

HOME BUYER'S REMEDIES FOR DELAYED PROJECTS

An estimated 2,000 housing projects across 42 Indian cities have stalled, totaling 5.08 lakh units as of 2024, leaving thousands of homebuyers in limbo. The legal experts share the legal remedies available to the homebuyers in case of a delayed project.

By: Realty+ Bureau

Having one's own home is the ultimate dream for many, signifying a sense of security and comfort. However, a delayed and stalled project may lead to a substantial loss since, apart from the monies to be paid for the home, there is also interest on home loans and the rent for the present accommodations to be paid.

Purchasing a property, particularly in an under-construction real estate project is a significant financial and emotional investment for most homebuyers. However, a common concern faced by home buyers is delay in delivery of the project caused either because of delay in obtaining approvals, disagreements between builders and their contractors/sub-contractors, builders facing financial difficulties, economic scenario, unforeseen events beyond one's control, etc.

Delayed Possession? Know Your Rights and Remedies

In this article, the legal experts analyze the provisions of (i) Real Estate (Regulation and Development) Act, 2016 ("**RERA Act**"); (ii) Consumer Protection Act, 2019 ("**CP Act**"); and (iii) the Insolvency and Bankruptcy Code, 2016 ("**IBC**"), in relation to the recourses available with an allottee/ buyer in case of delay in handing over the project to them.

In pursuance to the laws, a buyer/ allottee can file complaints before the concerned consumer forum or the RERA Authority or initiate insolvency proceedings under the IBC against developers for default in delivering promised housing units within the agreed project timelines.

Also, discussed are the recourses available with the allottee/ buyer which inter-alia includes (i) withdrawal from the project by the buyer; (ii) seeking a full refund and interest if the developer fails to deliver the property within the agreed timeline; (iii) demanding compensation for the delay from the promoter; (iv) demanding cancellation of the builder-buyer agreement; and, or (v) file complaints in consumer courts for deficiency in service, leading to monetary compensation or other remedies.

The problem of stalled and abandoned housing projects has plagued the residential real estate sector for a long time. An estimated 2000 residential projects with 5 lacs housing units worth ₹4.08 trillion are stalled across India, leaving thousands of homebuyers in limbo.



Real Estate (Regulation and Development) Act, 2016 (RERA)

Prior to the enactment of the RER Act, the real estate sector was largely unregulated, and homebuyers were resigned to approach the overburdened civil / consumer commissions for remedies which was time-consuming, expensive and many times ineffective all of which worked in favor of the errant developers making a delay in possession quite common. The provisions for revocation of registration, hefty penalties and even imprisonment contained in the RER Act for non-compliances as set out therein have proven to be an effective deterrent against these malpractices.

RERA established a mechanism to resolve disputes between homebuyers and developers while safeguarding consumer interests. The aggrieved homebuyer can file a complaint with the Real Estate Regulatory Authority or adjudicating officers against the erring promoters.

Importantly, RERA supplements rather than supersedes other laws, allowing homebuyers to pursue remedies under the Consumer Protection Act (CP Act), arbitration agreements, or the Insolvency and Bankruptcy Code (IBC). The Supreme Court has clarified the remedies available under these frameworks, allowing homebuyers to choose the most suitable option.

As per **Sushant Shetty, Partner and Rikky Dedhia, Senior Associate, Fox Mandal & Associates**, RERA, 2016 enacted with the primary intent to protect the home buyers, provides for an option to claim interest on the delayed possession or seek a refund in full along with interest and a complaint for the same can be filed before the authority established in each state. The Act and rules thereunder provide for a model agreement to be adopted by the promoters which has provisions pertaining to compensation to the home buyer particularly in case of a delay. In most cases even before the verdict of the RER Authority, the mere filing of a complaint mounts pressure on the erring developer who then seeks to settle the claims of the home buyer.

Shashi Bhushan, Sr General Manager-Legal, Ascendas Firstspace agrees, "Under Sections 18 and 19 of RERA, if a promoter fails to complete or deliver an apartment, plot, or building by the agreed date or abandons the project, the allottees have two options:

- **Withdraw from the project: The allottees can demand a refund of the amount paid and interest at the prescribed rate. This right is unconditional and does not affect other legal remedies available; or**
- **Stay in the project: If the allottees choose not to withdraw, they are entitled to monthly interest for the delay until possession is handed over.**

The allottee can decide which option to pursue. RERA ensures remedies for buyers to recover their investment or compensate for delays. Additionally, the homebuyers are entitled to seek compensation from the promoters if the project is developed on land with defective title or if the promoter fails to fulfil any other obligations under RERA or the sales agreement. Courts have also held that a co-promoter is equally liable to pay a refund if a flat's possession is delayed. It doesn't limit or define the responsibilities of different promoters."

As per **Farid Karachiwala, Partner, JSA Advocates & Solicitors**, RERA is the most effective and popular route for seeking recourse. "Under the ambit of RERA, an aggrieved person may file a complaint under Section 31 of RERA before the concerned Authority, where the property is situated and can under Section 18 of RERA either opt for Interest and Compen

sation for delayed possession or Refund with Interest & Compensation for withdrawal from the project because of delay. The jurisdiction to decide a claim for interest is with the Authority and the jurisdiction to decide issue of compensation is in the realm of Adjudicating Officer u/s 71 of the RERA. If required the aggrieved person can also challenge the decision of the Authority before the Real Estate Appellate Tribunal ("REAT") and if REAT's decision doesn't satisfy the buyer, the buyer can further challenge the decision before the concerned High Court through a second appeal making RERA an accessible yet structured route for redressal of grievances of the buyer."

Senior Partner, Hardeep Sachdeva, Partner, Nupur Singh and Associate, Ananya Singh, AZB & Partners, inform on certain relevant provisions of RERA Act in brief:

- **Section 18: Return of amount and compensation of the RERA Act provides for the rights of the buyers and provides recourse to the buyers if there is a delay in delivering the property/ project.**
- **Section 31: By filing of complaints with the Authority or the adjudicating officer a buyer can file a complaint with the RERA Authority or an adjudicating officer for any violation or contravention of the provisions of RERA Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.**
- **Section 71: Power to adjudicate provides that for the purpose of adjudicating compensation, the RERA Authority shall appoint one or more judicial officer as deemed necessary, for holding an inquiry, after giving any person concerned a reasonable opportunity of being heard.**
- **Section 72: Factors to be taken into account by the adjudicating officer of the RERA Authority are (i) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; (ii) the amount of loss caused as a result of the default; (iii) the repetitive nature of the default; (iv) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.**

CONSUMER PROTECTION ACT, 2019

Section 79 (Bar of jurisdiction) of RERA Act provides that civil courts cannot handle suit or proceeding in respect of any matter which the RERA Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under RERA Act to determine. However, consumers forums are still allowed to handle complaints.

Shashi Bhushan clarified, "Section 79 of the RERA Act bars civil courts from hearing disputes under RERA's purview. However, the writ jurisdiction of high courts and the Supreme Court remains unaffected. This ensures judicial oversight in exceptional cases where statutory remedies fall short."

Hardeep Sachdeva briefs on the CP Act, "If the project is not under RERA Act or buyer is dissatisfied with the RERA resolution, the aggrieved buyer can file a complaint in consumer court. The court can order compensation for delays, interest on the amount paid, or even a refund. The aggrieved buyer can approach the consumer forums to seek redressal and the consumer forums have the authority to adjudicate complaints involving significant monetary claims, offering a legal avenue for consumers to enforce their rights."

Farid Karachiwala added, "There is often a debate as to which is a better option – RER Authority or the consumer commissions. In our view and experience, considering that the RER Act is a dedicated legislation to protect the interest of the allottees of real estate projects including homebuyers and that the RER Authority has greater powers to regulate and penalize developers providing for a speedy disposal of cases compared to consumer commissions, the RER Authority is generally seen to be more effective and preferable as compared to the consumer commissions."

Sushant Shetty elaborated, "An alternate to the RER Authority is approaching the consumer commissions and depending on the value of the home, the home buyer can file a complaint before the various commissions at the district, state and national level being District Commission (for value not exceeding INR 1 crore), State Commission (for value exceeding INR 1 crore but not exceeding INR 10 crore) and National Commission (for value exceeding INR 10 crore) respectively. There is often a debate as to which is a better option - RER Authority or the consumer commissions. In our view and experience, considering that the RER Act is a dedicated legislation to protect the interest of the allottees of real estate projects in-

cluding homebuyers and that the RER Authority has greater powers to regulate and penalize developers providing for a speedy disposal of cases compared to consumer commissions, the RER Authority is generally seen to be more effective and preferable as compared to the consumer commissions."

The Supreme Court has clarified that consumer commissions retain jurisdiction over such cases despite RERA's provisions. While consumer commissions provide an alternative, RERA is often more effective due to its sector-specific focus and greater regulatory authority.

INSOLVENCY AND BANKRUPTCY CODE, 2016

Homebuyers are also considered as financial creditors under the IBC. Home-buyers can initiate the corporate insolvency resolution process under Section 7 of the IBC before the National Company Law Tribunal ("NCLT") if the Promoter is a company or a limited liability partnership. As financial creditors, home-buyers are also accorded an opportunity of being a part of committee of creditors under Section 24 and may vote during the corporate insolvency resolution process.

"As per subsequent amendments to the IBC, the homebuyers are accorded the status of a financial creditor and the allottees being not less than 100 in number under the same project or not less than 10% of the total number of allottees under the same project, whichever is less, can jointly file an application for initiation of the resolution process before the NCLT. However, resolution under IBC is a time-consuming and expensive process compared to the other available remedies," explain **Sushant Shetty and Rikky Dedhia**.

"To prevent misuse of the provision, it has been mandated that the application must be filed jointly by at least a hundred allottees or one-tenth of the total number of allottees in the same real estate project, whichever is less. The pecuniary jurisdiction for filing a complaint with the NCLT is INR 1 Crore. However, individual buyers cannot file cases alone. They must work together to reach the INR 1 Crore threshold," informed **Farid Karachiwala**.

"Insolvency and Bankruptcy Code, 2016 could be another route that the consumers could take. Allottees are recognized as financial creditors, which enables them to initiate insolvency proceedings against developers for default in delivering promised housing units. The second provision to Section 7 of IBC states that in case of allottee, an application for initiating CIRP under Section 7 of the IBC is to be filed jointly by at least 100 allottees or 10% of the total allottees under the said project, whichever is lesser. The third proviso further stated that matters already filed by financial creditors such as allottee but not yet admitted by the adjudicating authority before the commencement of the 2020 Amendment Act shall be dismissed if they are not modified to fulfil the minimum threshold requirement as stated above within 30 days from the commencement of the 2020 Amendment Act," explained **Hardeep Sachdeva, Nupur Singh and Ananya Singh**.

"The 2018 amendment to the IBC granted homebuyers the status of financial creditors and the Supreme Court has ruled that the Bankruptcy Code takes precedence over RERA in cases of conflict. The homebuyers have the right to invoke insolvency proceedings against the developers under the Bankruptcy Code as financial creditors without resorting to the remedies available under the RERA Act," summed up **Shashi Bhushan**.

Homebuyers in India face significant challenges, but legal frameworks like RERA, the CP Act, and the IBC empower them to address their grievances effectively. By combining preventive diligence with legal recourse, they can force promoters to greater accountability and transparency.

IN CONCLUSION

The aforesaid remedies under the legal framework significantly safeguard homebuyers' rights. Through landmark judgments, Indian courts and tribunals have affirmed homebuyers' rights to timely possession and compensation for delays.

Farid Karachiwala said, "These legal remedies are essential tools for homebuyers to assert their rights and seek justice in case of delayed possession, ensuring a fair and transparent resolution. Homebuyers should be aware of these remedies and take timely action

to protect their investments. RERA, in particular, provides robust provisions for delaying developers and offering financial compensation. By asserting their rights under these laws, buyers can navigate the complexities of real estate transactions and secure favorable outcomes in cases of delays."

Hardeep Sachdeva inferred, "In case of delays, RERA Act or CP Act enables an allottee to seek compensation or refunds, as discussed hereinabove. Courts have upheld the principle of awarding interest on amounts deposited, or ensuring that developers honor the terms agreed upon in contracts. Furthermore, the courts have reinforced that the refund of amounts paid, along with appropriate interest, is the responsibility of the developer, irrespective of whether they have received full consideration from the allottee."

Shashi Bhushan shares a cautionary approach, "The doctrine of election allows homebuyers to cherry-pick one remedy among the available options for the same relief. Courts discourage "forum shopping" and emphasize that the first chosen remedy should be pursued. However, insolvency proceedings under the IBC can be initiated simultaneously with other remedies, providing additional recourse to homebuyers. It helps to tread cautiously. While the above remedies are curative, preventive measures are essential. Homebuyers should thoroughly evaluate a project's viability and the developer's track record before investing. Proactive diligence can help avoid financial and legal complications."

Sushant Shetty concluded, "Real estate having had been a typically unregulated sector, the advent of the RER Act has true to its intended intent ushered in an era of transparency, efficiency and accountability thereby eliminating unscrupulous players from the market. Complemented by fora like consumer commissions and NCLT, homebuyers are now put at relative ease while making their purchase decisions."

ADDITIONAL LEGAL REMEDIES FOR HOMEBUYERS

Criminal Proceedings under Bhartiya Nyaya Sanhita, 2023: Further, in several cases, where the builder has fraudulently withheld possession, buyers can file criminal cases as well. Under the Indian Penal Code/ Bhartiya Nyay Sanhita, 2023, offenses like fraud, criminal breach of trust, and cheating can be applied. Criminal cases might lead to severe penalties or imprisonment for the builder. A criminal complaint is usually filed if there is clear evidence that the builder intentionally deceived buyers, misappropriated funds, or falsely promised possession. Buyers may file an FIR with the police or approach the magistrate if the police fail to act.

Filing a Complaint with the Competition Commission of India (CCI): In rare cases, buyers may file complaints with the CCI if they believe the Promotor is holding a dominant position and is engaging in anti-competitive practices. While this was more common before RERA, CCI complaints remain an option for buyers affected by a Promotor's monopolistic behaviour or unfair practices. However, pursuing this route may require very strong evidence of anti-competitive behavior and dominant position of the Promotor in a particular region.

Arbitration: If the sales agreement between the project developer and the homebuyer includes an arbitration clause, disputes can be referred to an arbitral tribunal. Section 8 of the Arbitration and Conciliation Act mandates judicial authorities to refer disputes to arbitration when a valid agreement exists. However, arbitration is limited by public policy and special statutory remedies. Courts can reject arbitration requests if a specific remedy is opted under another statute, such as the CP Act or RERA.

