

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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RIGHT TO TRANSIT RENT AND IMPLICATIONS IN CASE OF DEFAULT

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Introduction

A home represents not just a financial asset but an emotional cornerstone of a person's life. Buildings housing such homes require regular maintenance, and after several years, may necessitate complete redevelopment. In recent times, the number of buildings undergoing redevelopment has significantly increased, many completed successfully, while others have been brought before the Hon'ble courts over defaults, delays, or contractual contraventions.

The decision to enter into a redevelopment agreement involves numerous considerations. One critical aspect is transit rent, the compensation paid by the developer to homeowners during their displacement to temporary accommodation. In many projects, developers fail to fulfil this obligation, placing a significant financial burden on residents. Several cases have come before the Hon'ble courts questioning homeowners' right to transit rent and the remedies available upon developer default. This paper seeks to analyse this right and the legal implications of such defaults.

Analysis

The right to transit rent is a relatively new concept as mentioned earlier. When a property goes into redevelopment, the house owners and the tenants of the building going into redevelopment are made to relocate from their homes for a certain time period until the redevelopment is complete. The rent for such relocation must be paid by the developer of the project to the house owners and the tenants. However, there are many instances when the developers default in such payment of transit rent, and that eventually affects the house owners as such rent then needs to be paid through their pockets. Redevelopment projects, especially in the city of Mumbai are on the rise, therefore addressing this question as to the responsibility of payment of transit rent and the right of a house owner to seek transit rent needed to be done by the courts of law.

Two judgements are analysed in this paper in order to highlight the right that an individual to

get payment of transit rent, and the social injustice that the non-payment of such transit rent causes.

1. Maniar Associates LLP v. Vijay Niwas Co-op Housing Society Ltd. and Ors:

In this case, a Mumbai suburban society agreed to redevelopment, with a majority of flat owners and tenants consenting to vacate and hand over possession to the developer. However, a dispute arose concerning respondent number 3, who is alleged to be a trespasser by respondent number 2 in a separate pending suit, questioning the rightful possession of one particular flat. Due to this dispute, respondent number 3 refused to vacate, while the remaining eleven flat owners duly vacated their flats.

The petitioner sought directions for respondent number 3 to vacate. Respondent number 3 contended that they had no objection to vacating but were restrained due to the ongoing suit, and claimed transit rent basis their rightful possession. Respondent number 2 similarly claimed transit rent, asserting that lawful possession of the flat vested in them.

However, in the cases Heritage Lifestyles and Developers Pvt. Ltd. vs. Amar-Villa Co-operative Housing Society and others and Saikripa Co-operative Housing Society Ltd V/s. Osho Developers & Ors it was held that the person who was being dispossessed from the property would be entitled to the transit rent. Thereby, relying on these judgements and maintaining consistency in the view taken by the court, this court held that respondent number 3 would be entitled to transit rent. The court in its order, mentioned the payment of an advance transit rent to the respondent number 3 when the flat is vacated by him.

Therefore what can be understood through this case is that the flat owners and the tenants are entitled to a transit rent on account of redevelopment of their original homes. As highlighted, in the recent times there have been several cases wherein this question has arisen in order to determine what can be done if transit rent is not paid. In one of the cases before the Bombay High Court, it was held that if the developer defaults in payment of rent to the owners / tenants then the authorities can order for selling of the property and the tenants can move to relevant authorities in order for them to acquire the land and complete the development.

2. Rajawadi Arunodaya Co-op Housing Society Ltd. v. Value Projects Pvt. Ltd.:

In this case, Rajawadi Arunodaya Co-op Housing Society Ltd. filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim reliefs due to a six-year delay and default in transit rent payment by Value Projects Pvt. Ltd. The redevelopment agreement was executed in 2013, possession handed over in 2015, and the agreement terminated in 2019

following persistent defaults. A Court receiver was appointed, and the developer was directed to peacefully restore possession to the society which would be in the symbolic possession of the Court receiver until the redevelopment was complete.

Justice G.S. Patel of the Bombay High Court made significant observations, noting that displacement and non-payment of transit rent causes immeasurable human tragedy, describing it as tearing apart the city's social fabric. He emphasised that transit rent is a matter of survival for ordinary homeowners, and its default constitutes social injustice. The Court further held that such default entitles the society to terminate the agreement and engage a new developer to complete the project.

The judgement mentions that payment of transit rent every month to the house owners or the tenants is not something that the developer needs to do as a standard operating procedure, rather it should be done in order to ensure that the house owners / tenants are not put under any inconvenience as the rent received is actually a matter of survival for them. It terms the default in payment of such transit rent as a social injustice on the part of the developer towards the house owners. The case mentions that default in payment of transit rent provides the society enough rights in order to terminate the contract with the developer and thereafter seek another developer to take possession of the land and complete the development process. Certain duties are put on the developers when the society approaches the courts for termination of the project mid-way due to default or contravention of the agreement. The developer is required to put forth a proposal wherein he is required to:

1. Cover all the accumulated arrears of transit rent and the other dues.
2. Compulsorily pay the ongoing transit rent until the possession is transferred back to the house owners / tenants along with an occupation certificate.
3. Pay the statutory and corporation dues and taxes as applicable.
4. Provide with a financial structure showing the means to complete the project.

In the absence of such a proposal, the contract between the society and the developer shall be terminated, the developer must be ejected from the site, and must be compelled and liable to pay the accumulated debts thereto.

Through these two judgements, the need for protection of homeowners is evident. Homeowners invest their blood, sweat, and efforts into buying or renting a home. When redevelopment is decided, they trust that their investment will be honoured and the project completed duly. Keeping such faith, they vacate the premises and hand over possession to the developer, in return for alternate accommodation and transit rent.

In many cases, the developer initially pays the rents to the house owners, but after a few years

he starts defaulting in such payment, putting the burden of paying the rent on the house owner. As rightly pointed out by Justice Patel in the above mentioned judgement that coping up with the additional expenses with no actual fault of theirs is terrifying and unimaginable for a person from a middle-class family. It is a moral as well as legal duty on the part of the developer to not default in such payment, and it is through these judgements that one can ascertain that the courts are also of the same view.

Conclusion

To conclude, The Real Estate (Regulation And Development) Act, 2016 (**RERA**) was enacted with the intent of protecting homeowners from developer defaults. However, Section 18 of RERA, which provides compensation for delays in handing over possession, fails to address defaults or delays in transit rent payments. As highlighted in a recent case before MahaRERA, when the question of transit rent was raised, MahaRERA directed the homebuyers to approach another forum, stating that it was “not the proper forum to resolve the grievance pertaining to non-payment of rent raised by the Complainant”. This creates significant ambiguity, given that RERA’s primary purpose is to protect homebuyers. Since transit rent is an integral aspect of the redevelopment process, it is essential that the right to transit rent be brought within the purview of RERA. This would ensure that homeowners have a designated authority to approach in cases of developer default, thereby preventing injustice.