

# Shaky foundations of building advertisements

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There is invariably no squeak on the steep maintenance costs in such areas. (Photo: Representational Image)

Just 5 minutes from the metro station, schools, hospitals and malls."For the prospective investors, there's a different carrot. "Assured rental income of thirty to forty thousand rupees a month for a 3BHK flat." This is usually an oral assurance to expedite those stagewise payments by gullible buyers. Splash a few pictures of furnished and swanky model apartments on billboards and newspaper jacket advertisements and the lure of new residential projects at far flung areas is complete.

What these advertisements conveniently don't clarify is whether the 5 minute distance is under normal traffic conditions or a helicopter or VVIP convoy! Or whether there are water and sewerage connections. There is invariably no squeak on the steep maintenance costs in such areas. Neither is there any clarity on whether the fat rental income is the prevailing rate in that area or a fancy expected figure churned out by a glib talking salesman. For a reality check, you just need to visit certain gated communities along Chennai's IT corridor, where there are residents and owners who are rueing the time they were taken in by these misleading promises and are struggling to find tenants and pay their EMIs on home loans.

Does anyone care about the legislative intent of Section 12 of the Real Estate Regulation & Development (RERA) Act which is on the veracity of advertisements by builders? For the record, here's what it says. "Where any person makes an advance or a deposit on the basis of the information contained in the notice, advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter."

The statute goes on to state that "if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act." Great on paper but on the ground, it's a struggle to hold builders accountable.

How many buyers are aware of the provisions of Chapter 1 of the Advertising Standards Council of India (ASCI) Code dealing with truthful and honest representation? Clause 1.1 enunciates that "all descriptions, claims and comparisons which relate to matters of objectively ascertainable facts should be capable of substantiation." Further, clause 1.2 requires advertising claims "to be based on or supported by independent research or assessment" and "the source and date of this should be indicated in the advertisement." As per clause 1.4 "advertisements shall neither distort facts nor mislead the consumer by means of implications or omissions.

"Then comes clause 1.5. "Advertisements shall not be so framed as to abuse the trust of consumers or exploit their lack of experience or knowledge. No advertisement shall be permitted to contain any claim so exaggerated as to lead to grave or widespread disappointment in the minds of consumers." How many advertisements will pass these tests? In the light of facts on the ground, they seem more like mission impossible statements!

Oh, how can we forget promises of transparency and fairness? Recently, the National Consumer Disputes Redressal Commission in Amit Soni Vs Umang Realtech Pvt Ltd highlighted a common lopsided clause in a builder's agreement "where the seller, in case of default on the part of the buyer, seeks to recover interest a 18% p.a. but offers only ₹5/- per sq. ft. for any delay in delivery of possession." Terming it "an unfair trade practice" the commission noted that "it gives an unfair advantage to the seller over the buyer" and attracts Section 2(1)(r) of the Consumer Protection Act.

Such clauses fly in the face of the definition of 'interest' under Section 2(za) of RERA. Under the explanation of this clause, "the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default." I know of several cases where this is followed in the breach and even the paltry interest offered by builders for delays is not paid.

The Supreme Court in Pioneer Urban Land & Infrastructure Ltd. Vs Govindan Raghavan frowned upon standard form contracts. "A term of a contract will not be final and binding if it is shown that the flat purchasers had no option but to sign on the dotted line, on a contract framed by the builder."

I do concede that not all builders are unconscionable. There are some very ethical players in the market. How I wish they could be cloned! If home buyers do not read the fine print and insist on a level playing field, they will end up demolishing their rights and allow the construction goliaths to bulldoze their way through.

Home Truths

Veracity of advertisements - Section 12 of RERA

Honest representation - Chapter 1 of the ASCI Code

Unfair trade practice - Section 2(1)(r) Consumer Protection Act

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