclose the loan that you had taken and apply for a fresh loan. As for the new unit that you are taking in exchange for your old property, it will be easier for the same bank to do this. But you can also get a loan from another bank on a document of exchange which you will have to sign with the builder. The new bank will pay off the previous bank in that case and provide you

an additional loan if you so desire.

What is a composite loan and how does a bank disburse such a loan. What documents do we need to submit to avail a composite loan?

— Sanjit Sharma
A composite loan is a loan taken for self-construction of a house. The loan is given to finance the cost of land as well as cost of construction of property. The banks will require documents in respect of proof of income, identity, residence for the home loans and documents relating to title of the property being purchased.

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Is shelter for all by 2020 attainable?

A three-pronged approach involving the state, regulatory bodies and the executing agency or private player is required for the Housing for All policy to be successful

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Viewed dispassionately, the current government's Housing For All by 2022 promise seems a bit unrealistic at the moment, as the modalities and concrete steps needed to be undertaken to achieve this goal have not been spelt out. Constructing two crore urban houses and four crore rural houses is a huge undertaking in itself, and will require not only sustained government interest and investment but also substantial private sector investment and involvement.

In the previous budget, the announcement of Housing for All was accompanied by increased allotment to the National Housing Bank for both rural housing and for extending credit to the urban poor/EWS/LIG segment. There was also talk of setting up a Mission on Low Cost Affordable Housing, which was to be anchored in the National Housing Bank. However, the track record of government-built housing in terms of quantum and delivery timelines has been as abysmal as that of the private sector. The last Budget did not indicate any further steps on the Housing for All by 2022 initiative.

If this very ambitious goal is indeed to be met, there needs to be a clear, well-thought out policy document outlining the exact deliverables and accompanied by methods/initiatives to streamline the development process. This entails reducing approval times while providing specific incentives to build such houses on time. Considering that the government has seven

years in all to achieve this target, it fundamentally involves construction of 30 billion square feet of housing stock, or approximately four billion square feet per year if we assume an average of 500 square feet per house.

To state that this is an ambitious objective is perhaps an understatement. Without a clear roadmap in place, it is likely to remain unachievable. The roadblocks remain in ensuring land availability, easy credit and involving construction experts, town planners and the private sector to expedite this target.

A three-pronged approach involving the state, regulatory bodies and the executing agency/private player is the essence.

The respective state governments will also play a major role in synergising their own housing policy with that of the Centre and revitalising the role of the development authority as more a facilitator with contracts being awarded to private players/semi-government agencies such as HUDCO and NBCC utilising the Budget's 'plug and play' mechanism, where all approvals and linkages are already in place.

Execution penalties will be deterrents, but it is essential to have the right development partners who will not put their hands up in the middle of project execution citing financial viability. Suitable fiscal incentives to the private industry as well as financial support through cheaper industry loans will also be required to ensure healthy participation.

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How to save tax through multiple properties

If you own more than one property the second house attracts tax, but the law allows assesseees to claim deductions on housing loan interest

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One of the most popular avenues for investment is an additional house property. Its value not only appreciates in the long term but also helps the investor mitigate the risk of inflation.

An investor, however, needs to be mindful of the tax implications on the additional house property, especially in case of a vacant property. It must be noted that tax implications will mean additional taxes; but not always. Generally taxes are levied only on 'real income'. However, an additional house property which is retained as vacant or is used by the owner for his personal purpose has tax implications. The deemed rent from the property is charged to tax, especially if the property is let out.

As per the Indian Income Tax law, if a person owns more than one house property and these properties are not let out, one property may be considered as self-occupied by the owner and the other properties considered as 'deemed to be let out'.

Where a property is considered as deemed to be let out, notional rent for such property is required to be offered for tax. The notional rent is usually determined based on the rent receivable for a similar property in the same locality. The expected rent of a similar property may be subjective and could depend on various factors like quality of construction, interiors provided and other features. In such situations, an individual should ensure that a best estimate is used to arrive at the expected rent, and the individual should be able to substantiate the same if any questions are raised by the revenue authorities.

The intent of law seems clear;

to curb the malicious practice of assesseees not disclosing the rent received from the second property and to discourage unoccupied property. It should be noted that even if both the properties are vacant or are self-occupied, deemed provisions will apply.

While a notional income is required to be offered to tax as rent from the properties that are not let out, the law allows the assessee to claim deductions as if the property is let out.

Interestingly, sometimes this may lead to a beneficial situation for assesseees as they may be able to claim a deduction of the housing loan interest without any restriction. For the tax year 2015-16, the limit for interest on house property is ₹2,00,000 on self-occupied property. Considering the house property for which there is a higher interest payable on housing loan as a deemed let-out house property, it would be beneficial to the owner.

In addition to the above deduction, one may also claim a deduction for the municipal taxes paid to the local authorities during the financial year. Further, a standard deduction of 30% is also available to the owner of the house property. These deductions would have otherwise not been available, if the property was self-occupied. These deductions from the notional income may also result in a loss from house property. To understand the above better, let us consider the below illustrations, where the same property is considered as self-occupied and also as deemed let out:

- Annual rent receivable from house property: ₹2,40,000
- Interest on housing loan per annum: ₹5,00,000
- Municipal taxes paid: ₹1,00,000

Based on the illustration 1, one can see that the loss from the house property would have been ₹2,00,000 if it was considered as self-occupied. It is evi-



HOUSING LOAN BORROWED AND INTEREST PAID

PARTICULARS	SELF-OCCUPIED PROPERTY/IES	DEEMED LET OUT PROPERTY (IN ₹)
Annual value	Nil	2,40,000
Less: Municipal taxes	Nil	(1,000)
Net annual value	Nil	2,39,000
Less: Standard deduction @ 30%	Nil	(71,700)
Less: Interest on housing loan	(2,00,000)	(5,00,000)
Income/ Loss from house property	(2,00,000)	(3,32,700)

Illustration 1

dent from the above that there is higher loss from the house property considered as deemed let out. However, the scenario changes when there is no interest payment made, as shown in illustration 2. When the two are compared, readers will notice that there is a loss from house

property of ₹3,32,700 in the former and income of ₹1,67,300 (and consequently additional tax liability) in the latter.

The loss resulting from the house property, if any, may be adjusted against any other property income or any other income offered to tax in the same

HOUSING LOAN BORROWED

PARTICULARS	SELF-OCCUPIED PROPERTY/IES	DEEMED LET OUT PROPERTY (IN ₹)
Annual value	Nil	2,40,000
Less: Municipal taxes	Nil	(1,000)
Net annual value	Nil	2,39,000
Less: Standard deduction @ 30%	Nil	(71,700)
Less: Interest on housing loan	0	0
Income/ Loss from house property	Nil	1,67,300

Illustration 2

financial year. The loss may also be carried forward for the next seven financial years and adjusted with any house property income arising in those years. One needs to be cognizant of the fact that an additional vacant house property has tax implication. Hence, before investing in

a house property one should be clear about the objective of the investment and understand the cost of maintaining the house property including the tax cost and compliances involved.

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