

For a FAIR DEAL

The Real Estate Regulator Bill assures to assuage homebuyers' concerns pertaining to defect liability

After a legal battle with a Mumbai-based developer for seven long years, Madhumita Shukla is a hassled homebuyer. She had been told by the lawyers that her case pertaining to defect in construction is strong. Even today, she is being reassured that eventually, the case would be settled in her favour and she would be entitled to compensation and penalty. However, the builder has the financial clout to delay the proceedings and this single mother is now losing her patience.

"For how long can I fight like this? I am losing money and am completely exhausted. The upbringing of my child is suffering, as I hardly find time for my daughter after my job and the legal issues. Above all, I live in an apartment, which is scary and I even fear for life. I wish there was a law that could have helped me," says Shukla.

The Real Estate Regulator Bill that has the provision of having a defect liability clause should have come as a good news to her. As per the Real Estate Bill, the defect liability period has been set at five years and as per clause 14 (3) this translates into a warranty in principle.

DEFECT LIABILITY ACT

The Real Estate Regulatory Act clause 14 (3) reads, "In case any structural de-

fect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days,...."

Defect liability period is a clause in builder-buyer agreement that allows the buyer a protective window against any structural or workmanship defect that can crop up post possession of the apartment. As per the Real Estate Regulatory Act, this period has been revised to five years from two years. This should have certainly reassured the buyers on quality issues but has not been catalyst to boost buyers' confidence due to prevalent practices in this part of the world.

Homebuyers know that the builder has the better resources to drag the case in courts for years in case of defect. Many homebuyers, therefore, maintain that though it's a good beginning, implementation holds the key. If only the real estate sector takes it up in true spirit, there will be a tangible change on the ground. Failing this, it will be one of the many laws that only a few would avail after long legal battles.

TIME FOR DIFFERENTIATION

Vikram Kotnis, managing director, Amura Marketing Technologies, agrees that the defect liability clause is intended to protect the end-user segment of buyers (which is an 80 per cent majority anyways), though the renowned customer-centric developers have been offering product level warranty for quite some time now. He, however, believes that warranties should be restricted to things like leakages, cracks, structural problems and MEP, as there is a thin line between structural problems and physical damage.

"The clause will, at any rate, put more



focus on product standardisation and quality. Also, with homes becoming smarter and premium fittings being used increasingly, developers should also focus on educating customers on care and maintenance of contemporary homes. This will ensure a smoother last mile with a better handover and repairs kept to a minimum," says Kotnis.

J C Sharma, VC and MD of Sobha Ltd, says at a time when the current market sentiment and consumer confidence is at its nadir, there is an utmost need to stress on fair play, quality of construction and on-time delivery; the reputation of developers hinges on these. The revision of this clause is expected to increase transparency, clarity and boost investor confidence in the Indian market.



FAST FACT

DEFECT LIABILITY HAS BEEN A SUBJECT OF INTENSE DISCUSSION ALL OVER THE WORLD. INTERNATIONAL EXPERIENCE SUGGESTS THAT COUNTRIES, WHERE IT IS UP TO 10 YEARS, ARE WITNESS TO MORE ORGANISED REAL ESTATE ECO SYSTEM

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"A brand wins customers' trust only when it takes quality seriously. In order to ensure that one has to consistently deliver the highest-quality and a consistent quality of construction," says Sharma.

QUESTION OF INTENT

Nikhil Hawelia, managing director of Hawlia Group, makes it a point when he says that defect liability clause stands even today on part of the developers, only its tenure has been extended. According to him, it is not about the new law but the implementation that is a key concern. However, the sector is moving in a direction where the seriousness and implementation of due procedures would be the market differentiator.

"If your property is selling at lower the average market value in the secondary market, that itself speaks loud about your construction quality and inherent defects. We are no longer living in an era where the reputation vis-à-vis the construc-



tion can be concealed. I feel even after the new provision, there would be developers, who would seriously follow it while others would pay a lip service leading to amount of consumer grievances and litigations," says Hawelia.

INTERNATIONAL EXPERIENCE

Defect liability has been a subject of intense discussion all over the world. It differs from country to country but international experience suggests that the countries where it is up to 10 years are witness to more organised real estate eco system with less consumer cases.

The model has been working successfully in UK where the National House Building Council (NHBC) provides 10-year-long home warranties providing first or subsequent purchasers against damages caused by structural defects or poor construction. Only builders registered with NHBC can offer the warranty and the construction is audited at key stages by NHBC.

In the USA, home warranty is loosely used and is more like a home service contract offered by builders, insurers which cover repair and replacement of home appliances, heating systems, MEP among others. However both the models aim to improve the customer's ease of buying, owning and maintaining the product.

MORE PREMIUM?

Developers often question whether the buyers are ready for a time when they will be willing to pay a premium on properties that come with stronger warranties. However, the fact of the matter is that buyers expect quality regardless of premium.

Currently, buyers are already stretched with direct and indirect premiums for the brand, the specifications, specific amenities, floor-rise, views, stage-wise pricing et al.

At this point, the market is not prepared to accept or pay any further premiums, especially, on construction quality and specifications, which will become a qualifier. In fact, the reverse may happen wherein reputed brands may start setting the price in their respective micro markets, where quality construction, certain specs,

and timely handovers will become a given.

In a nutshell, the time has come for the sector to take in its collective consciousness the defect liability as an industry practice, instead of treating it as another regulation. They can any way no longer deny it in the name of normal wear and tear or physical damage. Delaying the justice to homebuyers in the courts will neither help the developer nor the sector in its efforts to get a facelift.

— Ravi Sinha