EBONEY LAW

What 23+ Years in Real Estate Law Has Taught Me About Why Redevelopment Disputes Repeat

Over more than two decades of advising clients, negotiating development agreements and overseeing litigation pending in court due to stalled projects or contested permissions or disagreement on certain agreed terms due to lapse of time, one thing has become unmistakably evident to me that redevelopment disputes recur not because agreements are intended to fail, but because the way we design those agreements fails to anticipate how people, markets, money and law interact as a project progresses, when projects usually stretch for a period of 3 years where larger projects stretch even for a period of 5-7 years or more.

There are discernible patterns that I have observe over the period of my experience in the real estate sector.

A builder defaults on performance or stretches timings far beyond what residents / occupants assumed when they entered into an arrangement for the redevelopment of their old / exiting building.

Issues that seemed peripheral at the start (temporary accommodation rent, penalties for delay, the allocation of additional space, hardship compensation or step-in rights) crystallize into the most contested elements once construction begins.

Many society members / occupants / owners of the building, having read a “standard” development agreement, assume those terms are sufficient. Most of the time, they discover later that ambiguous language no strict timelines with clearly jot down consequences of such delay, leads to differing interpretations and disagreements over the extended timelines and / or consequences on such delays or who is responsible for certain charges, leaving residents / occupants / society members clueless on their recourse under law and how to effectively complete the project in a timely manner and in their best interest.

These issues are tangible and appear in litigation, where courts have reinterpreted terms that were never fully specified and has passed directions which are in light of the judicial norms.

A second pattern is that disputes arise even when parties start with consensus. A society may pass a special resolution with the belief that it has secured sufficient consent. That consensus sometimes begins to fray when the developer seeks to monetize elements of the project in ways some members had not anticipated, or when statutory regimes like RERA are applied to some parts of a project but not others, leaving gaps of jurisdiction that expose members to conflicting forums.

So why do these disputes recur despite reliance on “standard” agreements?

The answer is that those templates were never designed in accordance with the requisites for an actual project to be completed. A template cannot anticipate how a builder will seek to change parking rights in mid-project, nor how members will respond if promised amenities are delayed. Nor can it always cope with statutory boundaries limiting where a regulatory authority can and cannot intervene. Nor can it ensure the delays which may be caused due to developmental norms and / or change in rules and regulations.

These loopholes, when they surface, inevitably pull parties back into disputes and / or disagreement which either lead to negotiations which benefit the parties to the arrangement or drag them to court where the focus is more on interpretation rather than implementation.

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VISIT OUR WEBSITE

https://eboneylaw.com/

EMAIL US

contact@eboneylaw.com

VISIT OUR OFFICE

427, Parekh Market,
39, Kennedy Bridge, Opera House, Mumbai – 400004