

**INFORMATION MEMORANDUM:**

NCDRC holds that paltry rental amount of flat cannot be made sole basis for granting compensation to the homebuyers.

**Springdale Core Consultants Pvt Ltd vs. Pioneer Urban Land and Infrastructure Ltd. NCDRC, Consumer case no. 349/2017**

**Decided on 14<sup>th</sup> July, 2020**

Compensation for delayed possession computed solely on the basis of rent will not be a deterrent for erring builder since such paltry compensation would not cost him more than 3-4% of capital invested.

The Complainant company booked a residential apartment for its Directors in the Builders project on 29.11.2011. An agreement for sale dated 13.03.2012 was executed between the parties.

Under the agreement, the Builder had to apply for Occupancy certificate by 04.09.2015 and obtain the OC by 04.03.2016.

The builder could not obtain OC within agreed time. The Complainant filed a complaint seeking possession of the flat along with the compensation for delay in construction. Alternatively, the complainant company prayed for refund of the amount paid to the Builder.

During the pendency of the complaint, the Builder obtained OC and offered possession to the complainant company vide letter dated 03.04.2019.

**Issue before NCDRC:**

- (i) Whether the flat booked by the Complainant company for its Directors was booked for speculative purposes?
- (ii) Whether the Complainant company is entitled to any compensation in the form of interest for delay in possession of flat?

**Complainant's contentions:**

It placed reliance on the resolution passed by its board of directors on 14.11.2011, resolving to book flat for the residence of one of the directors of the company. Accordingly, the complainant argued that the purchase of flat was not for speculative purposes.

**Builder's contentions:**

1. Since the complainant is a private limited company resolution may have been manufactured at a later date.
2. As per the information provided by the Registrar of companies, the business activities of the complainant company were confined to Amritsar and all the Directors were residents of Amritsar. A director was also a partner of LLP engaged in the business of Real estate.
3. The compensation for the delay in delivery of the possession where the complainant is a company should not be at par with the compensation granted to an individual.
4. Submitting the lease deeds, the builder showed the prevailing rentals in the project. They stated that there would be no justification for compensation higher than the prevailing rentals in the project.

5. Builder also claimed for holding charges from the complainant company.

**Key Principles:**

1. Compensation to a company for delay in delivery of flat cannot be at par with the compensation granted to an individual. Since the company would not be entitled to compensation for mental agony and harassment to which an individual will be entitled to.
2. The builder cannot levy holding charges on a homebuyer as it does not suffer any loss on account of a buyer taking possession at a later stage due to an ongoing litigation.

**Verdict of NCDRC:**

NCDRC directed the Builder to hand over the possession of flat to the complainant company within 8 weeks from the date of order. The court also awarded compensation to the complainant company.

It rejected the Builder's contention that the flat in question was for speculative purposes. It observed that the Director became a partner in the LLP in the year 2017 and the flat in

question was booked earlier in the year 2011. Secondly, she was residing at Gurgaon and was planning to shift to Gurgaon even if she was residing at Amritsar. Therefore, it is difficult to infer that the flat was booked for speculative purposes

The Commission relied on the decision of *Vishal Malik & Anr. Vs. Pioneer Urban Land Infrastructure Ltd<sup>1</sup>*, to direct possession of flat along with the compensation.

The commission agreed with the Builder that the compensation to the complainant company cannot be at par with that to an individual. The company is not entitled to compensation for the mental agony and harassment to which an individual is entitled.

On quantum of compensation, NCDRC stated that the prevailing rents in respect of similarly situated flats of identical specifications and size cannot be made the sole basis for grant of such compensation. Else the builder would have no incentive to complete the construction within the agreed time frame. He would know that even if he diverts the funds collected from the flat buyer to another project, he would easily compensate the buyer which would not

cost him more than 3-4% of the capital employed.

NCDRC placed reliance on the decision of *Capital Greens Flat Buyer Association & Ors. Vs. DLF Universal Limited & Anr<sup>2</sup>* to observe that the builder is not entitled to holding charges. Since the builder having received the consideration has nothing to lose by holding possession of flat except to maintain the apartment.

### **Acelegal Analysis:**

The order of NCDRC will have a strong influence on other forums like RERA. The issue of the complainant being an "allottee" is existing under RERA too. The test laid down by NCDRC will come in handy even under RERA.

RERA provides the quantum of compensation u/s 18 of RERA in case of default / delay by the Builder. Such compensation is fixed at 2% plus the Maximum Marginal lending rate. RERA does not provide for rent or mental agony as the basis for determining the compensation. Therefore, under RERA the issue of quantification of the compensation is rather watertight.

<sup>1</sup> CC no.1238 of 2017, Decided on 29.03.2019

<sup>2</sup> Decided on 03.01.2020

*Acelegal*

Email: [bharat@acelegal.net](mailto:bharat@acelegal.net)

Telephone: 022-27812781 / 82

Website: [www.acelegal.net.in](http://www.acelegal.net.in)

**Mumbai:** D-201, 2nd Floor, Vashi Station Complex, Navi Mumbai – 400 703

**Delhi:** B-27, Front Block, Sagar Apartments, 6-Tilak Marg, New Delhi – 110 001.

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