

INFOLEX
CONSULTANTS

LEGAL INSIGHTS:
CONSTRUCTION & REAL ESTATE

RECENT IMPORTANT LEGAL DEVELOPMENT

1. HOMEBUYERS, WHO STAYED IN DELAYED REAL ESTATE PROJECTS, CAN ONLY GET INTEREST, AND NOT COMPENSATION.

In the case titled as *Vandana Negi v. Address Infrastructures Private Limited & Anr.* [RERA/AdC/0055/2024], the Ld. RERA, Punjab, by relying on the Hon'ble Supreme Court's ruling in *Newtech Promoters and Developers Private Limited v State of Uttar Pradesh (2021)*, had reiterated that compensation is a distinct remedy available only when an allottee exits the project. It concluded that Negi remained bound by the 2023 agreement and had already chosen and received the statutory remedy of interest, and therefore no further claim was permissible.

2. AUTHORITIES AND TRIBUNALS ESTABLISHED UNDER RERA ACT, CANNOT ADJUDICATE TITLE DISPUTES OR GRANT DECLARATORY OR INJUNCTION RELIEF, AS SUCH POWERS LIE EXCLUSIVELY WITH CIVIL COURTS.

In the case titled as *Sana Hospitality Services Pvt. Ltd. v. Madan Kishan Gurow & Ors.* [Civil Revision Application/606/2024], the Ld. Bombay High Court, had noted that:

28. Thus the core issue that arises for determination as to whether the Plaintiffs are bona fide purchasers for value without notice of the prior instrument between Defendant Nos.1 and 2, would warrant investigation into a host of facts. Dispute would, thus, partakes the character of a lis between the two sets of allottees. Such a dispute between the allottees, nay which of the two instruments is legal and valid, is not a matter which the authorities under the RERA are empowered to adjudicate. Consequently, the reliefs of declaration and injunction sought by the Plaintiffs in the instant suit, may not be granted by authorities under RERA.

It also relied on the Supreme Court's ruling in *State of Tamil Nadu v. Ramalinga Samigal Madam* (1985), which held that even if a statute gives finality to the decisions of a special tribunal, courts must still examine whether that tribunal can grant the kinds of reliefs a civil court ordinarily would. If it lacks those powers, the judgment noted, it becomes difficult to infer that the civil court's jurisdiction has been excluded.

3. DESPITE RECEIVING NEAR TO FULL PAYMENT, UPON FAILURE TO DELIVER POSSESSION OF FLAT WITHIN AGREED TIME, CONSTITUTES DEFICIENCY IN SERVICES.

In the case titled as *Ruma Mohandas Gopani v. Frontier Shelters Private Limited* [SC/29/CC/69/2024], the Ld. SCDRC, Karnataka, had noted that the Opposite Parties must pay delay compensation as agreed in the construction contract. However, it rejected the Complainant's request for higher compensation of ₹80,000 per month, noting that there was no proof that the agreed rate was inadequate. The Commission also stated that the Complainant cannot claim more money than what was agreed, especially when the delay was caused by several external factors.

The Commission concluded that the Opposite Parties' failure to deliver possession within the stipulated period, despite receiving 95% of the payment, constituted a deficiency in service.

4. BUILDER IN FULL COMPLIANCE OF RERA NORMS, CANNOT BE HELD RESPONSIBLE FOR HOMEBUYER'S DELAYED HOME LOAN APPROVAL.

In the case titled as *Hitendrakumar Bhaichandbai v. Piramal Estate Pvt. Ltd.* [Complaint No. CC12401072], the Ld. Maharashtra RERA, had noted that Authority noted that Section 19(1) gives a homebuyer the right to obtain complete information about the project including the approvals and permissions secured by the builder from the competent authorities.

Authority observed that the project was registered with MahaRERA at the time the Homebuyer booked the flat. Therefore, all relevant details about the project including necessary permissions and pending litigations were available on the MahaRERA website for public access.

Accordingly, the Homebuyer's claim that the Builder failed to provide information required for a home loan is incorrect.

5. DISPUTES INVOLVING FRAUD WITH OTHER COMPLEX MATTERS, CANNOT BE ADJUDICATED UNDER CONSUMER LAWS.

In the case titled as *Mrs. Rajni Suryakant Gujar & Anr. v. Shree Vinayaka Developers [FA/89/2017]*, the Ld. NCDRC, New Delhi had noted that:

“14. In view of the above facts and binding judicial precedents, it is clear that the appellant does not qualify as a "consumer" within the meaning of the Consumer Protection Act, 1986. The transaction in question was with an individual and not with the firm or its authorized partners. The nature of the dispute involves serious allegations of fraud, criminal breach of trust, and unauthorized financial dealings, which are matters for adjudication under criminal and civil law and not within the jurisdiction under the Consumer Protection Act, 1986.”

6. UNILATERAL CANCELLATION OF FLAT ALLOTMENT, RE-SELLING THE UNIT AND RETAINING THE FUNDS PAID BY BUYER, STANDS AS UNFAIR TRADE PRACTISE.

In the case titled as *Sh. Abhishek Pandey v. Magic Eye Developers Pvt. Ltd. [FA/89/2017]*, the Ld. DCDRC - VI, New Delhi had noted that:

“24. In the facts of the present case, the Complainant paid a substantial amount of ₹12,30,641/-, no agreement for sale was executed, possession was not delivered by the contracted date of April 2016 (even allowing for grace periods) and the unit was

cancelled and resold by the Opposite Party without refunding the Complainant. The Complainant has successfully established his case through un rebutted evidence. Thus, the Opposite Party's conduct falls squarely within the scope of unfair trade practices as defined in Section 2(47) of the Consumer Protection Act, 2019, and amounts to deficiency in service under Section 2(11). Accordingly, the Complainant is prima facie entitled to the reliefs claimed."

7. RERA HAS NO POWER TO GRANT EVICTION / POSSESSION RECOVERY ORDERS.

In the case titled as ***Raajyam Realty LLP v. Radhika Ganatra & Anr.*** [COMPLAINT NO. CC006000000591010], the Ld. RERA, Mumbai had noted that:

D. Further, the recovery of possession, and eviction of the respondents, are beyond the scope of MahaRERA's jurisdiction. The reliefs sought necessarily involve adjudication of proprietary and possessory rights, which fall exclusively within the jurisdiction of a competent civil court. MahaRERA, being a regulatory body, does not have the authority to grant reliefs involving recovery or eviction. Accordingly, the complainant is at liberty to approach the competent civil court for appropriate remedies.

8. BUILDER FAILING TO COMPLETE PROJECT AND HIS FAILURE TO OBTAIN OCCUPANCY CERTIFICATE, MAKES THE BUILDER LIABLE.

In the case titled as ***Uttam Bhagwan Bhosle & Anr. v. M/s Calyx Spaces LLP & Ors.*** [COMPLAINT NO. CC005000000289987 & 66 Other], the Ld. RERA, Mumbai had noted that the builder has not completed the project and has also failed to obtain the Occupancy Certificate. Such delay amounts to a breach of the contractual terms and has caused significant hardship to the homebuyers.

Authority held that refund or interest shall be calculated only on the amount mentioned in the Agreement for Sale for each home buyer. Authority noted that while some home buyers may have paid extra amounts towards registration or stamp duty, such payments cannot be treated as part of the flat's sale price for deciding the relief.

9. CONTRACTOR LIABLE FOR DEFICIENCY IN SERVICE AND UNFAIR TRADE PRACTICES FOR FAILING TO COMPLETE THE TRUSS ROOFING PROPERLY, CAUSING LEAKAGE AND STRUCTURAL DEFECTS.

In the case titled as *Deepanjali P.B. & Anr. v. Pradeep Kumar S. [CC/56/2024]*, the Ld. DCDRC, Ernakulam had noted that:

(C) Application to Facts.

- *The workmanship defects recorded in Ext.C1 are not superficial; they are systemic and structural, producing sustained leakage and damage immediately upon the monsoon.*
- *The opposite party's assurances of expertise and absence of on-site supervision are inconsistent with the result. The minimal "screw-fix" visit months later did not cure the defects.*
- *On these facts, the Commission is satisfied that the opposite party's performance falls squarely within "deficiency in service" as per Section 2(11) CPA 2019.*

10. CUSTOMERS HAVE THE RIGHT TO BE INFORMED ABOUT THE PROPER USE AND RISK ASSOCIATED WITH THE PRODUCT AT THE TIME OF SALE.

In the case titled as *Geo Johnson v. Proprietor, Ideal Agencies [CC/570/2010]*, the Ld. DCDRC, Thrissur had noted that:

[...] Section 6 (b) of the Consumer Protection Act, 1986 invests the consumer with a right to be informed, amongst others, about the quality, purity, potency, standard etc of the goods that he purchases, so as to protect himself against any unfair trade practice. This

right of his, helps the consumer take informed decisions. A retail shop is not a centre meant merely to collect money from the end consumers, whose duties and responsibilities to the consumers extinguish once the transaction is accomplished. The retailer is expected to help the consumers take informed decisions in respect of the purchase, concerned, and hence owes a duty to furnish the consumers with such information relating to safe and hassle free use of the products that he sells.

In the instant case, the opposite party is seen to have deprived the complainant of this right of his to take informed decision in respect of the purchase, though the opposite party was admittedly well aware of the fact that the use of certain cement/clay/chemicals may cause harm to the tiles, which in turn constitutes deficiency in service on their part. Hence we are inclined to hold that there is deficiency in service on the part of the opposite party in so far as their having not properly furnished the complainant with the information sufficient to forbid the use of undesirable clay/cement/chemicals on the impugned tiles.

11. SELLING DEFECTIVE MATERIAL AND FAILURE TO RESPONDING TO CUSTOMER COMPLAINT, AMOUNTS TO DEFICIENCY IN SERVICES.

In the case titled as *Ali Mohammad Ganie v. KC Marbles* [CC/67/2024], the Ld. DCDRC, Baramulla/Bandipore had noted that:

The complainant as witness in his on case on affidavit stated that he purchased the Moon White Granite and other material from the O.P for improvement of his residential house against the payment of Rs.1,27,950/-, however, despite hollow promises and assurance of best quality, the said material was proven to be defective, which caused loss to him. [...]

Since the O.P is under bounden duty to sell the defect free material to the customers. Selling defective material and failure to respond to consumer complaints or to redress the grievances amounts to unfair trade practice under Section 2 (47) of Consumer Protection Act, 2019. [...]

The Hon'ble National Commission in the case titled "Smt. Usha Rani versus Principal Saint Joseph's Convent School Delhi (2018)" has held that denial of redressal of consumer grievances amounts to unfair trade practice. [...]

12. DISCOLORING OF TILES AFTER THEIR INSTALLATION CONSTITUTES DEFECTIVE PRODUCT AND UNFAIR TRADE PRACTICE.

In the case titled as **George Joseph v. Glossy Tiles & Anr.** [CC/18/406], the Ld. DCDR, Ernakulam had noted that:

The second opposite party asked the complainant to take photographs of the defective tiles and show them, which he did. The second opposite party confirmed the defect and assured replacement, but again no action was taken. The complainant found out that the second opposite party had issued a forged bill in the name of another company.

Moreover, the first opposite party (the tile manufacturer) also failed to ensure the quality of the product as per standards, adding to the complainant's troubles. Due to the reckless and negligent behaviour of both opposite parties, the complainant suffered physical and mental agony, financial losses, and embarrassment in front of relatives and friends.

13. HOME BUYER FORCED TO VACATE FLAT AFTER TAKING POSSESSION DUE TO UNSAFE CONSTRUCTION HOLDS THE BUILDER LIABLE.

In the case titled as **Saurabh Mehta & Jai Prakash Mehta v. NBCC (India) Limited** [Complaint No. 82 / 2023], the Ld. RERA, Gurgaon had noted that:

35. When house / apartment allotted to complainants has been found unsafe for living, they have to vacate it. All this apparently caused harassment and mental agony to the complainants. However, there is no scale to measure loss caused by harassment in this way. Considering facts of case and circumstances of complainants, they are awarded [...]

KEY CONTRIBUTORS



Deepak Panwar

Managing Partner

Infolex Consultants

M.: 8890238352

E.: deepak@infolexconsultants.com

W.: www.infolexconsultants.com