

Manoj Kawatra vs. Pioneer Urban Land & Infrastructure

The Hon'ble NCDRC (National Consumer Disputes Redressal Commission) recently passed an order in the case of **Manoj Kawatra vs. Pioneer Urban Land & Infrastructure** [Consumer Case No. 1442 of 2018, decided on 01-11-2021], wherein the Hon'ble NCDRC directed the Pioneer Urban Land & Infrastructure Ltd. (the "Developer") to refund the amount received from the home buyers along with compensation for delay in handing over the possession and that the Builder cannot take recourse to the *Force Majeure* provision for delay in delivering projects.

Brief facts of the case:

1. The Complainants (two home buyers) had booked two flats in project "Araya" of the Opposite Party (Builder).
2. Subsequently, the said units were allotted through Allotment Letter.
3. Thereafter, an apartment buyer's agreement was entered into between the Parties, wherein the possession of the said units were promised to be completed and delivered by 04.03.2016.
4. Accordingly, 90% of the consideration amount was paid by the home buyers but the said flats were not handed over by the Developer as per the apartment buyer's agreement and the Developer claimed protection under *Force Majeure* events for such delay.

Contention of the Complainants:

1. Pursuant to the above mentioned facts, Complainants contested that, despite the payment of 90% of the sale consideration, the Opposite Party failed to hand over possession of the Unit, within the promised time period and even possession in the near future seemed unlikely.
2. The Complainants had made substantial payment towards their flat and cannot be penalized if the Opposite Party could not collect payments from other flat buyers. Moreover, if only some customers failed to make payments in time, the Opposite Party is not expected to delay the entire project.
3. Hence, the Complainants claimed for a refund of the entire sums paid by them along with compensation.

Contention of the Opposite Party:

1. The Complainants failed to make timely payments.
2. The Opposite Party, while admitting delay in delivering possession of the Unit, stated the reasons for such delay as shortage of labour due to construction of Commonwealth games village, shortage of water, dispute with construction agencies, delays in obtaining licenses, approvals etc. which was purely beyond their control hence they were "*Force Majeure*" events. Hence, the Opposite Party would be entitled to extension of time, without incurring any liability.
3. Further, it was contended that the time stipulated for delivering possession of the Unit in the apartment buyer's agreement was only tentative.

Observations of the Hon'ble NCDRC:

Unforeseen nature of the reasons for delay is the essence of Force Majeure events:

1. Held that, neither any new legislation was enacted nor an existing rule, regulation or order was issued stopping/suspending or delaying construction. There was no evidence of any lock-out or strike by the labour at the site of the project.
2. There was no civil commotion, war, enemy action, terrorist action, earthquake or any act of God which could have delayed the construction of the project.
3. That the Opposite Party merely narrated a set of events and obstacles which are routinely faced by project developers. The Opposite Party failed to prove that there was any unforeseen and unexpected event which prevented the completion of the Project within the stipulated time period.
4. The essence of any *force majeure* event is the nature of its uncertainty. Since there were no events which were unforeseen or could not be anticipated, the Developer merely was taking shelter behind the veil of "*Force Majeure*"; as the reasons cited by the Opposite Party for the delay of the project, appear to be delaying tactics and seem to be an attempt to wriggle out of its contractual obligations.

NCDRC held and directed as follows:

1. In view of the abovementioned observations, Opposite Party failed to fulfil its contractual obligation of delivering possession of the Unit to the Complainant within the time stipulated in the agreement, or even within a reasonable time thereafter.
2. A person cannot be made to wait indefinitely for the possession of the flats allotted to him/her.
3. Hence, the Opposite Party was responsible to refund the entire amount received from the Complainants along with the compensation in the form of simple interest @9% p.a.

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