

In a battle for delayed delivery, original buyers can gain more

Original allottees in a recent case were awarded more compensation for delayed delivery than others who repurchased apartments later

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Anyone interested in investing in a particularly attractive project is bound to be disappointed if he or she finds that all apartments in that complex are booked. The person is then forced to buy a unit from someone already invested in the project. In this situation, the intended buyer/investor becomes a subsequent/substituted allottee and steps into the shoes of the original allottee. Now the question is: will the new allottee who has acquired allotment by way of repurchase/transfer and the original allottee be on equal footing?

In a recent judgment, the National Consumer Dispute

Redressal Commission (National Commission) dealt with a similar issue while redressing 24 similar/identical consumer complaints filed by consumers comprising of both original allottees and substituted allottees having acquired allotment by way of repurchase/transfer. The National Commission granted relief to all the allottees by going beyond the terms of the builder-buyer agreement, holding that the compensatory clauses in the agreement were unfair and one-sided. However, the compensation awarded to the original allottees and the substituted allottees was different. In one case, the allottees had booked flats in a complex in Gurgaon, Haryana, and entered into individual buyers agreement with the builder. There were cases where original allottees transferred their allotment in favour of third parties. It was agreed that possession of the flats would be handed over to the allottees within 36 months from the date of the agreement. However, even

after 50 months, neither was possession delivered to the allottees nor was the construction completed by the builder. Therefore, the allottees, being left with no option, approached the National Commission seeking appropriate relief. The allottees in their complaints sought delivery of the flats and demanded compensation for the delay.

In lieu of loss for rental income, the allottees also demanded compensation at the rate of ₹5 per square feet, according to the terms of the agreement. It was to apply from the date when possession of the flat was to be handed over. The buyers also pleaded for grant of compensation on account of mental torture and agony suffered due to unjustifiable delay in handing over possession of the flat.

The National Commission allowed the complaint and directed the builder to hand over possession of flats to all the allottees in a time bound manner. However, for the purposes of awarding compensation, the



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National Commission differentiated between the original allottees and substituted allottees.

The original allottees, and substituted allottees who had booked flats within one year from the date of the initial agreement between the original allottee and the builder, were for the purpose of compensation to be treated at par with each other and accordingly granted compensation/interest at the rate of 12% per annum with effect from 36 months from the date of the initial agreement till the actual date of possession.

The reason given for awarding this compensation was that such allottees could not have foreseen that the builder would

be unable to deliver possession within the stipulated date as two more years were still left for the builder to hand over possession.

On the other hand, the substituted allottees who had acquired allotment by way of repurchase/transfer from the original allottee, after more than one year from the date of the initial allotment, could not be treated at par with the original allottees. The National Commission observed that such substituted allottees had knowledge that builder would not be able to give possession of flat on time. Thus, the National Commission awarded compensation/interest at the same rate of 12% per annum but not from three years from the

date of their initial allotment, but from three years from date of repurchase/transfer till the possession was handed over. For the period between three years from the date of initial allotment and three years from the date of repurchase/transfer, the National Commission granted the transferees compensation of ₹5 per square feet of super area of the flat per month.

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