

Not a Prestigious Oasis

A real-life incident shows why India urgently needs a real-estate regulator



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Today, if one were to choose between praying before the gods and praying before the government, the former may be a better bet. So, as home buyers, let us hedge our bets and pray to both, to send us a protector in the form of a real-estate regulator — to protect us from the atrocities of builders, reputed and not-so-reputable alike.

To protect against what atrocities, you may ask. In response, one may provide a long laundry list of outrages suffered by home buyers every time they buy a new home. Instead, let us keep the response more pointed: namely, the routine abuse by builders of their dominant position.

Earlier in these columns, we have highlighted how hapless home buyers habitually suffer from the highly one-sided nature of contracts with the builders: so one-sided that a builder can effectively stomp, romp and tramp upon home buyers and when he pleases, with home buyers expected to lie limp, with no recourse against the outrage.

For example, a typical contract, thus something like this, while the home buyer must pay a penal interest of 18% per annum for a delay of even

15 days on his instalments to the builder, the builder has no symmetric penalty to pay for delaying work for any length of time. The instalments may be demanded every two months or upon each stage of completion, whichever is earlier, upon threat of penal interest, so that even if the builder has not completed a stage of construction, his instalment must be paid — else, you pay penal interest. The builder is not obliged to complete any of the promised facilities supposed to be provided at the time of handing over the house or even any time thereafter.

It is his sheer goodwill if he chooses to provide the promised facilities and they cannot be contractually demanded, even though paid for. Home buyer cannot question the quality of construction delivered against promises, nor can she have a claim to warranty on defective construction even for one season, and so on. But if you think such contracts cross the limits of fairness, here is a case study that may make you think again.

Here is a project floated by a prestigious estates and projects company, listed on the NSE and BSE. The company is a dominant player in Bangalore. The project comprises 182 villas in Bangalore and commenced nearly four years ago and was completed, in time (a blessing there) in December 2011. Completed units were handed over to buyers earlier this year. For now, we shall disregard the fact that the contract in this case, too, was about as one-sided as any



But since one-sided contracts are now par for the course, the builders want to squeeze even more from the buyers.

Understandably, when the project started four years ago, the builders had home buyers sign an 'agreement for sale'. This agreement and all the marketing material and periodic newsletters of the company, then and since, repeatedly referred to the project or 182 villas, with all the bells and whistles, a fancy club house and other common facilities and areas. Upon completion and handing over of the villas, just as the properties fell due for land registration, the builders have asked buyers to sign a final sale deed.

This is fine, except that this deed contains a new clause, namely, 'right to integrate' according to which the "builder is in the process of acquir-

ing lands abutting [the current scheme] for the purpose of extending the layout of the [project] wherein the similar type of development will be undertaken by the builder and integrated with the [current] development [and that the] purchaser shall not object [to] such integration. All internal roads and other common facilities can be made use of by the owners of the extended layout and the purchasers shall have no objection to the same."

Clearly, the right demanded is a misuse of the builder's dominant position, especially as it is made after the buyers have already fully paid for the property, and when there was no reference ever beyond the 182 dwellings for sharing of the common facilities. Also, even as the sale deed refers to the formati-

on of an owners' association, the builders do not create and share a group email ID of all home buyers in the scheme to help the buyers bounce their concerns relating to the project off each other.

By keeping each home buyer carefully incommunicado with the others, the builders misuse their dominant position yet again by denying the buyers the opportunity of united opposition to their demands. Communications to the company never draw a reasoned response, beyond routine acknowledgement, if that. So much for good corporate governance.

So what is the recourse for home buyers? The Competition Commission of India, though an empowered body against misuse of power by dominant players in the market, is not a regulator of exploitative realtors. Sebi and the stock exchanges are unlikely to be concerned beyond violations of listing requirements.

Our legal system, with many lower courts and even some higher ones, are prone to bend under the enormous money power of the builders. A good many lawyers who earn long annuities from repeated adjournments for their living, are hardly the answer to the common man's prayers. Therefore, there is an urgent need to have a regulator for the real estate sector, so that the unfortunate supplicants will have somewhere to pray, and have some hope of their prayers being answered. As things are, there is not even a god to pray to, in the hope of justice.