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India Corporate Law

No Occupancy Certificate: No Maintenance Charges

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An Occupancy Certificate (**“OC”**) is a document that is issued by a local government agency or planning authority, upon completion of construction of a new project. The certificate is proof that the project has been built, by adhering to applicable building codes, relevant regulations, and laws. It is the responsibility of the developer to obtain an occupancy certificate once the project has been completed. The certificate is an indication that the building is suitable for occupancy.

The National Consumer Disputes Redressal Commission (“NCDRC”), in a recent ruling in Gurumurthy Thisgarajan and Anita Rao and Ors. (“Complainants”) v. VDB. Whitefield Development Pvt. Ltd (“VDB Whitefield”)[1], maintained that builders should refrain from coercing flat owners to pay maintenance charges without obtaining OC from the civic authority.

Case History

A consumer complaint was filed under Section 21(a)(i), read with Section 12(1)(c) and Section 13(6) of the Consumer Protection Act, 1986, read with Order 1 Rule 8 of the Code of Civil Procedure (**“the Complaint”**). In the Complaint, the Complainants said that they were allotted flats in VDB Whitefield’s project. After much delay, the Complainants were then allotted incomplete possession of apartments, without an OC and other promised amenities. Furthermore, without the OC, VDB Whitefield started levying maintenance charges and advance maintenance on the Complainants.

However, VDB Whitefield had argued that maintenance fee was being charged as it was providing all facilities to those who had shifted to their flats. According to the Builder, the delay in the project was caused due to the Covid-19 pandemic and the buyers were forcing it to give possession of their units without OC.

Issue

The question before the Apex Consumer Forum was whether a builder/ developer can levy maintenance charges on the Complainants without obtaining OC?

Judgment

The NCDRC held that homebuyers would be liable to pay maintenance charges for their apartments only after the builder obtains OC from the civic authority, and it is not appropriate for builders to demand maintenance charges even if home buyers start residing in their apartments before that. It was observed by the Apex forum that “Therefore, we are of the considered view that the Complainants are entitled to get fair delay compensation. *Further, not obtaining an Occupancy Certificate to date is a serious deficiency of service*”. It further held that if the builder fails to obtain OC, then the project will be considered incomplete, and only “paper possession” will be observed even if the flats are handed over to the buyers.

The NCDRC did not agree with the argument of VDB Whitefield and backed the Complainants, relying on a recent judgment rendered by the Supreme Court in Samruddhi Co-operative Housing Society Ltd. v. Mumbai Mahalaxmi Construction Pvt. Ltd[2], wherein the Apex Court had

observed that the failure of a builder to obtain occupation certificate is a deficiency in service under the Consumer Protection Act 1986. Further, in Kamal Kishor and Ors. v. M/s. Supertech Limited[3] the Apex forum had observed: *“It would thus see that maintenance charges are required to be paid by the allottee from the date of issue of letter of offer of possession. As stated earlier, the possession in my view could not have been offered to the allottee without completing the construction of the villa in all respects and obtaining the requisite occupancy certificate. Offering possession without obtaining occupancy certificate is meaningless since the allottee is not permitted in law to occupy the house which does not have the requisite occupancy certificate. Therefore, the maintenance charges, in my opinion, would be payable only from the date on which the possession is offered to the complainants after obtaining the requisite occupancy certificate and provided the construction of the villa is complete in all respects at that time”*.

Therefore, the NCDRC maintained its stance and remarked that despite the Complainants taking physical possession of their respective units, maintaining certain common services would be an expense. No OC indicates that the project is not yet fully completed and that not all services promised are provided. Therefore, no maintenance charge should be levied before obtaining the OC.

Apart from the above, the Court directed compensation for the delay in the project and referred to the Supreme Court decision to discuss the plight of the Complainants while citing Wg. Cdr. Arifur Rahman Khan v. DLF Southern Homes Pvt. Ltd[4]., wherein it had held,

“Flat purchasers suffer agony and harassment as a result of the default of the developer. Flat purchasers make legitimate assessments with regard to the future course of their lives, based on the flat, which has been purchased, being available for use and occupation. These legitimate expectations are belied when the developer as in the present case is guilty of a delay of years in the fulfilment of a contractual obligation”.

[1]. Consumer Complaint no. 763 of 2020 – National Consumer Dispute Redressal Commission

[2]. Civil Appeal No 4000 of 2019

[3]. Consumer complaint no. 1009 of 2016

[4]. (2020)16SCC512