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Flat Owners Don't Forfeit Right To Claim Amenities Promised By Builder By Taking Possession Of Apartments : Supreme Court

Manu Sebastian

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The Supreme Court has observed that that flat-owners, who are often forced by the circumstances to take possession of apartments even if the amenities promised by the builder are not provided, do not forfeit their right to claim such services from the builder.

A bench comprising **Justices S Ravindra Bhat and Dipankar Datta** criticised the National Consumer Disputes Redressal Commission for refusing the claim of compensation raised by the aggrieved flat-owners on the ground that they had taken possession. *"We have failed to comprehend as to what the NCDRC meant when it observed that the appellants "ought to have known what they were purchasing",* the bench observed in the judgment(*Debashis Sinha vs M/s RNR Enterprise*).



The bench was hearing an appeal filed by the homebuyers against the NCDRC dismissing their complaints filed against Kolkata-based builder RNR Enterprise. Their grievances ranged from the builder not providing 'completion certificates' and

also not fulfilling the promises of common amenities and facilities such as playground, community hall-cum-office room, 33-feet wide concrete road, water supply, landscape gardening, generator, multi-gymnasium, water filtration plant, and gas pipeline. Though the NCDRC found that the builder was guilty of unfair trade practice, it did not grant relief to the buyers by saying that they have not established their claims.



SC flays NCDRC's 'casual approach'

Taking a critical view of the NCDRC's "casual approach", the Supreme Court observed that the NCDRC's reasoning that the flat-buyers can't complain after knowingly purchased the flats with the deficiencies, "defies logic".

The Court noted that in most cases, the jurisdiction of NCDRC is invoked "post-purchase".

"If complaints were to be spurned on the specious ground that the consumers knew what they were purchasing, the object and purpose of the apartment would be defeated. Any deficiency

the enactment would be defeated. Any deficiency detected post-purchase opens up an avenue for the aggrieved consumer to seek relief before the consumer fora. The reasoning of the NCDRC is, thus, indefensible"

NCDRC should appreciate present day realities

The Court further observed :

"NCDRC, in our opinion, might have missed to appreciate the present day realities of life. Now-a-days, flat owners seldom purchase flats with liquid cash. Flats are purchased on the basis of finances being advanced by banks and other financial institutions. Once a flat is booked and the prospective flat owner enters into an agreement for loan, instalments fall due to be paid to clear the debt irrespective of whether the flat is ready for being delivered possession. The usual delays that are associated with construction activities result in undue anxiety, stress, and harassment for which many a prospective flat owner, it is common knowledge, even without the project/flat being wholly complete is left with no other option but to take possession.

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Whether, upon taking possession, a flat owner forfeits his/her right to claim such services which had been promised but are not provided resulting in deficiency in services is a question that the NCDRC ought to have adverted to. Once the NCDRC arrived at a finding that the respondents were casual in their approach and had even resorted to unfair trade practice, it was its obligation to consider the appellants' grievance objectively and upon application of mind and thereafter give its reasoned decision. If at all, the appellants had not forfeited any right by registration of the sale deeds and if indeed the respondents were remiss in providing any of the facilities/amenities as promised in the brochure/advertisement, it was the duty of the NCDRC to set things right".(emphasis supplied)

Builder's obligation to obtain completion certificate

The Court further criticised the NCDRC's "perfunctory approach" in not considering the

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appellants' grievance regarding builder not obtaining completion certificate. After examining the provisions of the Kolkata Municipal Corporation Act, the Court noted that "it is the obligation of the person intending to erect a building or to execute works to apply for completion certificate in terms of the rules".

"It is no part of the flat owner's duty to apply for a completion certificate", the Court stated based on the KMC Act provisions.

"True it is, the appellants ought not to have taken possession without the completion certificate; however, that was not a valid ground not to direct the respondents to apply for and obtain the completion certificate as required by law", the Court further stated.

The Court also criticised the NCDRC for taking over 10 months to deliver the judgment after completing the hearings in the complaint filed in 2008.

With the above observations, the Court remanded the matter to the NCDRC for fresh consideration. The Court clarified that it is not opening the claim for Rs 1 80 00 000 00

opening the claim for Rs. 1,00,00,000.00

compensation raised by the buyers, as they have failed to give particulars and the basis for the claim. *"The remand is directed only with a view to secure adherence to the promises that the respondents had made in the brochure and/or advertisement, as the case may be, and thereby cover up deficiency in service, if any, as well as the mandatory statutory provisions"*, it said.

Case Title : Debashis Sinha and others vs M/s RNR Enterprise represented by its Proprieter/Chairman, Kolkata and others

Citation : 2023 LiveLaw (SC) 92

For Appellant(s) Mr. Arvind Kr. Sharma, Adv. Mr. Aniteja Sharma, Adv. Mr. Avijit Singh, Adv. Mr. Raj Kishor Choudhary, AOR

For Respondent(s) Mr. Vipin Kumar Jai, AOR

Summary- Flat owners do not forfeit the right to claim amenities promised by the developer by taking possession of the apartments- Supreme Court disapproves of NCDRC order dismissing homebuyers' claim on the ground that knowingly purchased the apartments.

Consumer Protection Act 1986- Flat-owners' rights-If complaints were to be spurned on the specious ground that the consumers knew what they were purchasing, the object and purpose of the enactment would be defeated-in most cases, the jurisdiction of NCDRC is invoked post-purchase-Any deficiency detected post-purchase opens up an avenue for the aggrieved consumer to seek relief before the consumer fora - Para 11

Supreme Court's comments on flat-owners' plight - Now-a-days, flat owners seldom purchase flats with liquid cash. Flats are purchased on the basis of finances being advanced by banks and other financial institutions. Once a flat is booked and the prospective flat owner enters into an agreement for loan, instalments fall due to be paid to clear the debt irrespective of whether the flat is ready for being delivered possession. The usual delays that are associated with construction activities result in undue anxiety, stress, and harassment for which many a prospective flat owner, it is common knowledge, even without

the project/flat being wholly complete is left with no other option but to take possession.

Consumer Protection Act 1986- Kolkata

Municipal Corporation Act - Builder has

obligation to seek completion certificate-It is no

part of the flat owner's duty to apply for a

completion certificate - Para 18, 19

[Click here to read/download the judgment](#)

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JUSTICE DIPANKAR DATTA

JUSTICE S RAVINDRA BHAT

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