

Force majeure not an excuse to delay handover

LEGAL CLEARANCE If a builder-buyer agreement including the force majeure is executed but conceals vital facts, the document is not binding on the buyer



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GETTING TO KNOW THE LAW

- A builder-buyer agreement contains the terms and conditions regarding the allotment of an apartment by a builder to a prospective buyer and also the timelines for the handover of the booked apartment/ unit. A force majeure clause in the agreement allows the builder to suspend or terminate the obligations undertaken by them in the event of certain circumstances beyond their control.
- NCDRC held that since the agreement containing the force majeure clause was executed and concealed material facts on the part of the appellant, the aforesaid agreement is not binding on the complainants.

As per the terms and conditions of the agreement, the builder had to deliver the plots within a period of 24 months, with a grace period of six months. Despite the fact the buyers/allotees had made substantial payment against the consideration amount, the builder failed to deliver possession of the respective plots within the stipulated time. This forced the complainants to raise a consumer dispute before the state commission for which they received a favourable verdict.

The builder pleaded before NCDRC that it had obtained necessary wild life clearance, forest clearance, letter of intent issued by department of town and country planning department Haryana (DTCP) for setting up of residential plotted colony on the additional land before seeking application of allotment of plots from the public at large. It was pleaded by the builder that in response to their letter dated March 16, 2011, it was instructed by the DTCP not to carry out any work unless he received clearance from the irrigation department, Haryana. This condition was imposed for the first time although there was no mention of such condition either in the letter of intent or the licence for development issued in favour of the appellant.

The requisite clearances and permissions from the competent authorities took nearly three

to four years from the date of issuance of the said letter dated March 16, 2011 and there was stay against the development on the subject land by the order of Supreme Court which remained in operation from April 19, 2012 to Dec 12, 2012. It is also argued that the state commission has ignored the aforesaid aspects which caused delay in the development of the project and delivery of plots to the respondents and the obstructions were not within the control of the appellant. Thus, in view of the force majeure clause, the complaint

ought to have been dismissed.

On the other hand, it was contended on behalf of the respondents that benefit of force majeure clause is not available to the appellant for the reason that the appellant entered into the plot buyer's agreement with the respondents by concealing material facts.

NCDRC did not find any merit in the contention of the appellant and held that the protection of force majeure clause in the agreement between the parties was not available to the appellant for the reason that it

was the stand of the appellant that vide letter dated March 16, 2011, DTCP Haryana had directed the appellant not to carry out any earth work or construction work at the subject site without obtaining no objection certificate from the irrigation department Haryana. Despite the restraint, the appellant executed the plot buyer's agreement with the complainants during the period June 23, 2011 and June 24, 2011. NCDRC also observed that while entering into the agreement, the appellant did not mention the

restraint letter dated March 16, 2011 issued by DTCP Haryana. NCDRC opined that by concealing material facts, the appellant defrauded the respondents/complainants to execute the agreement that contained the force majeure clause, which is an unfair practice and amounts to deficiency in service.

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I am a non-resident Indian (NRI) and own a residential property in Delhi. I wish to transfer the same to my relative who is an Indian citizen who resides outside India? Am I allowed to do so?

- Sameer Pande
Yes. It is allowed. As per Foreign Exchange Management Act (FEMA) regulations, a non-resident India (NRI) can transfer any immovable property (other than agricultural land or plantation property or farm house) to an Indian citizen resident outside India or a person of Indian origin resident outside India.

I have made a gift of an immovable property in favour of my daughter. The gift deed has been duly registered and attested. However, I have reserved the right to use the property and to receive the rents from the property during my lifetime. Is such a conditional gift valid?

- Siddharth Mehta
As per the Transfer of Property Act, delivery of possession is not an essential prerequisite for making a valid gift in case of an immovable property. A duly executed gift deed whereby absolute title in the gifted property is transferred from donor to donee, with the right to retain possession and received rents therefrom, constitutes a valid gift.

I am a 32-year-old working woman. I am Hindu by religion. I

live with my minor son who is eight years old. My husband expired a few years ago. The residential property in which I and my son reside was inherited by my son from his grandfather a few years ago. Am I, being his mother, entitled to mortgage the said property for a loan?

- Sonali Gupta
As the said property is in name of your minor son, you may create a mortgage on it only after obtaining prior permission of the court as per provisions of Hindu Minority and Guardianship Act, 1956.

I am a resident of Delhi but presently settled in Pune. I have property in Delhi which is my self-acquired property. I had leased out the property to a tenant and he has informed me that a new electric meter needs to be installed as the old one is giving a faulty reading. Can I give a power of attorney to the tenant?

- Shikha Khare
You may execute a special power of attorney in favour of your tenant for acting in your behalf for the specific purpose of replacing a faulty electric meter.

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In a recent case, decided by the National Consumer Disputes Redressal Commission (NCDRC) the defence of force majeure clause was used by the builder to try and escape from any penalty that may be imposed on it due to delay caused in the handover of the possession of the apartment.

In the present case, being aggrieved by an order of Haryana State Consumer Disputes Redressal Commission held the builder guilty of deficiency in service. It directed it to refund the money paid by the complainants with 12% interest besides payment of compensation and litigation expenses. Later, an appeal was made by the builder/developer (appellant) to NCDRC.

The brief facts of the case are that the prospective buyers or allottees (complainants/respondents) booked residential plots in a development project undertaken by the builder in Sector 3, 4, 4-A of Islam Nagar, Pinjore Kalka Urban Complex District, Panchkula. A plot-buyer's agreement was executed between the builder and the buyers in 2011.