

# Compensation clause in builder-buyer agreement is unfair, one-sided

ISTOCK

The National Commission holds that the clause in the builder-buyer agreement providing nominal compensation to buyers is unjust, exploitative and tantamounts to unfair trade practice

## htestates LEGAL REMEDIES

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In a recent judgment, the National Consumer Dispute Redressal Commission (National Commission) addressed almost 24 similar consumer complaints and granted major relief to consumers and apartment buyers by going beyond the terms of the builder and buyer agreement and holding that the compensatory clauses in the agreement were unfair and one sided. In its judgment dated June 8, 2015, the National Commission directed the builder to hand over possession of the flat to consumers in a time bound manner and also awarded legal costs to the buyers/consumers.

In this case, consumers/buyers had booked flats in a complex being developed in Gurgaon, Haryana, and entered into individual buyer agreement with the builder. It was agreed that possession of the flat would be handed to the buyers within 36 months from the date of the agreement. However, even after 50

months, neither was possession delivered to the buyers nor was the construction completed by the builder.

The consumers approached the National Commission to seek appropriate relief. The buyers in their complaints sought delivery of possession of flats and demanded compensation at the rate of 18% compoundable interest for the period of delay. In lieu of loss for rental income, the buyers demanded compensation at the rate of ₹5 per square feet, according to the terms of the agreement from the date on which the possession of the flat was supposed to be handed.

In addition to the above relief, the buyers also pleaded for grant of compensation on account of mental torture and agony suffered due to such unjustifiable delay in handing over possession of the flat.

The builder admitted the delay in handing over possession, but defended the delay on account of various factors like slowdown in the real estate sector and shortage in supply of material and labour due to government notifications and schemes, Commonwealth Games, shortage of brick kilns and sand mining.

After hearing both the parties the National Commission

observed that the reasons/exceptional circumstances cited by the opposite party had no force and no such documents were placed on record to support that there was any shortage of material and labour at site and held that the opposite party/builder is liable to pay compensation for delay.

The National Commission further turned down the contention of the builder that compensation payable had to be calculated only at the rate of ₹5 per sq ft of the super area of flats as it was stipulated in the agreement and therefore the same was binding on the buyers. It held that such a term/ clause of the agreement was one sided, unfair and unreasonable. It also observed that in the event of default/delay on the part of buyer in making payment, the agreement provided for payment of 18% compoundable interest to the builder; on the contrary in case of delay/default by the builder in handing over possession of the flat, the builder was liable to only pay ₹5 per sq ft. Therefore, the National Commission held that such a clause in the agreement providing nominal compensation to buyers is unjust and exploits the consumers and tantamounts to unfair trade practice.

With respect to the objections regarding maintainability of

the complaints on the ground of pecuniary jurisdiction (jurisdiction of a court over a lawsuit based on the value of its subject matter: Delhi High court now has jurisdiction over cases worth R2crore) and arbitration clause, the National Commission held that as on date of filing of the complaint, the prices of the flats had increased to more than R1crore rupees and thus complaints had been rightly filed and existence of arbitration clause in a builder-buyer agreement did not stop consumer forums from granting appropriate relief to consumers on account of deficiency in services and unfair trade practices. On the issue of limitation raised by the builder, the commission held that non-delivery of possession is a continuous wrong, which constitutes recurrent cause of action and so long the possession is not delivered, buyers can always approach consumer forums for appropriate relief.

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