

## "What measures do you take in the event of a claiming refund from Builder ?"

### Very Important Note

### What Care Should Be Taken Before Filing a Complaint Against the Builder/Developer/Owner for Refund of Amount?

#### Precautions Before Filing a Complaint for Refund from a Builder

1. **Verify Eligibility for Refund:**

- Check the agreement for refund clauses, cancellation conditions, and penalties, if any.
- Ensure that the builder is in breach of the agreement, such as delay in possession, failure to deliver promised amenities, or termination of the project.

2. **Document Collection:**

- **Payment Records:** Collect all evidence of payments made, including:
  - Bank transfer receipts.
  - Cheque details.
  - Cash receipts signed by the builder.
- **Loan Documents:** Include a copy of the loan account statement showing amounts disbursed directly to the builder.
- **Agreement to Sale:** Attach the agreement or sale deed that specifies the payment terms and possession timeline.
- **Builder's Acknowledgments:** Keep receipts or acknowledgment letters for all payments made.
- **Correspondence:** Gather all emails, letters, or messages sent to or received from the builder regarding the delay, refund request, or breach of agreement.

3. **Evaluate Jurisdiction:**

- File the complaint in the appropriate forum based on the **total consideration amount** under the Consumer Protection Act, 2019:
  - **District Commission:** For amounts up to ₹ 50 lacs
  - **State Commission:** For amounts above ₹50 lacs but below ₹ 2 crore.
  - **National Commission:** For amounts above ₹2 crore.
- If your residence is different from the location of the property, choose a forum that aligns with your convenience.

4. **Legal Notice to the Builder:**

- Send a well-drafted legal notice to the builder demanding the refund within a specified time (usually 15-30 days).
- Mention the grounds for the refund, including breaches like project delays or non-fulfillment of terms.
- Highlight consequences of non-compliance, such as legal action or a consumer complaint.

5. **Calculate the Refund Amount:**

- Include the principal amount paid.
- Add interest on the amount based on agreement terms or prevailing market rates.
- Include compensation for mental agony, inconvenience, and litigation costs.



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**6. Check Builder's Financial Health:**

- Verify if the builder is facing insolvency proceedings or financial distress.
- If insolvency is declared, you may need to file your claim with the appointed resolution professional under the Insolvency and Bankruptcy Code (IBC).

**7. Relevant Laws and Regulations:**

- If the property is registered under **RERA**, you can file a parallel complaint with the Real Estate Regulatory Authority for refund and compensation.

**8. Refund Precedents:**

- Research consumer-friendly judgments from NCDRC, Supreme Court, or RERA for similar refund cases. Use these precedents to strengthen your case.

**9. Documentation for Online Filing:**

- Organize all documents according to an index for online submission via <https://edaakhil.nic.in/>.
- Scan all documents in clear PDF format, ensure proper pagination, and upload them as per portal requirements.

**10. Review Cancellation Clauses:**

- Confirm whether the agreement specifies a penalty or deduction for cancellations initiated by the buyer or delays caused by the builder.
- Challenge any unfair clauses under the Consumer Protection Act if they limit your rights excessively.

**11. Proof of Demand:**

- Submit proof of previous attempts to claim a refund, such as:
  - Emails or letters requesting refunds.
  - Builder's responses, if any, acknowledging or denying the claim.

**12. Relief Sought:**

- Clearly outline the relief sought in the complaint:
  - Refund of all payments made, including booking amounts.
  - Interest on the paid amount.
  - Compensation for mental harassment and loss of opportunity.
  - Litigation costs.

**13. Drafting the Complaint:**

- Ensure that the complaint is well-structured and includes:
  - Synopsis of the case.
  - Statement of facts.
  - Specific breaches committed by the builder.
  - Grounds for refund and compensation.

**14. Professional Assistance:**

- Consult an experienced advocate to ensure the complaint is accurate, legally sound, and includes all necessary evidence and arguments.

**15. Monitor Builder Activities:**

- Keep track of any updates regarding the builder's projects, such as stalled construction or new launches, to assess their financial capacity.

**16. Filing an Interim Application for Refund of Initial Amount**

**Importance of Interim Relief:**



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- An **interim application** can be filed to seek a refund of the amount already paid to the builder while the main consumer complaint is still pending.
- Interim relief helps mitigate the financial burden on the complainant, especially when the delay in possession or breach of agreement by the builder is evident.

#### **Steps to File an Interim Application:**

##### **1. Basis for Filing:**

- Highlight builder's breach of contract, such as:
  - Unreasonable delay in possession.
  - Abandonment or stalling of the project.
  - Misrepresentation or fraud.
- Demonstrate the urgency and financial hardship caused by the delay or non-performance.

##### **2. Supporting Documents:**

- Attach documents such as:
  - Proof of payments made (receipts, bank statements).
  - Copy of the sale agreement or booking confirmation.
  - Correspondence with the builder regarding delay or refund demands.
  - Project status updates (or lack thereof).

##### **3. Relief Sought in the Interim Application:**

- Refund of the initial amount paid with or without interest.
- Suspension of further payments (if under loan or installment) until the matter is resolved.

##### **4. Drafting the Application:**

- Clearly mention:
  - The amount claimed as refund.
  - Grounds for interim relief.
  - Supporting legal provisions from the Consumer Protection Act or RERA, if applicable.



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## 5. Legal Provisions and Precedents:

- Cite **Section 38** of the Consumer Protection Act, 2019, which empowers Consumer Commissions to pass interim orders.
- Refer to relevant judgments from the **NCDRC** or the **Supreme Court** supporting interim relief in similar cases.

## 6. Builder's Financial Status:

- Mention any financial instability or insolvency proceedings involving the builder to establish the urgency of refunding the initial amount.

## 7. Advantages of Filing an Interim Application:

- Immediate relief reduces financial distress.
- Strengthens the main complaint by demonstrating the gravity of the builder's default.

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### Our Assistance:

- **Judgments for Support:** We can provide landmark judgments where interim refunds were granted.
- **Drafting and Filing:** We will assist in drafting a precise interim application that aligns with procedural requirements.
- **Documentation Support:** Guidance on arranging and presenting all supporting documents for the interim relief application.

### Formatting the Complaint Document:

#### When drafting the complaint:

- **After the index page, the complaint document should start on a half-page, leaving the second half blank.**

## 2. Document Arrangement:

**Prepare and organize the file in the order of documents listed. This ensures clarity and accessibility for the adjudicating authority.**



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**We need to arrange all the documents as per the index provided below and upload them online on the designated website:**  
**<https://edaakhil.nic.in/>.**

**NOTE : Additionally, we are available to assist you with uploading the complaint online if required. However, to proceed, you must send the complaint along with the supporting documents as per the index, with proper paging starting from the Synopsis.**

**Please note: We will be unable to upload the complaint unless you provide a scanned copy of all documents arranged as per the index, with correct paging.**

### **IMP**

**We will help you draft the consumer complaint and provide relevant judgments from the NCDRC and the Supreme Court to support your case. Simply send the policy document and all relevant documents mentioned above to the email address or WhatsApp number provided below.**

**We had also provided the draft copy of compliant if you required in this application /website**



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