

NEWS LETTER: Landmark Judgments for the Homebuyers **Volume - III - 2021 (September – December 2021)**

ABOUT US: PSP Legal is one of the leading Corporate & Commercial Disputes Resolution law firm of the country today, presently, serving more than **75,000 clients**. **PSP Legal** is a go to firm in commercial sectors and is known for its pragmatic ability to get the deal done. With its team of **45 lawyers** in Delhi, PSP Legal proudly supports its clients, based across the globe, in.

In recent times **Mr. Aditya Parolia and Mr. Piyush Singh, Partners & Founders of PSP Legal** have been instrumental in shaping the Real Estate & Commercial Law Jurisprudence of our country. Their contribution towards the development Insolvency & Bankruptcy Code and Consumer Protection Act is unparalleled. At PSP, through our practice goals, we have been able to **create and preserve value** in providing legal services. Our principle of operation is the partners' personal commitment and their responsibility for content and result. PSP aims to provide these services promptly with particular emphasis on quality.

PSP Legal has been at the **forefront of protecting consumer (homebuyer) rights** at various fora. In the interest of all our existing clients, we have decided to share few of our landmark judgments on the **Builder-Buyer Disputes from the Hon'ble Supreme Court , National Consumer Disputes Redressal Commission, National Company Law**

Tribunal et.al. here for their knowledge & reference. The highlights of the cases pursued and resolved on the rights of the homebuyers in the month of **September, October, November & December** fought by PSP Legal are as brought out:

1. Manoj Kawatra & Anr. V Pioneer Urban Land & Infrastructure Ltd¹ & Ranu Kawatra V Pioneer Urban Land & Infrastructure Ltd.² **(Project-Pioneer's Araya)**

The **Hon'ble NCDRC** after going through the facts of the matter in details and on the bases of the arguments presented by PSP Legal made a detailed observations :-

- That the reasons veiled by the Builder such as obtaining various licenses, approvals, sanctions, and permits; dispute with the constructing agencies, shortage of labour in the NCR region; implementation of schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru National Urban Renewal Mission; shortage of water in NCR region, cannot be put under the ambit of the Force Majeure Clause and the builder cannot take shelter under the Majeure Clause for such delaying tactics.
- That if only some customers failed to make payments in time, the Opposite Party is not expected to delay the entire project. A Consumer/Homebuyer

¹ CC No. 1442 Of 2018

² CC No.1443 of 2018

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cannot be made to wait indefinitely for the possession of the flats allotted to him/her.

The Hon'ble Commission also directed the Builder to refund the entire amount deposited by the Complainants along with compensation in the form of simple interest @ 9% p.a. from date of each payment till the date of payment by the Builder.

2. Alope Anand v. Ireo Pvt. Ltd. & 2 Ors.³ **(Project-Ireo Skyon)**

The Hon'ble NCDRC observed that the burden is squarely upon the Builder to prove the fact that the Complainant is indulging in the business of sale and purchase of the flats. The Hon'ble Commission also observed that a Consumer cannot be called an investor just because he/she is holding multiple properties with the same Builder. The Hon'ble NCDRC further, directed the Builder to refund the entire principal amount of Rs.2,23,91,480/- to the Complainant along with compensation in the form of simple interest at the rate of 10.25 % per annum.

3. Suman Kumar Jha & Anr. v Mantri Techology Constellations Pvt. Ltd.⁴ **(Project– Mantri Signature Villas, Chennai)**

The Hon'ble NCDRC observed that offering possession of incomplete construction i.e, without obtaining the "Occupation Certificate" and "Completion Certificate" will not amount to legal offer of possession. Further it constitutes unfair

trade practice to force the consumers to sign papers while giving wrongful/incomplete possession. Therefore, the Hon'ble Commission directed the Builder to refund the entire amount deposited by the Complainants along with interest @ 9% per annum from the date of each deposit, within period of two months as the Builder was unable to complete the construction and provide the legal offer of possession to the Complainants.

4. Gopal Das Mundhra & Anr. v Ozone Projects Pvt. Ltd.,⁵ And 6 other similar matters **(Project- The Metrozone)**

The Hon'ble NCDRC was approached by seven allottees of the residential project "Metrozone" individually as the project was delayed beyond a reasonable time period. The Hon'ble Commission after hearing the arguments presented by PSP Legal directed the Builder:-

- To handover the possession of the unit in a habitable condition to the Complainants within 6 weeks from the date of this order.
- To pay the delayed compensation @8% p.a. from the date of delivery of the possession as specified in the agreement till the actual date of delivery of the possession within 6 weeks from the date of this order.

³ CC NO. 1277 OF 2017

⁴ CC NO. 54 OF 2018

⁵ CC No. 2044 of 2017

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- The Hon'ble Commission also clarified that if any amount is already received by the Complainants as compensation for the delay in delivery of possession, the same will be adjusted by the Builder from the amount calculated in terms of this Order.

5. Kanupriya Vijay v Vatika Ltd.⁶ & Bhanupriya v Vatika Ltd⁷ **(Project – Vatika- Tranquil Heights)**

The Hon'ble NCDRC was approached by two separate homebuyers of the residential project "Vatika Tranquil Heights" individually as the project was delayed beyond a reasonable time period and is still under construction. The Hon'ble Commission in the said matter after observing the inordinate delay caused by the Builder in handing over the possession of the property directed the Builder to refund the entire amount paid by the Complainant along with 9% simple interest per annum with Rs.50,000/- cost to the Complainant. The Hon'ble Commission also directed the Builder that in case the Builder does not comply with the above directions and does not refund the amount within two months in that case the interest granted by the Hon'ble Commission would increase to 12% p.a. and the Builder will be liable to refund the entire amount paid by the Complainant along with 12% simple interest.

⁶ CC No.534 of 2020

⁷ CC No. 535 of 2020

⁸ CC No. 1568 of 2018

6. Suhel Hukku v Edeco Infrastructure & Properties Ltd.⁸ **(Project – Eldeco Inspire)**

The Hon'ble NCDRC after looking into the facts of the matter in detail observed that the Complainant was offered the possession of the flat only in 2018 that to without obtaining the Occupancy Certificate. The Hon'ble Commission also observed that the even if the Complainant has taken the possession of the flat on the offered date, it would have been a mere paper possession with no legal sanctity. Based upon the above observations the Hon'ble Commission directed the Builder to refund the entire amount paid by the Complainant with a delay compensation of 9% simple interest from the respective dates of deposits till realization, within a period of two months of this order. Also, any delay beyond the period of two months, will attract an interest rate of 12% p.a. for the same period. Further, the Builder will pay litigation cost of Rs.50,000/- to the Complainant.

7. Pawan K. Aggarwal v Sepset Properties Pvt. Ltd. & Anr.⁹ **(Project-Paras Dew)**

The Hon'ble NCDRC while looking into the facts of the matter observed that the Builder has failed to offer the possession of the flat till date even after collecting a huge sum of money towards the total consideration of the

⁹ CC No. 1640 of 2017

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unit and the Complainant cannot be made to wait indefinitely for the delivery of possession. The Hon'ble Commission also observed that the act of the Builder in retaining the amounts deposited by the Complainant is not only an act of deficiency of service but also amounts to unfair trade practice.

Based upon the above observations, the Hon'ble Commission directed that the Builder shall refund the entire amount collected from the Complainant, along with simple interest @9% p.a. from the date of respective deposit, till realization, within a period of six weeks from the date of the order.

8. Aquacity Consumer And Welfare Society v AG8 Ventures Limited¹⁰ **Project-(Aakriti Aqua City)**

The Hon'ble NCDRC observed that in the present matter the Builder has unreasonably delayed for about 7 years in completing the construction of the project, the same has not been explained convincingly and justifiably by the Builder and it is reasonable on the part of the Complainants to claim refund of their principal amount paid along with just and fair compensation. In view thereof, the Hon'ble Commission directed the Builder to refund of the entire amount deposited by the Complainants along with a compensation for the unreasonable delay @ 9% for the period beyond 36 months from the date of issue of

Offer Letter/Agreement for sale upto the date of making payment to the Complainants, within two months from the date of issue of this Order.

9. Rahul Gupta v Supertech Ltd.,¹¹ **Project-(Supertech Capetown)**

The Hon'ble NCDRC observed that possession of the unit was to be handed over to the complainant in the year 2014 with a grace period of six months and no offer of possession had been made at that time. The Hon'ble Commission also observed that till the filing of the complaint, no offer of possession for the said unit had been made to the Complainant by the Builder.

Therefore, the Hon'ble Commission directed the Builder to refund the entire principal amount to the Complainant along with compensation in the form of simple interest @ 10% per annum from the date of each payment till the date on which the aforesaid payment along with interest is made.

The Hon'ble Commission also directed the Builder that in case the loan amount taken by the Complainant remains unpaid, the Builder shall discharge the liabilities of the bank first and then shall pay the remaining balance if any to the Complainant.

¹⁰ CC No. 1404 of 2019, CC No. 1403 of 2019

¹¹ CC No.1056 of 2018

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10. Rohit Verma & Anr. v Supertech Limited & Anr.¹²

Project-(Supertech Hues)

The Hon'ble NCDRC observed that the Builder has failed to abide by his own commitment of handing over possession of the unit in question even after the lapse of the grace period and do not have either a completion certificate (CC) or an offer of possession and the delay in completing the construction of the project cannot be construed as reasonable. The Hon'ble Commission directed the Builder to refund the total amount paid by the Complainant to the Complainant and HDFC bank on the proportion in which they have paid to the Builder by demand Draft. In addition simple interest @ 9 % from the respective dates of deposits shall be paid to the Complainant to compensate for mental agony and hardship apart from litigation costs of Rs.50,000/- by Demand Draft within a period of 6 weeks of this order, failing which simple interest @12% shall be applicable.

12. Bimlesh Bhardwaj v Value Infratech India Pvt Ltd,¹³

Project-(SKYWALK RNE)

The Hon'ble NCLAT on a petition of home buyers of "Value Infratech India Pvt Ltd" for a project 'Skywalk RNE', gave directions that the real estate company should not be sent into liquidation directly and efforts should be made to revive the real estate company. The Hon'ble NCLAT was

hearing an appeal arising out of an order of liquidation of the company because of the wrongful conduct of the Resolution Professional. In this case the Resolution Professional did not take any steps to invite resolution plans and in fact exaggerated a claim of 6 crores of a Financial Creditor to 149 crores so that the said Financial Creditor could enjoy the majority voting in Committee of Creditors (COC) and the home buyers were reduced to minority. Also, the said Financial Creditors voted straight away for liquidation so that the secured asset of the Company i.e. project land could be sold and money would be paid to the said Financial Creditors.

Due to the mala fide actions of the Resolution Professional in the present matter the Hon'ble NCLAT quashed the constitution of COC and removed the Resolution Professional from the said real estate company along with a direction to the IBBI board to conduct a disciplinary action against the RP.

13.The Villas Condominium Association v MGF Developers Limited¹⁴

Project- (The Vilas)

The Petition was filed on behalf of the RWA of the project 'the Vilas' wherein, the Developer/ Builder was not refunding the IBMS charges to the RWA which was collected directly from the Homebuyers. The Hon'ble NCLT observed that as per the terms and condition of the agreement the IBMS charges are collected in order to pay

¹² CC. No. 530 of 2020

¹³ Company Appeal (AT) (Ins) No. 112 of 2021

¹⁴ IB-936/ND/2020

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the maintenance bills, other charges raised by the maintenance agency, etc. and cannot be utilised for any other purposes. Wherein, the Developer/Builder has himself admitted that the IBMS charges has been utilised for the purpose of construction of club, restaurant, swimming pool and 62-seater mini theatre. Hence, there is a breach of clause of the agreement and the amount towards the IBMS charges are due and payable by the Builder Company to the RWA.

Based upon the above facts the Hon'ble NCLT initiated the Corporate Insolvency Resolution Process (CIRP) in the Builder company and appointed the IRP to take charge of the management of the company immediately.

14. Nexgen Infracon Pvt. Ltd. v Manish Kumar Sinha & Anr.¹⁵ **Project-(Mahagun Mezzaria)**

The Builder approached the Hon'ble **Supreme Court of India** against the order by the Hon'ble NCDRC wherein the Hon'ble Supreme Court upheld the view taken by the Hon'ble NCDRC and directed the Builder i.e, Nexgen Infracon Private Limited to refund the amount deposited by the Homebuyers with respect to the apartment in question with 9% interest from the date of receipt of each payment within one month. The Hon'ble Supreme Court also acknowledged the entitlement of the Homebuyer in order to seek refund of his money paid to the Builder.

¹⁵ Civil Appeal No. 62 of 2021

15. Vandana Raheja & Ors. v Spaze Towers Private Ltd.¹⁶ **Project- (Corporate Parkk)**

The Hon'ble NCLT was approached by a group of Buyers of the commercial project Corporate Parkk in order to initiate the Corporate Insolvency Resolution Process (CIRP) against the real estate company "Spaze Towers Private Limited" as the **Assured Monthly Investment Return** was due and payable by the real estate company and the company was unable to repay the same.

The Hon'ble NCLT after going through the facts of the case initiated a Corporate Insolvency Resolution Process (CIRP) in the builder company as the company was unable to pay its debt.

The said order was also challenged by the Builder before the Hon'ble NCLAT but the same was dismissed by the Hon'ble Tribunal. After the said dismissal the Builder was left with no other option but to settle the matter with all the Buyers who filed this petition before the Hon'ble NCLT and due to the said settlement the same was withdrawn by the Buyers in front of the Supreme Court of India and the CIRP was set aside by the Hon'ble Supreme Court.

¹⁶ IB-889/ND/2020

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16. Saurabh Nagpal v Pioneer Urban Land & Infrastructure Ltd¹⁷ **Project-(Pioneer Araya)**

The Hon'ble NCDRC was approached by the homebuyer of the residential project "Pioneer Araya" as the project was delayed beyond a reasonable time period and is still under construction. The Hon'ble Commission in the said matter after observing the inordinate delay caused by the Builder in handing over the possession of the property and also considering the interest rate paid by the homebuyer to the HDFC bank for the home loan taken on the said unit, directed the Builder to refund the entire amount paid by the Complainant along with 11.25% simple interest per annum from the date of each payment till the date of realization. The Hon'ble Commission also directed the Builder that in case the Builder does not comply with the above directions and does not refund the amount within two months in that case the interest granted by the Hon'ble Commission would increase to 12% p.a. and the Builder will be liable to refund the entire amount paid by the Complainant along with 12% simple interest.

observing the inordinate delay caused by the Builder in handing over the possession of the property directed the Builder to refund the entire amount paid by the Complainant along with 9% simple interest per annum from the date of each payment till the date of realization.

17. Sunil Malik v Raheja Developers Ltd¹⁸ **Project-(Raheja Aranya)**

The Hon'ble NCDRC was approached by the homebuyers of the residential project "Raheja Aranya" individually as the project was delayed beyond a reasonable time period and is still under construction. The Hon'ble Commission in the said matter after

¹⁷ CC No. 2505 of 2018

¹⁸ CC No. 727 of 2020