

Are you waiting for possession of your flat?

A developer is considered 'deficient in service' if he fails to deliver apartments on time or to refund deposit money

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htestates LEGAL REMEDIES

A big challenge faced by consumers investing in real estate projects is getting timely possession from the builder/developer. While delays in possession largely occur on account of circumstances beyond the control of the developer/builder and certain unforeseen force majeure conditions, sometimes it also happens due to lack of proper financial planning and delegation of resources by the developer.

The National Consumer Redressal Commission, in its judgment of 2012, had decided on a revision petition involving the deficient services of the builder/developer who despite being held liable to refund the consideration amount of the consumer, moved a revision petition before the National Commission citing unfounded infirmities in the orders passed by the district forum and the Karnataka State Commission, Bangalore.

In this case, with the intent of owning a flat, the consumer/complainant had approached the builder and entered into a sale and construction agreement. At the instance of the builder, the complainant, after execution of the agreement, had paid approximately 50% of the consideration amount. However, the builder failed to complete the construction work on time. Even after a lapse of three years from the date of the agreement, possession of the property was not handed over to the buyer. Further, no sufficient cause was given for the delay. This led to the consumer losing interest in buying the property. Various emails were sent by the consumer for seeking refund of the deposit money from the builder. Despite agreeing to refund the money, the builder failed to do so. Therefore, the



A developer's ability to deliver possession rights on time can make or mar his relationship with buyers

complainant filed a consumer complaint before the district forum.

The question was whether the builder's act of keeping the consumer's money for years (not refunding it nor delivering the apartment), amounted to deficiency in service.

The district forum decided the complaint in favour of the con-

sumer by holding that there was a failure on the part of the builder to discharge his obligation by not completing the construction within the agreed time period and further failing to refund the consideration amount.

Such failure on the part of the builder/developer tantamounts to 'deficiency in service' and 'unfair trade practice'.

The builder was, therefore, directed to refund the deposit money with interest from the date in which the agreement was signed.

The district forum also innovatively ordered, that in the event of the builder not making the payment to the consumer within 30 days from the date of the order, there shall be an

escalation of interest and a further increase in rate of interest beyond 60 days.

The builder/developer appealed against this order of the district forum, which was dismissed at admission stage by the state commission. The builder then filed a revision petition before the National Commission, which was also dismissed on the grounds that the detailed and reasoned order of the state commission did not suffer from any infirmity or erroneous exercise of jurisdiction. The National Commission not only upheld the order of two for below but in addition also imposed punitive cost of ₹25,000 on the builder along with an interest at the rate of 9% per annum in case of nonpayment of the cost.

Given the present market conditions, timely delivery of possession of flats/apartments by the developer continues to be the challenge faced by consumers. Such cases highlight the plight of the consumers and the hurdles they face while investing their hard earned money on property.

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

htestates LAW BOOK Sunil Tyagi

My father executed a will which was duly registered in 2010. Thereafter, he executed another will in 2015. However, before he could get it registered, he passed away. Which one will be deemed as his final will?

Akash Bansal

It is not mandatory for a will to be registered for it to be a valid document as per the Indian Registration Act. Hence, the last will, if executed in a manner specified in law, by your father, will be considered to be his final will. The properties shall devolve basis this will.

I am a member of the managing committee of a cooperative housing society located in Delhi. There has been a transfer of membership; does the managing committee of the society have to issue a new certificate or hand over the old certificate to the transferee after cancelling the earlier share certificate.

Anshul Rastogi

According to the Delhi Co-operative Societies Rules, 2007, as applicable to cooperative housing societies, the cooperative housing society shall issue fresh share certificate with new serial number to the transferee after cancelling the earlier share certificate.

I have bought a house and a patch of adjacent land from a person who gave me the impression that he owned both the house and the land. Later I came to know that the transferor became the owner of the adjoin-

ing land only after he had executed an agreement to sell in my favour. What rights do I have?

Rishabh Mann

Now, when the seller has actually acquired the ownership of the adjoining piece of land you may continue with the contract and cause execution of sale deed in your favour.

Alternately, you may rescind the agreement to sell for the land adjoining the house.

I have executed a lease deed for five years. As the term has expired, I requested the lessor to renew the lease for another five years but to no avail. How should I proceed?

Sahadevan

It is not clear whether the original lease deed contains a clause providing you the sole option for renewal of lease. In case it does, you may seek redressal by filing a suit for specific performance of the renewal clause, provided you have not breached or violated any material terms and conditions of the original lease deed.

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deduction.

You will be able to claim tax deduction benefits under Section 80C in respect of the stamp duty paid in respect of the self-occupied property is taken at nil and a person is entitled to claim interest payment for loan taken to acquire that property of up to a limit of ₹2 lakh. You can also claim income tax benefit towards repayment of housing loan on both properties put together within the overall limit of ₹150,000 under Section 80 C.

All taxable income of the second and the third property will be arrived at by deducting actual interest payable in respect of such property without any limit from the notional/actual rent taken above as well as 30% standard

But in the very next year (2013) the rate got revised to 10.50% (BR 10.25+0.25). However, I got no benefits, post the revision. I want to know whether the bank is bound to implement the revised interest rate for existing customers?

- Nandini Das

If the bank has reduced the base rate, it will have to reduce the interest rate applicable to you as well. But please check whether the interest benefit has already been given to you even though the EMI has remained the same.

The best way to ascertain the effective rate of interest is to ask for amortisation schedule (break-up of each installments into principal and interest component) on your home loan. There are possibi-

ties that the bank may have kept your EMI the same and reduced the tenure of the loan. You can approach the branch manager of the bank from where you have taken the loan and ask them for the clarification. If the bank has failed to pass on the benefits of lower interest rate, you are not satisfied with the response, you can address your grievance to the nodal officer of the bank.

If you are still not satisfied with the response from the bank or do not get any response within four weeks, you should file a complaint with the banking ombudsman on the RBI website.

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India realty market update

This year while 6% of global retailers are targeting India for their office spaces, residential project launches are likely to increase in most of the leading cities

Anshuman Magazine
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The Government of India presented its Union Budget 2015-16 on February 28, 2015, highlighting that India's economy was in a bright spot compared to the rest of the world. This was mainly attributed to reduced vulnerabilities concerning economic slowdown, persistent inflation, slackening domestic demand and currency fluctuations. The Budget estimated a GDP growth rate of 7.4% in 2014-15 (an increase over 6.9% in 2013-14). Banking upon macro-economic stability, greater fiscal prudence, high employment generation and indigenous manufacturing, growth is expected to touch 8.1-8.5% in 2015-16. This would make India a leading growth driver in the global economy. Overall, the Budget struck a fine balance between populist measures, procedural efficiency, and ease of doing business, which was very

welcome. For the real estate and construction sector, however, it was a bit of a disappointment as many expectations remained unmet.

Office space update

Transaction activity dipped by approximately 15% over the previous month, with Bangalore accounting for almost 50% of the overall space transacted. Pune and the Delhi National Capital Region (NCR) also saw strong transaction activity (about 30% of the total transacted space in leading cities) during February. Cities such as Bangalore, Hyderabad and Kolkata observed an increase in occupier demand in the month. Few large sized transactions (above 100,000 sq. ft.) were also concluded in Bangalore, largely concentrated in locations such as the Outer Ring Road (ORR) and Electronic City. Among the transactions concluded, Tech Mahindra committed around

140,000 sq ft in Goldmill Supreme, Walmart took up around 130,000 sq ft in Salarpuria Aura, and RBS Business Services leased around 100,000 sq. ft. in RMZ Ecoworld.

Occupier interest also remained strong in micro-markets such as Gurgaon in the NCR; Thane and Airoli in Mumbai; ORR and Electronic City in Bangalore; Banjara Hills, and Madhapur (IT Corridor) in Hyderabad; Hinjewadi, Aundh, Talawde and Kharadi in Pune; and Central Chennai, with demand mainly driven by IT/ITeS, banking / financial services and telecommunications majors.

Housing market update

Demand for ready residential properties remained subdued and the quantum of residential unit launches also remained low during the month. While the focus remained on the mid-end

segment, the total number of launches declined due to abundant availability of ready-to-occupy inventory and cautious buyer sentiment. Most of the housing projects were launched in Bangalore and Chennai in the mid-end and high-end segments (measuring 100-700 units), while other cities attracted limited new launches during the month. Going forward, residential markets are likely to see stable price points with a gradual pick up in launches in most leading cities.

Organised retail space

High streets in Bangalore, Hyderabad and Chennai saw healthy demand from F&B, and apparel and accessories retailers. According to CBRE's latest report, How Active are Retailers Globally, around 6% of global retailers would be targeting India in 2015.

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All about the price of project delays and project deviations

A vigilant approach will go a long way in protecting buyers from financial losses and fraudulent practices by developers

Anuj Puri
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Reams of newspaper have been dedicated to discussing the sufferings of consumers in the Indian real estate sector. Who has not heard about homebuyers' woes related to late delivery of projects, deviation of housing projects from promised quality, additional payments due to change in apartment area and inadequate protection of their rights?

The question that invariably arises is whether the developer is at fault, or whether larger market forces beyond the control of developers are at play.

Construction delays: Is the developer or approval authority responsible for this? Technically speaking, the time spent in obtaining all requisite approvals adds to the total time of completing a project. These approvals can be needed at any stage between the launch of the project and the actual handover of apartments to buyers. Delays experienced for approvals automatically impact the specified delivery time.

A developer has to obtain several approvals from the state and central agencies and ministries before launching a project. In every business, there are two main factors that cause the overall price of finished products to push up-high holding costs (determined by the time period of holding raw material) and interest costs (when funds have been borrowed).

In the real estate sector, land is the basic raw material. The longer a developer has to hold his land; without getting any receipts through the sale of proposed apartments, the higher is his project cost.

In the current scenario, obtaining the 57-odd permissions to begin construction of a project can extend to two



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years. During this time, the cost of acquisition or even just holding the land for a project rises.

However, this is only one side of the picture. Many developers intentionally undertake a slower pace of construction if sales in their project are sluggish or a larger part of the project is unsold. They may have diverted a sizeable chunk of the revenue generated from pre-launch sales to another project, or utilised it to pay off a pressing bank debt.

Project quality and deviations

The difference in the promised quality and actual delivery status of the apartment continues to be a prime concern for real estate buyers.

A change in the apartment area after buying from the developer can occur if a change in project plan is necessitated due to a design or approval issue. A deviation of up to 10% is usually acceptable. However, for a higher deviation, a customer must definitely seek legal recourse. Project deviations can happen because of structural deficiencies of the overall system. However, at times developers also tamper with the overall project quality or make arbitrary changes in their project designs with a clear intent to maximise profit.

Recourse for consumer

The Real Estate Regulation and Development Bill that is long languishing on the policy drawing board (and still under consideration by the government) was formulated with the intention of protecting consumers better. However, after the most recent revisions to RERA, it seems that it will in fact now be less protective towards buyers. While the bill aimed at providing an alternate redressal mechanism, the new provisions are talking of no recourse to other consumer forums. Consumers should be aware that a certain degree of due diligence and awareness about their rights can protect them against unscrupulous practices by developers. In the first place, due attention should be given to details while drafting the sale agreement. Developer's sales team will usually present a buyer with a readymade agreement format, and a buyer must ensure that this captures every relevant detail. If it does not, the buyer is fully entitled to ask for missing details to be included, and potential grey areas to be clarified. A copy of the final agreement must be retained, as this will serve as the primary evidence in a legal action filed for agreement violations.

The author is chairman & country head, JLL India

feng shui corner MONIKA CHAWLA

As per the Chinese lunar calendar, the year of the wooden green sheep brings changes in the fortunes of all zodiac signs. In this second article of a six-part series I will talk about the fortunes of people born under the zodiac signs of tiger and rabbit.

Tiger

According to the Chinese lunar calendar, your zodiac sign is tiger if you were born after February 4 in the following years: 1902, 1914, 1926, 1938, 1950, 1962, 1974, 1986, 1998. (If your birthday is before February 4, then your astrological sign is ox, not tiger).

Since sheep is prey to the tiger, 2015 spells promise and fulfillment for you. Reaping rewards of past efforts, the carnivorous tiger has much to gain in the year of the green sheep.

Career

Set clear goals and targets and go for the kill! Watch out for arrogance and a dominating streak while dealing with others. Explore possibilities to expand your horizons and make those bold career choices. **Finances:** You roll in money with income opportunities on the rise. However, this is the time to invest in long-term plans as sudden losses and unforeseen expenditure are also on the cards for you.

Health tip: Strength and life force stay high, and the tiger feels invincible. Rest as much

Rabbit

According to the Chinese Lunar Calendar, your zodiac sign is rabbit if you were born after February 4 in the following years: 1903, 1915, 1927, 1939, 1951, 1963, 1975, 1987, 1999, 2011. (If your birthday is before February 4, then your astrological sign is tiger, not rabbit)

The year 2015 is interesting and eventful for you! With the sheep as your natural ally, the home front will be your focus this year. Confidence is the key. Take a stand against the status quo or risk being pushed

vaastu solutions Naresh Singal

There are two entry gates to my house. One faces north while the other faces west. What colour of paint do I use for these?

Vinita, Jasola

According to feng-shui you can colour the gate facing the north black or blue. The best options for painting the gate facing the west is white or cream.

Two months back I have sent you the layout of my house but the pyramids which you had suggested are very costly. What else can be do?

Santosh, Kirti Nagar

You can implement a few general remedies by using auspicious colour schemes.

I want to make some windows in my flat as it does not have adequate sunlight. What are the best directions for windows?

Ashutosh Parashar, Rohini

The direction facing east is the best. However, the southwest or northwest are also not bad. It will not harm to hang a picture of a mountain in the southwestern zone.

Problems with your new (or old) home? Write to mail@vaastunares.com for quickfix remedies

Good year for tigers in the year of the sheep

With a little caution and confidence, those born under the zodiac signs of tiger and rabbit can expect an interesting year

as you can as exhaustion and stress can manifest by way of stomach ailments.

Rabbit

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