

How to protect your property investments

Most home buyers feel their investment is safe when developers tell them that all the necessary approvals from government authorities are in place, and that the project has also been approved by banks and housing finance companies. If banks have approved the project for a loan, then it would be fair to assume that the developer would have complied with all rules and regulations, for lenders carry out their share of due diligence.

That was until April 11, when the Allahabad High Court ordered the demolition of two 40-storey towers under construction at the Emerald Court project in Nodia being developed by real estate major Supertech.

The court order has thrown up a fresh set of challenges to home buyers. What is the extent of due diligence buyers need to do on their own? This verdict has brought forth a new set of checks that a buyer should carry out, be aware of the rights provided under the law and critical questions that they need to ask developers on a continuous basis.

OTHER CASES PENDING BEFORE THE HIGH COURT	
BUILDER & PROJECT	ALLEGATION BY THE RWA
OMAXE Omaxe Grandwoods Sector 93 B, Noida Expressway	Creation of basement stores without the approval of regulatory authorities and RWA
OMAXE Omaxe Grandwoods Sector 93 B, Noida Expressway	Converted basement parking space into apartments; constructed villas in the green area
ASSOTECH REALTY Windsor Park Indirapuram, Ghaziabad	Developer prohibited RWA from the management of the common areas and facilities
DESIGNARCH INFRA Designarch E-homes Greater Noida	Issuing of complete occupancy certificates at the time of partial completion
VXL REALTORS Eastern Heights Indirapuram, Ghaziabad	Not providing infrastructure like, approach road, sewage lines; providing occupancy certificates without completing the project

The Supertech case

The Allahabad High Court ordered demolition of Towers 16 and 17 on Plot 4 of Sector 93A in Noida “within a period of four months” for breach of the Noida Building Regulations and Directions, 2010 and the Uttar Pradesh Apartment Act, 2010.

Under the Apartment Act, a developer had to take prior consent of buyers or residents regarding amendments or revision of the sanctioned plan. In this case, the court observed that Supertech failed to obtain this consent and slammed the Noida Authority for not ensuring compliance.

“The maps, specifications as required under Rule 4 of the Apartment Rules, 2011 was never disclosed to the petitioner society and admittedly major alterations were made by linking petitioners’ building block with T-16 and T-17 (Apex & Ceyane), by space frame making the petitioners block unsafe. No objection/consent, as required under proviso to sub-section 4 read with Section 12 and Rule 3 and 4 of the Apartment Rules, 2011 was taken by the respondent company or Noida Authority from the petitioners,” the court order said.

The court further ruled that the developer did not maintain the mandatory distance of 16 metres between the two buildings that is required for buildings taller than 55 meters, and said that it also failed to maintain a clear space of 7.5 meters in the parking space for the movement of fire tenders. There was also deviation on the use of the basement as the developer had carried out illegal construction in the basement.

The court was scathing in its indictment of the Authority. “Noida Authority has colluded with respondent company in sanctioning the plan, hence there was no occasion of the Noida Authority to respond to the specific grievance of the petitioners.”

What can buyers do?

There are several must do’s for home buyers and after this case, one of the most important things to do is to insist on getting the copy of the plan from the developer every 2-3 years.

“Under law the builder is supposed to show the latest plan to the residents that has been approved by the authority and has the proposed changes to be made in the initial plan,” said Kunal Ravi Singh, the counsel for the petitioners Emerald Court Owner Residents’ Welfare Association.

Singh added that the validity of the maps is only for 2-3 years and the builder makes new maps with changes in the plan. “Therefore buyers should regularly demand for the new maps to know the changes proposed by the builder in the original plan.”

Another step buyers should take is to ask their bank or housing finance company to inspect these maps as the banks are also interested parties and they too should exercise a check whether the rules are being followed.

Legal experts say that two major developments have emerged from the court order: One, the RWA has the right to represent the apartment owners in every litigation pertaining to disputes between owners and developers. Two, without taking previous consent of the owner as stipulated in the UP Apartments Act, 2010, no amendments to the sanctioned map can be made by the developer.

When buyers are aware of these provisions, they can use it effectively to check the developer who promises say an open space or an amenity such as a club house on the map, but then goes ahead and constructs another building and markets it as a different project. While the court order says that existing buyers should be compensated for the principal investment with an interest rate of 14 per cent per annum, experts feel that,

given the passage of time, that sum may not be enough to buy a property with similar specifications in that area.

“Buyers should ask for adequate compensation and it could be a similar flat in a comparative location or a compensation that takes into account the market price in that locality,” said Sunil Agarwal, adjunct professor at the RICS School of Built Environment and MD, Black Olive Ventures.

The key question is the compensation itself, which is hovering around current interest rates. “The existing buyers of Supertech would be compensated only for principal investment with interest at the rate of 14 per cent per annum. This compensation does not take into consideration the return on investment that would have accrued to the flat owners,” said Aditya Tiwari, managing partner, Prudentius Legal Advocates.

Market observers say that properties in that region have risen at least four-fold over the last six years (the time buyers bought into the project) and those seeking a refund should do so being fully aware that it would take a great deal more to acquire a new property in the region or in other sectors of Noida.

“Exit generally is not easy, as the developer has already invested significantly on the construction of the project. And refund process itself might take some months, as it involves processing through various departments and the lending banks,” said Devina Ghildial, deputy MD, RICS South Asia, a certification body for the real estate sector.

Buyers do have the option of appeal before the Supreme Court, and this development would be keenly watched as any ruling by the apex court would be a settled question of law.

Need for a regulator

This episode once again brings out the dire need for a regulator for the real estate sector. The developers’ association Credai-NCR states that there is overlapping of rules that is creating confusion among developers and has called upon the government to provide clarification on the overlapping rules in the Act to avoid such incidents in future.

“With miscommunication, lack of approvals, delayed delivery of projects becoming a constant problem in this industry, there definitely needs to be some sort of discipline that needs to be instilled,” said Manpreet Grewal, regional director, Re/Max India, a brokerage firm.

Ghildiyal added that a regulator is necessary to remove the discrepancies prevalent in the market. “The regulator, as envisaged, will sanction the construction of a project only when the developer has fulfilled all the requirements relating to the project specifications.”

- Sandeep Singh & L Ramakrishnan

(Financial Express)