

Compensation for delay in possession

LEGAL RECOURSE Of late, many courts have adopted a strict approach for delays in possession, terming them 'deficiency in services'

htestates legal remedies

Sunil Tyagi
■ htestates@hindustantimes.com

Buying a home of their own is still a dream that eludes many Indians. Booking an apartment with a builder is the first step towards the fulfilment of this dream. Delays in delivery of apartments even after consumers have been paying EMIs regularly greatly inconveniences them as they have to also pay rent for their temporary shelter. Many people have been forced to seek legal recourse against builders who make false promises and misrepresentations to them when the property is being booked and by executing builder-buyer agreement on terms and conditions that are not complied with.

Of late, the courts of law have adopted a strict approach for such delays in handover of possession, terming them 'deficiency in services' by the builders. As in the recent case of Sangeeta Jain and two others (complainants) versus (i) Yamuna Expressway Industrial Development Authority (YEIDA) and two

others; and (ii) Department of Stamp and Registration (opposite parties), the National Consumer Disputes Redressal Commission (NCDRC) ordered one of the opposite parties to pay compensation and granted various other reliefs to the complainants because of delay in handover of the possession of booked residential property to the buyers.

The case is about allottees of residential plots in the pre-launched residential plot scheme by YEIDA called Yamuna Expressway Industrial Development Authority Residential Plot Scheme 2009. The allottees or complainants, under the opted plan, were obligated to pay 30% of total premium upfront and the remainder in 16 half-yearly instalments, with interest at the rate of 12% pa. It was stated that the scheme provided for possession of the plots to be handed over to the allottees, upon payment of 75% of premium or after four years from date of issue of allotment letter, whichever was later. The stamp charges, registration charges, etc. were to be borne by the allottees at the time of execution of the lease deed.

The complainants alleged that YEIDA sent 'defaulter notices' with threatening consequences to allottees despite them duly remitting the instalment amount. Aggrieved by such notices, a complainant filed an RTI application to which YEIDA responded stating that the lease plan was not received from the Planning

Department and hence YEIDA was not in a position to give possession.

The Complainants further contended that YEIDA had the duty to approach the Planning Department for lease plan and get their approval which it failed to perform. Moreover, YEIDA had not even initiated development activities and the status of the land remained what it was prior to allotment of plots. The Complainants had already made 75% of the payment and failed to get any response to subsequent letters from YEIDA.

YEIDA called upon one of the complainants to execute an agreement to lease (ATL) and informed them that the said agreement would mention allotment rates and not circle rates. YEIDA went on to make the execution of fresh ATL compulsory for the purpose of transfer of plots in favour of the complainants from the previous allottee. It was alleged that that YEIDA did so in absence of ownership, possession and without demarcation of plots and for the benefit of the Department of Stamp and Registration and Registry Office. Further, the stamp duty on the previous ATL was not adjusted and was charged at 5%

MANYPeople HAVE BEEN FORCED TO SEEK LEGAL RECOURSE AGAINST BUILDERS WHO MAKE FALSE PROMISES AND REPRESENTATIONS

of the circle rate and not on the original allotment rate.

NCDRC held YEIDA guilty of unfair trade practice stating that it should not have announced the scheme without having a clean title of the acquired land as it was common knowledge that farmers move to High Court and then to Supreme Court for enhanced compensation after approaching district/additional district judge.

YEIDA was directed to handover possession of the property to the complainants, within one year. In case that was not possible YEIDA had to provide alternative property to the allottees as per their choice. If neither of the given options were possible, then YEIDA was to pay back the amount to the complainants, along with stamp duty and interest at the rate of 12% per annum if desired by the complainants from the date of deposit till realisation.

YEIDA was also directed not to take interest for the remainder payments towards allotment of property to allottees except for four years till the complainants were in possession of their respective property. Further, YEIDA was debarred from sending any "defaulter notice" or forcing allottees to execute lease deeds without possession of land.

The author is a 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 and htestates@hindustantimes.com.



htestates
law book
SUNIL TYAGI

I and my sisters jointly inherited a property in Delhi which was owned by our father. Now this property is being reconstructed by a builder. In the reconstructed property, I will own the first floor and my sisters will also own one floor each and the builder will also own ground floor and basement. How can we register our shares in this reconstructed property and not of the builder?

— Sangeeta Puri

Once the property has been reconstructed, you and your sisters may execute and register a partition deed of this property with respect to your shares (other than builder's share). This way, you and your sisters would be able to register ownership of your respective floors.

My father has a residential property in Delhi. I am the only son of my father. My father has taken a home loan for the said property and the loan is still continuing. Therefore, considering the present scenario can my father execute a gift deed in my favour? Will there be any legal issues if he goes ahead with gift deed regarding the said property?

— Benny Shah

If a property is under mortgage for a loan a valid gift deed may only be executed after taking prior permission of the lender.

We have registered a co-operative group housing society under The Delhi Co-operative Societies Act, 2003. Are we mandatorily required to open an account exclusively in a cooperative bank or can we open our account in a

nationalised bank to invest or deposit our fund?

— Pratik Arora

As per the provisions of the Delhi Cooperative Societies Act, 2003, a cooperative society may invest or deposit its fund with cooperative or scheduled or nationalised bank. Therefore, your housing society may open an account in a nationalised bank as it is not mandatory for a cooperative society to open an account in a cooperative bank to invest or deposit its fund. However, a co-operative society may invest or deposit its fund in a postal saving bank account also, ie with post office.

I live in a flat in Delhi which is owned jointly by me and my wife. As per our understanding, I would like this flat to be solely in her name and therefore I want to delete my name as joint owner of the flat. Is this possible? Will I have to pay stamp duty?

— Devang Sah

If this flat was purchased by both jointly, you have two options – you may either execute a gift deed or a transfer deed of your undivided share in favour of your wife. A gift deed or a transfer deed attracts payment of appropriate stamp duty, as applicable in Delhi.

The author is a senior partner, Zeus Law Associates, a corporate commercial law firm. One of its areas of specialisation is real estate transactional and litigation work. If you have any queries, email us at htestates@hindustantimes.com



ISTOCK



htestates
cheque book
HARSH ROONGTA

I purchased a flat in Ghaziabad, Uttar Pradesh, in 2011 for which I took a home loan. I have booked another flat in Ghaziabad which is yet to be registered. I hope to get possession of the second flat by March 2017. I am planning to take a home loan on the second house too. Once I shift to the new flat, I plan to sell off my old flat. Can I use capital gains from the first house to prepay my home loan that I intend to take for the second house?

— Swati Jain

The capital gain on your existing Ghaziabad flat will be calculated on the sale price minus the indexed cost of acquisition. Assuming the existing house in Ghaziabad that was bought any time after April 1, 2011, the indexed cost will be 1.43 times the original cost (i.e. index value of 1125 for financial year 2016-17 divided by index value of 785 in financial year

2011-12). Let's assume that the purchase date of the new Ghaziabad flat is within one year before the date of sale of the existing Ghaziabad flat. If so, then if the cost incurred on purchasing the new Ghaziabad flat is higher than or equal to the capital gain as calculated above, it will not matter whether you use the sales proceeds of the old flat to pay the builder or to pay off the home loan.

In either case, you should be able to claim exemption on the capital gains

I have chosen to buy a flat in a city in Maharashtra and have paid

20% of purchase value to the builder. The deal amount is decided and agreed.

The flat will be ready for possession in June-2017. The builder has asked me to register the agreement any date before possession. Considering the GST coming into force in April next year, which would be the best period do you think (before or after GST coming into force) to register an agreement? I want to save on paying service taxes.

— Pankaj Mathur

The exact regulations or even the tax rates of GST or the date of its implementation are still far from clear so it is not possible to answer your

question with certainty. But it is very unlikely that GST rate will lead to any savings over service tax rates.

In any case leaving a property unregistered is extremely risky as far as your title to the property is concerned. You should be much more concerned about the safety of your basic investment rather than trying to save on taxes (which in any case is not likely in this case). So, from all accounts I would advise you that it is much better for you to register the property immediately.

I'm planning to buy a house in my

wife's name. She is a housewife with no source of income. How will the Benami Property Amendment Act affect my purchase transaction and after-purchase transactions?

— Rakesh Sharma

The Benami Transaction (Prohibition) Amendment Act does not affect property bought in the name of the spouse. This applies as long as the consideration for such property has been paid out of the known source of such an individual.

Harsh Roongta is a SEBI registered investment adviser. He can be contacted on HT@harshroongta.com



SHUTTERSTOCK