

THE ADVISOR

A NEWSLETTER ON LANDMARK JUDGEMENTS FOR THE HOMEBUYERS



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**NCDRC PAVES WAY FOR
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About PSP Legal

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 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 High Court at Delhi and National Consumer Disputes Redressal Commission here for their knowledge & reference. The highlights of the cases pursued and resolved on the rights of the homebuyers in the month of January and February fought by PSP Legal are as brought out:

Homebuyers penalized for the mistakes of the Developers without their fault.

Shreesh Shukla & Ors. v. Union of India & Ors. (W.P.(C) 5870/2021) (Order on 31 January 2022)



A petition was filed before the Hon'ble High Court situated at New Delhi, by the aggrieved homebuyers, who had purchased their respective apartments with the assistance of home loans through subvention schemes offered by the developer. The banks and developers were in the constant practice of entering into a tripartite loan agreement, and upon the failure to pay off the loan EMIs on time, the homebuyers were held liable for default, irrespective of the fact whether the project is under construction as per schedule.

To stop this malpractice, in light of the various guidelines issued by the Reserve Bank of India (RBI) and National Housing Bank (NHB), the PSP Legal Team sought relief from the Court to issue directions to the banks/HFCs, restraining them from taking any coercive action against the petitioners.

That after hearing the detailed arguments presented by the PSP Legal Team, the Hon'ble High Court noted that the Petitioners are being penalized without their fault grave and irreparable loss will be caused to the petitioners if they are not granted any interim protection. Thus, in favour of the arguments, the Court issued a restraining order against the Banks/HFCs.

One-sided clauses in Buyer's Agreement constitutes unfair trade practice.

Amit Verma & Anr. vs. Ireo Pvt. Ltd. (CC No. 385 of 2020) (Order on 03 Feb 2022)

In this matter, the Complainants had booked a plot for residential purpose in the Project "Ireo City" and thereby executed a Plot Buyer's Agreement on 30.05.2014, according to which, the possession of the plot was to be delivered within 36 months, with an additional grace period of 6 months. The Homebuyer duly paid the majority of the amount within the first 18 months of the Agreement, whereas the Developer failed to provide any update about the delivery of the possession after repeated requests. Aggrieved by the actions of the Developers, the Complainants approached the Hon'ble National Consumer Disputes Redressal Commission (NCDRC) for the redressal of their grievances.

Upon hearing the detailed arguments presented by PSP Legal Team, the Hon'ble NCDRC considered the fact that the Buyer's

Agreements comprise of one-sided clauses, wherein buyers are forced to sign the agreement without any alternative. Since it adopts unfair methods or practices to sell the flats by the Developer, such actions constitute an "Unfair Trade Practice" under the Consumer Protection Act and thus the terms of the contract will not be final and binding.

HELD: In favour of the arguments put forward by the PSP Legal Team, the Commission observed that the Developer is under an obligation to hand over the possession within the stipulated time and thus it is the right of the Homebuyer to seek a refund of the amount with reasonable interest. In this light, the Commission ordered a full refund of the deposit amount along with 9% interest per annum and costs of Rs. 50,000/-.

Complainants cannot be made to wait indefinitely for possession.

Amit Arora & Anr. vs. Vatika Ltd. (C.C. No. 710 of 2020) (Order on 16 February 2022)

In this matter, The Complainants booked an Apartment in the project **Tranquil Heights** and subsequently signed an agreement on 28.05.2015, according to which, the possession shall be handed over within 48 months from the date of execution. The Complainants paid almost 50% of the total sale consideration within two years, however, the project had bleak chances to be completed soon. Without much assurances or positive response for the exact date of completion from the developer, the Complainants approached the Hon'ble NCDRC for the redressal of their grievances.

The PSP Legal Team brought it to the notice of the Hon'ble NCDRC that numerous similar cases were filed against the developer for failing to deliver the possession on time, as a result of which the Commission ordered for a refund of the full amount along with interest.

HELD: In favour of the arguments put forward by the PSP Legal Team, the commission was of the opinion that the Developer ought to hand over the possession within the stipulated time, failing which the Homebuyer can seek a refund of the amount with reasonable interest as compensation. In this light, the Commission ordered a full refund of the amount along with 9% interest per annum and costs of Rs. 50,000/-.



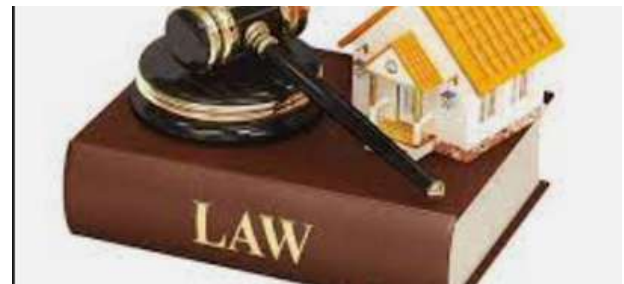
Unreasonable delay without proper justifications cannot be tolerated.

Dinesh Goyal vs. M/s Sepset Properties Pvt. Ltd. (C.C. NO. 616 OF 2020) (Order on 15 February 2022)

In this matter, The Complainant booked an Apartment in the project **Paras Dews** and was issued the allotment letter on 10.01.2013, requiring the possession to be handed over within 42 months from the date of execution. The possession letter was eventually issued on 24.01.2019, however, the project was yet to be completed for delivery of possession. Aggrieved by the actions of the Developers, the Complainants approached the Hon'ble NCDRC for the redressal of their grievances.

That, after hearing the detailed arguments presented by the PSP Legal Team, the Hon'ble NCDRC was of the opinion that the defense of Force Majeure cannot be pleaded by the Developer while simultaneously holding the deposit amount of the Complainant.

HELD: While favoring the Complainants, the commission observed that there was an unreasonable delay in completion of the project by the Developer despite obtaining the Occupancy Certificate and thus it is the right of the Homebuyer to seek a refund of the amount with reasonable interest. In this light, the Commission ordered a full refund of the amount along with 6% interest per annum.



Delay in delivery of possession by the Developer ought to be compensated.

Mohammad Faizan Iqbal v. Emaar MGF Land Ltd. (C.C. No. 664 of 2020) (Order on 04 Feb 2022)

The Complainant booked an Apartment in the project **Imperial Garden**, the construction of which began on 11.11.2013. The developer was to hand over the possession within 42 months from the date of execution, along with a grace period of three months. After an elongated delay, the flat was eventually offered for possession on 25.10.2019. The Complainant sought delay compensation from the developer under the terms of the Agreement which was rejected. Aggrieved by the actions of the Developers, the Complainants approached the Hon'ble NCDRC for the redressal of their grievances.

That, after hearing the detailed arguments presented by PSP Legal Team, the Hon'ble NCDRC relied upon various landmark

judgements and were of the opinion that it shall be unreasonable to expect the buyer to wait for an indefinite period for obtaining possession.

HELD: While favouring the Complainants, the commission was of the opinion that any unreasonable delay in delivering the possession of the Apartment to the homebuyer ought to be rightly compensated. In this light, the Commission ordered a refund of the amount along with 9% interest per annum.

Failure to obtain the Occupancy Certificate amounts to deficiency in service.

Gautam Saha & Anr. v. Anant Raj Industries Ltd. (C.C. No. 747 of 2020) (Dated 22 Feb 2022)

In this matter, the Complainant booked an Apartment in project **MACEO** and executed a Buyer's Agreement on 19.09.2012. The possession of the Apartment was to be handed over within 36 months from the date of execution, along with a grace period of 6 months. The Complainants paid more than 80% of the total amount according to the payment plan. However, there was an imminent delay on the part of the Developer and no update regarding the completion of the project in near future was intimated. Aggrieved by the actions of the Developers, the Complainants approached the Hon'ble NCDRC for the redressal of their grievances.

That, after hearing the detailed arguments presented by PSP Legal Team, the Hon'ble NCDRD was of the opinion that the presence of an arbitration clause does not bar the

jurisdiction of the Consumer Fora. Moreover, the Commission noted that the failure of the Developer to obtain the Occupation Certificate is a deficiency in service for which the developer is liable.

HELD: While favouring the Complainants, the commission held that it is the responsibility of the developer to obtain all requisite approvals from the relevant authorities, failure of which shall amount to deficiency in service on behalf of the Developer. Thus, In this light, the Commission ordered a full refund of the amount along with 9% interest.

Complainants cannot be made to wait indefinitely for possession.

Ravinder Kumar & Anr. v. Emaar MGF Land Ltd. (C.C. NO. 3315 of 2017) (Order on 14 Feb 2022)

In this matter, the Complainant purchased an Apartment in project **Palm Gardens** and executed a Builder Buyer's Agreement on 27.08.2011. The developer was to hand over the possession of the Apartment by September 2015, including a grace period of 6 months. As per the terms of the agreement, The Complainant duly paid more than 95% of the total amount within one year of the Agreement. However, There was an elongated delay on behalf of the Developers, who failed to deliver the possession even after two years of the promised date.

Aggrieved with the actions of the Developer, The Complainants approached the Hon'ble NCDRC for the redressal of their grievances. That, after hearing the detailed arguments

presented by PSP Legal Team, the Hon'ble NCDRC was of the opinion that due to the delay of 43 months, there exists a clear deficiency of service on the part of the Developer and thus cannot be absolved of deficiency of service.

HELD: The Commission ordered a full refund of the deposit amount along with 9% interest per annum.



Defence of Six Years cannot be used to justify delay of six years.

Vikas Shroff & Anr. v. Ramprastha Promoters & Developers Pvt. Ltd. & Anr.

(C.C. No. 718 of 2020) (Order on 08 February 2022)

The Complainants booked an Apartment in **Project Skyza** and entered into an Apartment Buyer's Agreement on 12.11.2011. The agreement required the apartment to be delivered on 31.08.2014, along with a grace period of 120 days. On the said date, according to the status of the project uploaded on the website, a mere basic stage had been completed, even after a lapse of six years from the promised date.

Aggrieved by the actions of the Developer, The Complainants approached the Hon'ble NCDRC for the redressal of their grievances. That, after hearing the detailed arguments presented by PSP Legal Team, the Hon'ble

NCDRC was of the opinion that there was an unreasonable and unjustified delay on the part of the Developer. Moreover, the defence of Force Majeure cannot be used to justify an elongated delay of six years.

HELD: In this light, the commission ordered full refund of the payment along with 8% interest per annum.



Arbitration Clause in the Agreement does not bar the jurisdiction of Commission

Vikas Mittal v. DLF Universal Ltd & Anr. (C.C. No. 424 of 2020) (Dated 12 January 2022)

The Complainants booked an Apartment in the project **DLF Capital Greens** and subsequently entered into an agreement with the developer. The Apartment was to be delivered within 36 months from the date of Application i.e., 27.10.2010. However, due to an increase in the area, the total sale amount was increased without prior intimation. along with an extension in completion time up to 52 months. Despite multiple enquiries by the Complainant, the date of completion was delayed by 5 years. The possession was finally offered in May 2019.

There were additional charges levied by the developer, including the club and car-parking charges which were not intimated beforehand. Aggrieved, the Complainants approached the Hon'ble NCDRC for the redressal of their grievances.

That, after hearing the detailed arguments presented by PSP Legal Team, the Hon'ble NCDRC was of the opinion that the presence of an arbitration clause does not bar the jurisdiction of the Consumer Fora. Moreover, to establish the profit-making intention of the Complainant, the Opposite Party should establish such intention with the help of documentary evidence, which it failed to do so.

HELD: Thus, in favour of the complainants, the Commission ordered delay compensation with 6% interest per annum for the period of delay in handing over the possession to the Complainant.

Compensation for delay shall be award upto date of obtaining Occupancy Certificate.

Nidhi Tamrakar & 2 Ors. v. Raheja Developers Ltd. (C.C. No. 618 of 2020) (Order on 09 February 2022)

The Complainants purchased an Apartment in **Rahejas Revanta** and subsequently executed an Apartment to Sell Agreement on 02.06.2012. The possession of the Apartment was to be handed over within 48 months with a grace period of 6 months. According to the updates on the project website, the project is far from completion and the Complainants have not received any positive responses from the Developers. Aggrieved, the Complainants approached the Hon'ble NCDRC for the redressal of their grievances.

That, after hearing the detailed arguments presented by PSP Legal Team, the Hon'ble NCDRC was of the opinion that there has

been an unreasonable delay on behalf of the Developer and compensation shall be payable for the period when the delivery of possession was due and the date on which the Occupancy Certificate had been obtained.

HELD: In this light, the Commission ordered in favour of the Complainants and directed the Opposite Party to complete the construction of the project by September 2022 and pay delay compensation with 8% interest, failing which, the entire amount shall be refunded along with 8% interest per annum within four weeks.

Order to the Developer to complete construction or refund entire amount.

Minakshi Parmar & Anr. v. Ramprastha Promoters & Developers Pvt. Ltd. & Anr. (C.C. No. 671 of 2020) (Order on 08 February 2022)

The Complainants purchased an Apartment in the Project **Skyz** and executed an Apartment Buyer's Agreement on 12.11.2011. The delivery of possession was due to be handed over by 31.08.2014, along with an additional 121 days grace period. A majority of the payment was duly made to the Developers. However, even after a lapse of six years from the promised date, the project is far from completion. Aggrieved, the Complainants approached the Hon'ble NCDRC for the redressal of their grievances.

That, after hearing the detailed arguments presented by PSP Legal Team, the Hon'ble NCDRC was of the opinion that the Commission is a competent authority to decide upon the matter and other remedies do not bar the jurisdiction of the Fora.

HELD: Since there has been an unjustified delay in completing the construction and delivering the Apartments and had failed to obtain an Occupancy Certificate, the Commission ordered for the construction of the flats allotted within 6 months of receipt of the order and to pay delay compensation to the Complainants with 8% interest per annum.



Failure of the developer to provide the Apartment on time amounts to deficiency.**Charu Sharma v. Raheja Developers Ltd. (C.C. No. 728 of 2020) (Order on 22 February 2022)**

The Complainant booked an apartment in the project **Rahejas Shilas** and subsequently entered into an Agreement to Sell Agreement on 21.12.2012, according to which the Apartment was to be delivered within 30 months from the date of execution, along with 6 months of the grace period.

The payment plan was followed by the Complainant and paid more than 90% of the sale consideration by 2014. However, There was an elongated delay on behalf of the Developers, who failed to deliver the possession even after two years of the promised date. Aggrieved, the Complainants approached the Hon'ble NCDRC for the redressal of their grievances.

That, after hearing the detailed arguments presented by PSP Legal Team, the Hon'ble NCDRC, relied upon various judgements and was of the opinion that failure of the developer to comply with a contractual obligation to provide an apartment within contractually stipulated time amounts to a deficiency in service and shall be liable.

HELD: Thus, in this light, the Commission ordered for the construction of the flats allotted within 6 months of receipt of the order and to pay delay compensation to the Complainants with 8% interest per annum.

Homebuyer cannot be blamed for the slowdown of the Real Estate Market**Kshitij Jain & Anr. v. Emaar MGF Land Ltd. (C.C. No. 386 of 2020) (Dated 04 February 2022)**

The Complainants purchased an Apartment in the project "**The Enclave**" and entered into an Apartment's Buyer Agreement on 14.09.2010. The Opposite Party Developer was to deliver the possession of the Apartment within 30 months, including a grace period of 6 months from the date of the beginning of construction.

The letter of possession was delivered to the Complainants after a lapse of four years from the initial date of promise, along with an increase in the super area of the Apartment, and additionally sought a delay compensation for the failure of payment of instalments on time and applicable interest thereof. Aggrieved, the Complainants approached the Hon'ble NCDRC for the redressal of their grievances.

HELD: That, after hearing the detailed arguments presented by PSP Legal Team, the Hon'ble NCDRC was of the opinion that the Complainants cannot be blamed for the slowdown in the real estate market and resultant non-making of payments by some allottees of the Project. The Commission ordered for the construction of the flats allotted within 6 months of receipt of the order and to pay delay compensation to the Complainants with 8% interest per annum.



Floating the Project prior to obtaining necessary sanctions amounts to deficiency of service.

Narinder Sachdeva & Anr. v. Ansal Housing & Construction Ltd. (C.C. No. 235 of 2018) (Order on 06 January 2022)

The Complainants purchased a Residential Apartment in the project **Ansal Highland Park** and executed the Apartment Buyer's Agreement on 04.04.2013, which obligated the Developer to deliver the possession within 48 months from the date of execution of the Agreement, along with a grace period of 6 months. The Complainants stated that the work of the project has been stalled and have no known date of completion, without citing any proper reason. Aggrieved, the Complainants approached the Hon'ble NCDRC for the redressal of their grievances.

That, after hearing the detailed arguments presented by PSP Legal Team, the Hon'ble NCDRC relied upon various judgements, for

establishing the jurisdiction of the Commission and was of the opinion that all the reasons, including demonetization, NGT orders, reservation agitations do not fall within the ambit of Force Majeure and thus cannot be accepted as a reason for delay. Moreover, the floating of the project and collecting money from the Flat buyers without having necessary sanctions is per se a deficiency in service.

HELD: In this light, the Commission ordered the Opposite Party to refund the deposited amount with 9% interest per annum.

Registration of the Project under RERA does not oust the remedy under Consumer Act.

Hemant G. & Ors. v. LGCL Urban Homes Pvt, Ltd. & Anr. (C.C. No. 468 of 2020) (Order on 04 February 2022)

In this matter, the Complainants had booked a Villa for residential purpose in the Project "**LGCL New Life**" and executed an Agreement to Sell and Construction Agreement on 21.02.2015, according to which the possession of the plot was to be delivered within 16 months, with an additional grace period of 6 months. The homebuyer duly paid the majority of the amount within the first 12 months of the Agreement, whereas the Developer failed to provide any update about the delivery of the possession after repeated requests for more than three years.

The Complainants approached the Hon'ble NCDRC for the redressal of their grievances. That, after hearing the detailed arguments presented by the PSP Legal Team, the Hon'ble NCDRC considered the fact that the

Buyer's Agreements comprise of one-sided clauses, which are unreasonable and unfair towards the homebuyers.

HELD: The Hon'ble NCDRC was of the opinion that There has been an unreasonable delay on behalf of the Developers without any substantial reason. In this light, the Commission ordered a full refund of the deposit amount along with 9% interest per annum.

