

Legislative Protection : Real Estate

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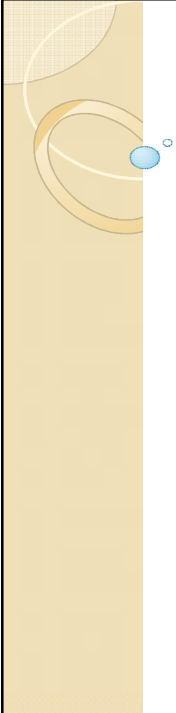
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WHAT WE WILL DISCUSS TODAY

- Problems being faced by Customers / Home Buyers
- RERA Salient Features
- RERA Impact : Customers must know
- SC Judgment recognising Home Buyers as FC
- Rights of Financial Creditors
- Legal Remedies available to aggrieved Customers
- Question Answer Session

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PROBLEMS FACED BY CUSTOMERS

(before RERA regime)

- **Title Disputes**
- **Non-Disclosure / Misrepresentation**
- **Delayed Possession**
- **Brokers' monopoly**
- **Lack of enforcement agencies**
- **Lack of awareness**
- **No uniformity and pricing**
- **Unfair trade practices of Builders**
- **No standard practices for Builders / Brokers**

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RERA 2016 SALIENT FEATURES

- Mandatory Registration of Project
- Mandatory registration of Agents
- Liability on Promoters in case of failure
- Establishment of Adjudicating Authority
- Mandatory disclosure of project specific information

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RERA IMPACT : CUSTOMERS MUST KNOW

Standardization of Carpet Area - Section 2(k)

- *“carpet area” means the net usable floor area of an apartment, excluding the area covered by external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment*
- *There is no room for manipulating / inflating the prices by wrong calculation of carpet area*

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RERA IMPACT : CUSTOMERS MUST KNOW

Ceiling on advance payment (Section 13)

- In no case the Builder / Promoter can collect advance without entering into registered agreement for sale
- Such advance or booking amount can not exceed more than 10% of the cost of property
- Agreement to sale must include payment modalities, constructions specifications

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RERA IMPACT : CUSTOMERS MUST KNOW

Compulsory Insurance of the Project (Section 16)

- The Builder / Promoter must get the project insured

Protection for Title of the property

Protection for Construction of the project

- The Benefits of insurance gets automatically transferred to allottee or association of allottees (RWA/AOA)

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RERA IMPACT : CUSTOMERS MUST KNOW

Penal interest in case of default

- In case Builder is not able to deliver the property within specified time
- The Registration of Builder got revoked / suspended
- Alottees can withdraw from the project and get refund with interest
- Penal interest in agreement to sale would be same for Builder and Buyer

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RERA IMPACT : CUSTOMERS MUST KNOW

Escrow Account Provisions : a bar against builders getting insolvent

- Separate Bank Account for Project
- 70% of the amount realized to be deposited in Separate Bank Account
- Withdrawal from Builder only on the basis of completion of the project to be certified by a Civil Engineer, Architect and CA in practice

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RERA IMPACT : CUSTOMERS MUST KNOW

Buyers right in case of misrepresentation

- Builder misrepresented at the time of booking
- Buyer can withdraw from the project
- Buyer entitled for full refund + Compensation

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RERA IMPACT : CUSTOMERS MUST KNOW

Right in case of defect after possession

- Structural defect
- Defect in workmanship, quality or provision of service
- Within 5 years after the possession
- Defect to be removed by Builder within 30 days without any extra cost
- In case of failure on the part of Builder, Buyer is entitled for compensation

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RERA IMPACT : CUSTOMERS MUST KNOW

Right in case of delay in possession

- **Withdrawal** from the project with full refund of interest
- **Continue** with the project – entitled for compensaion and interest

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RERA IMPACT : CUSTOMERS MUST KNOW

Right in case of defective title

- If at any time it is found that there is defect in title of property then the Buyer can claim compensation from the Builder
- There is no time limitation applicable for this

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RERA IMPACT : CUSTOMERS MUST KNOW

- Prescribed information on website
 - Promoter & Promoter Group Profile
 - Track Record of Promoter
 - Details of Litigation in last 5 years
 - Details of Real Estate Project
 - Financial Details of Promoter
 - Details of Approvals, Permissions, clearances of Project
 - Contact details

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RIGHTS OF HOME BUYERS UNDER IBC

- Supreme Court Judgment declaring Home Buyer as Financial Creditor
- Rights of Financial Creditor
- Process of Corporate Insolvency Process

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REAL ESTATE CUSTOMERS AS FINANCIAL CREDITORS UNDER SC JUDGEMENT

- Speaking of the benefits of IBC to homebuyers a bench of Justices R F Nariman, Sanjiv Khanna and Surya Kant said that IBC is a beneficial legislation to protect the interest of home-buyers who had invested their money to realize their dream of a house and there was no illegality in giving them a say in insolvency proceedings against a builder which failed to discharge its obligation to handover possession of flats on time.
- The court held that “RERA is to be read harmoniously with the Code, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over RERA
- The Code is thus a beneficial legislation which can be triggered to put the corporate debtor back on its feet in the interest of unsecured creditors like allottees, who are vitally interested in the financial health of the corporate debtor.

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REAL ESTATE CUSTOMERS AS FINANCIAL CREDITORS UNDER SC JUDGEMENT

- It was contended by the real estate developers that the law can be used as a tool of blackmail by speculative investors, to which the court said that the builders can also point out in the proceedings that the insolvency resolution process under the Code has been invoked fraudulently and with malicious intent.
- The bench also stated that with the help of IBC the aggrieved home-buyers can take action against builders and if that status is taken away, they will not get anything in liquidation process against a defaulting company.

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RIGHTS OF FINANCIAL CREDITOR UNDER IBC

- Financial Creditor means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to.
- As per section 7 of IBC the Financial Creditor has right to initiate the corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.
- The financial creditor shall make an application under sub-section (1) where the debt amount is Rs. 1,00,000/-
- The matter after being listed and on admission will be taken for Corporate Insolvency Resolution Process (CIRP).
- The Financial Creditor needs to propose an Interim Resolution Professional (IRP) in an application filed with NCLT.

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RIGHTS OF FINANCIAL CREDITOR UNDER IBC

- Once the IRP is confirmed by the NCLT then he will act as Resolution Professional (RP). The fees payable to the IRP is initially payable by the Company (Financial Creditor). Once the IRP becomes the RP on the onset of the Resolution Process, i.e. within approximately 1-2 month of his appointment, that amount is paid back to the Financial Creditor.
- The time duration for the completion of the CIRP is 180 days, however, If the Resolution Plan is not accepted by the COC within 180 days then they can extend the time duration for a period of not less than 90 days.
- In case where a resolution plan is neither to the satisfaction of COC nor even voted with majority voting of 66% in favour of a resolution plan coupled with the fact of lapse of CIRP period to a maximum period of 270 days then COC will opt for liquidation of such a Corporate debtor.

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Legal Remedies available to Customers

		RERA	IBC
1	BUILDER IS NOT GIVING THE POSSESSION, I WANT MY MONEY BACK	An application can be moved against Promoter before the RERA Bench asking for refund and compensation	Builder is Company. If the debt is more than Rs. 1 Lakh > Issue demand notice> 10 days lapsed > file petition before NCLT Bench for start of CIRP
2.	BUILDER IS NOT GIVING THE POSSESSION, I WANT POSSESSION	An application can be moved against Promoter before the RERA Bench asking for expediting possession and interest on money for the delay	Builder is Company. If the debt is more than Rs. 1 Lakh > Issue demand notice> 10 days lapsed > file petition before NCLT Bench for start of CIRP>out of court settlement for possession

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Legal Remedies available to Customers

		RERA	IBC / Consumer Court /other fora
3	THE PROPERTY GIVEN DOES NOT MATCH WITH SPECIFICATION	Formal request to be given to Builder by writing a written notice to remove the defect>>without any extra cost>>within 30 days>> an application can be moved against Promoter before the RERA Bench for removal of defect in the property	A Consumer Complaint for deficiency in service can be moved against the defaulting builder
4.	TITLE DEFECTS IN PROPERTY	An application can be moved against Promoter before the RERA Bench Claiming compensation	For misrepresentation and defrauding the consumers, a criminal complaint can be lodged

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Legal Remedies available to Customers

		RERA	IBC / Consumer Court /other fora
5	BUILDER IS DOING ILLEGAL ENCROACHMENT AND COMMERCIAL ACTIVITY IN COMMON AREA	Formal Complaint be moved to concerned Development Authority (GDA / GNIDA) with a copy to local police station	
6.	BUILDER IS NOT REGISTERING RWA / AOA	As per UP Apartments Act once more than 33% occupants are there, builder is under obligation>>in case of denial>>lodge a complaint with respective Development Authority copy to concerned Registrar of Societies	

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Legal Remedies available to Customers

		RERA /	IBC / Consumer Court /other fora
6.	BUILDER HAS NOT RELIEVED COMMON AREA POSSESSION	As per UP Apartments Act, once RWA / AOA is formed all common area should be handed over to the respective RWA / AOA	
7.	AOA / RWA IS ACTING UNILATERALLY AGAINST THE INTEREST OF RESIDENTS	Please check the Bye Laws of the RWA / AOA. The majority of residents can remove the office bearers and appoint a new one.	

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Questions???

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