

Buyers can expect relief for delayed projects

A Consumer Commission directive in 2013 to a developer for immediate delivery of flat, and penalty for non-compliance, should give hope to homebuyers waiting for possession

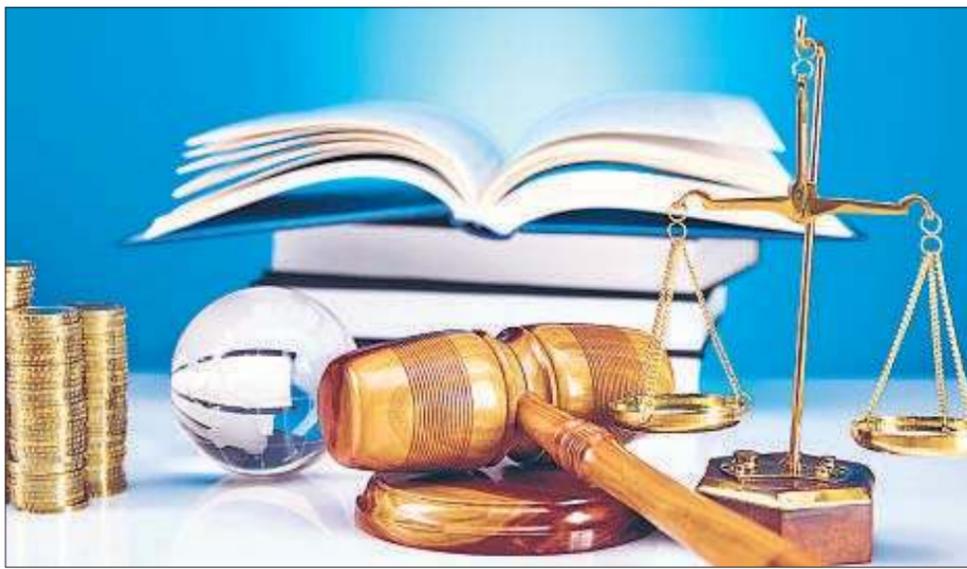
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LEGAL REMEDIES

A common man invests his hard-earned money to purchase a house of his own. After regularly paying easy monthly installments for buying the property and living in a rented property because of delay in possession is a mental and monetary burden. The National Consumer Dispute Redressal Commission in its decision of 2013 addressed this issue in a particular case.

The complainant had booked an apartment in a residential project in Gurgaon on the assurance by the developer that the project would be completed by a particular date in 2009. The entire payment was made as per the installment schedule. An agreement was executed between the complainant and the developer and, according to it, the developer was to hand over possession of the apartment to the complainant within 36 months of the execution of

the buyer's agreement. The possession of the apartment was not given even at the time of filing of the complaint in 2012. The complainant argued that he had been compelled to take a residential accommodation on rent and pay both installments and rent and had still not received the possession of the apartment. He was thus bearing an additional monetary burden. The developer offered to pay a penalty for delay at the rate of ₹7.50 per square foot instead of ₹5 per square foot, which was stipulated in the agreement, for the delayed period and also to refund the entire money with interest at the rate of 15% instead of 10%, but no such compromise was arrived at. The commission decided that there was an undue delay in handing over possession of the apart-



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ment despite the developer having taken the entire payment for it. The commission asked the developer to honour its commitment.

The commission directed that the possession be handed over to the complainant within six months, failing which the developer would have to pay an extra penalty of ₹25,000 per month.

The developer was also directed to pay rent and the increased rent of the flat, which

the complainant had taken on lease, till possession was given. The commission stopped the payment of penalty for the period of delay as these factors stood covered in the payment of rent to the complainant. The compensation for litigation charges was also granted in favour of the complainant. An appeal against this judgment was filed in the Supreme Court but the developer withdrew it subsequently.

Though the above case was

decided on particular facts and circumstances of the case, but wherever the facts are similar, buyers can pray for similar relief.

The above judgment comes as a huge relief to many home buyers who are at present living in rented accommodation and are waiting for their homes to be delivered by various developers.

In case developers fail to deliver and there is unreasonable delay, buyers placed in similar situations can seek

similar relief before consumer fora. Judgments like these will definitely create pressure on developers to deliver their projects on time and benefit large number of apartment buyers.

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

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LAW BOOK
Sunil Tyagi

I live in Delhi in a three-storeyed joint family property with my two brothers. I wish to seek partition of the immovable property. Which is the appropriate court of law to institute a suit for partition?

- Piyush Sahdeva

Before filing a suit involving immovable property, two factors have to be kept in mind. Firstly, the location of the property to ascertain the territorial jurisdiction and, secondly, the value of property to ascertain the pecuniary jurisdiction. On the basis of territorial and pecuniary jurisdiction, the appropriate court is ascertained. In Delhi, where immovable property is valued at ₹20 lakh or more, a suit for partition is to be instituted in the High Court of Delhi. And where value of immovable property is less than ₹20 lakh, the suit shall lie before the district court under the jurisdiction of which the immovable property is located.

cuted with your previous landlord. If the lease deed provides for execution of a new lease deed in the event of transfer/sale of property during the term of lease, you will have to execute a new lease deed. Otherwise, the existing lease deed will continue and the new landlord will step into the shoes of the existing landlord.

My mother (Hindu by religion) was the owner of a house. I have a brother and sister. My mother died without making any will. Does my sister have any right in the house? If yes, can she relinquish her share in the property only in my favour?

- Meet Singh

As per the applicable laws, all three of you (ie your brother, sister and you) have inherited equal undivided share in your mother's house on her death. As regards to relinquishment by your sister of her share in the property, she can relinquish it, but not in favour of a specified person, to the exclusion of others. If your sister wishes to transfer her share only to you, to the exclusion of your brother, she may do so by executing a gift deed of her share in the property in your favour.

I have taken a house on lease for a period of three years. However, before the expiry of the lease, my landlord has sold the premises to a third person. My new landlord wishes to execute a fresh lease deed of the premises. Is this permissible?

- Cara Singh

After the sale of the leased premises, rights of your previous landlord stand transferred in favour of your new landlord. Execution of a new lease deed depends upon the terms and conditions of the existing lease deed exe-

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CHEQUE BOOK
Harsh Roongta

For down payment, how much should one keep aside ideally? How do you arrive at this percentage?

- Santosh Verma

Normally lenders grant home loan of up to a maximum of 80% (90% for loan amount below ₹20 lakh) of the agreement value of the property as home loan. The overall eligibility will be based on your income, your regular outgoings and repayment track record and any existing

loan, which you are presently servicing.

This means that your down payment will have to be at least between 10% and 20% of the cost of the property. Moreover, as per Reserve Bank of India guidelines, the bank will not take into account stamp duty and registration cost, while calculating the cost of the property. Therefore, in addition to 10% or 20%, you will have to fully

fund the cost of stamp duty and registration charges.

The property is valued by the valuer appointed by the bank. Based on that, the amount to be financed for the property is decided by the bank. In case the valuation done by the valuer is lower than the agreement value, your eligibility in percentage terms shall be decided on the basis of the value as arrived at by the bank's valuer and you will have to pay the remaining amount. Moreover, there are some components of the cost of the flat, which may or may not be financed by the banks and consequently your down payment requirement

for the property will go up.

I am going to buy a flat in Thane, Maharashtra. I'm working but my wife is not. Can she be my co-applicant for a home loan?

- Shankar Raman

It is desirable to include the name of the spouse as a joint owner for the purpose of succession. If your spouse is a co-owner, then she will necessarily have to become a co-borrower. If you decide against making her a co-owner, then there is no advantage in making her a co-borrower. However, a lot of lenders insist on the spouse becoming a co-borrower even if she is not a co-owner.

My parents own a piece of land on which we wish to construct a house. If I take a home loan in my name as a co-applicant, will I get tax benefits even if the land is not in my name. If my parents give me the land as a gift, and if I apply for a home loan, will I be eligible for tax benefits?

- Sagar Sharma

To get a loan, your parents will have to be co-borrowers with you as they are the owners of the property. You cannot claim any tax deduction benefits on the loan if you are not a co-owner of the property. Becoming a co-owner through a gift deed or sale deed will help you get tax deduction but both options will entail payment of stamp duty.

I want to buy a flat in Delhi and the seller has informed me that the flat was allotted to him by DDA on leasehold basis. Later, he got the flat converted to freehold. What documents do I need to check?

- Sangeeta Sharma

Check the copy of conveyance deed and find out if the property tax and other utility bills have been paid up to the date of purchase. Verification can also be done at the sub-registrar's office to find out if transfers in respect of the flat are registered with him. Get a lawyer for due-diligence.

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