DOES BUYER HAS THE RIGHT TO DAMAGES FOR DELAY OF POSSESSION.

By MR.KALYAN RAO PEDDI REDDI B.COM (HONS) IN COMPANY LAW & SECRETARIAL PRAC. & BUSINESS ADMINISTRATION & ECONOMICS, ECONOMIC DEVELOPMENT; LL.M (CONSITUTIONAL LAW of India), COMPARATIVE STUDY IN (**U. S. American Constitution, Swiss Constitution, FRENCH CONSTITUTION & British Constitution)**,

C.E.O OF KALYAN LEGAL EXCEL CARE SERVICES ONLINE FOR CITIZENS & N.R.Is.

www.legalexcelcare.com

(LAUNCH: 1.1.2018),

Former District & Sessions Judge, now lives at HYDERABAD, INDIA

**Yes**, the consumers must have the *right* *to* *damages* if delayed because *delay* in delivery of possession can cause the buyer *losses* which may also leads to *defamation* of the consumer as well as the buyer. So, it is the *duty* of the *seller* to make the *losses* *good*.

 That is why there are some ***sections*** for the consumer’s protection:

**Section 32** of *Sales of Goods Act, 1930* says about the rules of delivery which includes the delivery of goods on *time*.

**Sections** **57** and **58** of *Sales of Goods Act, 1930* provides the damages for *non* –*delivery* and *specific* *performance* of the contract respectively.

This leads to ‘***deficiency*** ***in*** ***service’*** for which a buyer can file a consumer complaint under **section** **2(g)** of **CONSUMER PROTECTION** **ACT**,**1986** which defines the ‘**deficiency’** means any fault, imperfection, shortcoming or inadequacy about the *nature* and *manner* *of* *performance* which is required to be maintained.

**Section 49 and 50 CONSUMER CONTRACTS REGULATIONS,** **2013** includes the terms of contract that the trader must perform the service and the *liability* for the *breach* of this term cannot be excluded

Making it mandatory for all commercial and residential real estate projects to register with the Real Estate Regulatory Authority India, now disclosure of names of promoters, project layout, the status of statutory approvals, the draft of builder-buyer agreements, land status, names and addresses of real estate agents etc is obligatory. This information has to be regularly updated on the website of the regulator as well.

Non-registration of any real estate project can also lead to punishment upto 3 years or a fine upto 10% of the cost of the project. Various provisions of the act help in protecting the uninformed customers, such as:

* The registration of the regulator can be revoked in case of any misleading or false representation, advertisements etc from his side.
* Non delivery as per the terms of the contract would lead to a complete refund of the cost borne by the customer along with the pre decided interest rate or pay monthly interest on each delay month to the buyer, if they refuse to take the sum altogether.
* The prescribed regulator will now have to give security as to quality of construction and provision of services to the customer for 5 years from the date of possession and upon any such reporting of error, the developer will have to rectify it within 30 days of complaint.
* Before actually getting a registered sale agreement signed, the buyer cannot ask for more than 10% of the property’s cost as advanced payment.

 All of these mandates increase the productivity and value of the real estate industry, and set a benchmark for growth and development. The act lays down that each state establish its own Appellate Tribunal that liberates the honest man and disciplines the swindlers.

 ::2::

 The absence of authority and lack of proper rules and regulations in the real estate sector has always been a problem. The buyers have had problems such as the delay in possession, transfer of the deed or poor quality projects and much more and the builders are not held accountable for their actions or lack thereof.

The biggest harassment that a customer faces is a delay in possession of their property. Such a delay may extend to almost six years or more with no property in sight.

To ensure the timely possession of the properties the Act has made some provisions. The developers will have to get registered their on-going projects that have not received a completion certificate. After the registration, they will have to follow all the rules and regulations of the Regulatory Authority.

## **Provisions in RERA:** Real Estate Regulation Act – Provisions & Their Implications

The absence of authority and lack of proper rules and regulations in the real estate sector has always been a problem. The buyers have had problems such as the delay in possession, transfer of the deed or poor quality projects and much more and the builders are not held accountable for their actions or lack thereof.; The biggest harassment that a customer faces is a delay in possession of their property. Such a delay may extend to almost six years or more with no property in sight.

With the enforcement of [RERA](https://www.nrilegalservices.com/rera-real-estate-regulation-act/) in India, the sector has now got its own Regulatory Authority. Each and every state and Union Territories will have its own Authority, and the aim of such authorities will be to frame rules and regulations as per the RERA.; To ensure the timely possession of the properties the Act has made some provisions. The developers will have to get registered their on-going projects that have not received a completion certificate. After the registration, they will have to follow all the rules and regulations of the Regulatory Authority.

## **Provisions in RERA :** Some important rules in and stick to deadlines.: Written Affidavit:

* The buyers will now get a legal declaration from the developers along with all the other required documents.
* The legal document will be supported by an affidavit that will state the period within which a phase or the project will be completed.

Specify the Possession Date:

* The developers will have to specify in agreement of sale – the date of possession and the rate of interest in case there is a delay.
* The period will be different for every builder. The buyer will have to sure if the time will suit him or not while investing in the project.

Clear title of the land:: Most of the time the construction or delivery of the projects get delayed because of the land on which the development has to take place gets involved in disputes.

* The developers will now have to provide a written affidavit stating that the legal title to the land on which the project has to be built belongs to him.
* They will have to show the valid legal documents related to land and if another person owns the property then the authentication of the title.

*Free from Liability:* Sometimes the builder just can’t transfer the title to the buyer because of some liabilities.

* The developer will have to provide a written affidavit stating that the land is free from any liability.

*Maintaining Separate Account:* The developer will now have to maintain a separate account in a scheduled bank – an escrow account and 70 percent of the amount received from the buyers will be deposited in the account.

* The capital will be used to cover the cost of the land and the construction.
* They will be able to make withdrawals as per the work completed after it is certified by a chartered accountant, an architect, and an engineer.

*An offence: :*If the developers/builders abide by the rules of RERA in India, they will not only lose the registration of the project but will liable for the punishment.

* The punishment may vary – imprisonment for a term that may extend up to three years or fine that may extend up to ten percent of the estimated cost of the project, or both.

The [RERA Act](https://www.nrilegalservices.com/rera-real-estate-regulation-act/) short for Real Estate (Regulation and Development) Act, 2016 is one of the biggest improvisation in the sector of real estate. **Real Estate Regulatory Authority (RERA) Bill** was introduced by the Indian National Congress government in 2013 and after 6 years of debating, it was brought into effect on 1st May 2016.

RERA seeks to promote the interests of the consumers as well as builders and boost investments into real estate in an environment of trust and confidence. The transparency of the act ensures a steep drop in illicit activities and customer harassment, and an inclusion of agents in the provision now makes them accountable for their actions.

Making it mandatory for all commercial and residential real estate projects to register with the Real Estate Regulatory Authority India, now disclosure of names of promoters, project layout, the status of statutory approvals, the draft of builder-buyer agreements, land status, names and addresses of real estate agents etc is obligatory. This information has to be regularly updated on the website of the regulator as well.

Non-registration of any real estate project can also lead to punishment upto 3 years or a fine up to 10% of the cost of the project. Various provisions of the act help in protecting the uninformed customers, such as:

* The registration of the regulator can be revoked in case of any misleading or false representation, advertisements etc from his side.
* Non delivery as per the terms of the contract would lead to a complete refund of the cost borne by the customer along with the pre decided interest rate or pay monthly interest on each delay month to the buyer, if they refuse to take the sum altogether.
* The prescribed regulator will now have to give security as to quality of construction and provision of services to the customer for 5 years from the date of possession and upon any such reporting of error, the developer will have to rectify it within 30 days of complaint.
* Before actually getting a registered sale agreement signed, the buyer cannot ask for more than 10% of the property’s cost as advanced payment.

 In the near future, we expect REITs to increase the depth of the Indian property market through a sound regulatory framework which ensures transparency and high governance standards, and promotes regular monitoring of their performance. The market for REITs and InvITs is relatively nascent in India. However, with various enabling factors such as the growth of the economy and the middle class, and a concomitant need for housing and infrastructure, we are positive that the market for these investment vehicles will witness considerable growth in the near future.

 SATYA MEVA JAYETHE==MERA BHARAT MAHAAN===JAIHIND.