



UPDATE ON SUPREME COURT'S JUDGMENT ON COMPENSATION ON ACCOUNT OF DELAY OF POSSESSION OF APARTMENT UNITS

The Hon'ble Supreme Court of India, on 24 August 2020, delivered a landmark judgment in ***Wg.Cdr. Arifur Rehman and Aleya Sultana and Ors. v. DLF Southern Homes Pvt Ltd (now known as Begur OMR Homes Pvt. Ltd.) and Ors.*** (Civil Appeal No. 6239 of 2019 with Civil Appeal No.6303 of 2019) ("**DLF Southern Homes case**"). The judgment of the Apex Court which has far-reaching implications, deals with fair and just compensation over and above the rate of compensation agreed to between the purchasers and the builder arising out of a delay in handing over the possession of constructed flats.

BACKGROUND

- The Purchasers had booked residential flats in a project called Westend Heights developed by DLF Southern Homes Pvt.Ltd. located in Bengaluru. The project was being developed in an area spanning 27.5 acres and was to consist of 1980 units, spread across 19 towers, each consisting of 18 floors.

- Subsequently, on account of the delay in handover, a complaint was filed before the National Consumer Disputes Redressal Commission ("**NCDRC**") by 339 purchasers citing departure from builder's promise (agreement) to hand over the residential units within 36 months from the date of execution of the agreement to purchase the residential units.

- However, the NCDRC dismissed the consumer complaint filed by 339 flat buyers, accepting the defence of the builders on the grounds:-
 - a) that there was no deficiency of services on the part of the Developer in complying with its contractual obligations,
 - b) that despite delay in handing over the possession of the residential flats, the purchasers were not entitled to compensation in excess of what was stipulated in the Apartment Buyers Agreement (“**ABA**”).
 - c) that there were no exceptional nor strong reasons placed before the NCDRC to award compensation at rate more than what was agreed to between the parties to the agreement (i.e., builders and purchasers) relying on the judgment in **DLF Homes Panchkula Pvt. Ltd. V. D S Dhanda**, 2019 SCC OnLine SC 689 (“**Dhanda case**”).

- In light of the decision of the NCDRC, the Purchasers (complainants) preferred an appeal to the Supreme Court of India seeking fair and just compensation, over and above the stipulated amount in the agreement signed between the purchasers and the builders.

**HIGHLIGHTS OF THE JUDGMENT DATED 24 AUGUST 2020 IN DLF
SOUTHERN HOMES CASE**

➤ ***One sided Agreements to be looked into carefully***

- On a perusal of the ABA, the Court observed in its judgment that it cannot turn a blind eye to the manifestly one-sided nature of the agreement.
- The Apex Court in assessing the legal and factual position, stated it is necessary to look into terms of contract, which gave arbitrary discretionary power to waive a breach by the allottee of failing to make payments, subject to additional interest rate on the pending payments, and on the other hand, breach by the builder/developer in delaying the handing over of possession of residential flat units was restricted to Rs.5 per sq. m under the terms agreed. The Court pointed out the **abuse of position of ascendancy by the Developer.**
- The Court further observed that reliance on the *Dhanda case* by the NCRDC is erroneous inasmuch as its interpretation of the case to deny the purchasers, fair and just compensation. The Supreme Court made an *obiter dictum* interpreting the *Dhanda case* stating that the case never placed an interdiction on award of compensation above and beyond what has been agreed between the purchaser and the builder, and that the case

had been wrongly relied on by the NCRDC to deny fair and just compensation.

➤ ***Representations made by Developers are binding***

The Apex Court categorically stated that Developer must be held accountable to the representation made, and that the representations cannot be compromised or discarded as chaff by the Developer, and have a binding value, attracting liability on the Developer.

COMPENSATION FINALLY AWARDED BY THE HON'BLE SUPREME COURT

The Court directed the Developer to pay an amount calculated at the rate of 6 per cent simple interest per annum to each of the Appellants/Purchasers (amount shall be computed on total amounts paid towards the purchase) in addition to the compensation clause in the AGA.

OUR COMMENT

- The Hon'ble Supreme Court in the DLF Southern Homes Case has wide ranging repercussions, specially on one-sided unilateral clauses entered into by Developers and the liability of Developers. In addition to RERA and insolvency (IBC), the threat of additional compensation by the Consumer Commission looms large and as such, sufficient planning in terms of timelines, payment schedules, agreement drafting, etc.

would go a long way in ensuring lesser liability on the Developers.

- Whilst the precedent of travelling beyond contractual terms certainly presents uncertainties on the liabilities for Developers, it also inculcates sufficient responsibility on erring Developers to hand over projects on time.
- Developers, while drafting agreements, would have to exercise more caution in unilateral clauses, incorporate more neutral clauses, and also not rely on standard templates across projects. Promises are not to be made nonchalantly as they are held to be binding, and therefore, realistic completion dates and handover dates would have to be provided.

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