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INSURANCE

INSIGHT

Scope of surveyor's report in relation with the investigation of crime

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when the parties have mutually agreed to it in writing



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The Hon'ble NCDRC in the revision petition of Union India Insurance Co. Ltd. & Anr. v. Iqar Hussain Razvi, examined the scope of surveyor's report in relation with the investigation of crime and also held that scope of revision petition is limited and can only be exercised when there is prime facie jurisdictional error appearing in the impugned order.

The Hon'ble NCDRC stated that the main question is, as to whether in the case of crime, who is the appropriate authority to investigate, whether the role of surveyor is confined to the assessment of the loss or whether he has the powers to investigate a crime under IPC and play the role of a Police? It held that the surveyor cannot assume such responsibility of investigating the crime per se and overrule the findings of police enquiry which has been accepted by the Magistrate. Hence, we are of the view that reliance cannot be made on the report of the surveyor with respect to the fact of the incident of theft/burglary. The Commission also observed that if the insurance company was not registered with the Trade Tax Department nor was paying tax then the Insurance Company ought to have raised these issues even before the issuance of the policy and cannot raise these issues at the time of examining the claim.

Consumer Commissions cannot rewrite terms and conditions of a written contract when the parties have mutually agreed to it in writing

The Apex Court in the case of Venkataraman Krishnamurthy and another v. Lodha Crown Buildmart Pvt. Ltd held that once the parties have mutually agreed in writing to the terms and

conditions of a written contract the same would be binding upon them. In the event such a written contract provided for the consequences that are to follow in the event of breach of the conditions by one or the other of the parties thereto, such consequences must necessarily follow and if resisted, they would be legally enforceable.

In the case on hand, the Agreement stipulated the date of delivery of possession of the apartment for fit outs with a grace period of one year. In terms thereof, the date for delivery of possession of the apartment for fit outs, with the grace period, was 30.06.2017. Admittedly, the respondent-company did not offer delivery of possession of the apartment for fit outs by that date. The 'date of offer of possession', under Clause 1.14, linked with issuance of the 'Occupation Certificate' was distinct and separate from the 'date of delivery of possession for fit outs' and Clause 11.3 unequivocally provided the consequences in the event of delay in that regard. The appellants were granted an unequivocal right to choose whether to uphold or terminate the Agreement within ninety days following the grace period's expiration. It was not within the jurisdiction of the NCDRC to impose its own standards and decide that, despite a delay in apartment possession, such delay wasn't sufficiently unreasonable to justify Agreement cancellation. The NCDRC had no authority to alter the contractual terms and conditions or apply its subjective criteria to dictate the actions of either party.



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