

- **Instance where the NHBRC could be held liable by a home owner for rectification of major structural defects in a new home**

INTRODUCTION :

1. In the matter of Stergianos v National Home Builders Registration Council the Plaintiff Mr Stergianos issued summons against the NHBRC alleging that the NHBRC is obliged to remedy the defects evident in his home
2. In our law the Housing Consumers Protection Measures Act protects homeowners in certain circumstances from the effects of poor workmanship on the part of homebuilders who are registered with the NHBRC
3. Before we delve into the facts of the aforesaid matter the following relevant sections of the act should be taken into consideration where a home owner wishes to hold the NHBRC liable for defects evident in a home resulting from defective workmanship on the part of the builder:

The Act specifies the objectives of the NHBRC which include

- (a) Representing the interests of housing consumers by providing warranty protection against defects in the new home
 - (b) Regulating the home building industry
 - (c) Providing protection to home owners where home builders fail to comply with their obligations and
 - (d) To establish and promote ethical as well as technical standards in the home building industry
4. After the NHBRC has accepted the home builder`s application a certificate as proof of enrolment is issued.
 5. In terms of Section 17(1) the NHBRC is to pay an amount required for rectification from the fund established for that purpose.
 6. Within 5 years of the date of occupation a major structural defect emerged attributable to workmanship, design or materials has occurred here.
 7. The home builder is therefor in breach of the home builder`s obligations.
 8. The home builder no longer exists and therefor unable to meet his obligations
 9. In terms of the Act the NHBRC is empowered to either rectify or make a payment to a homeowner in full and final settlement instead of rectifying the defect or refuse any claim
 10. During the first year of occupation cracks began to develop in the concrete floor slab which progressively continued to open. An engineer was appointed by the homeowner who was of the view that the cause was structural
 11. The homeowner issued summons against the NHBRC for rectification of the structural defects.
 12. The NHBRC refused the claim. The only element in dispute which had to be determined by the court was the cause of the defect. If it were to be found that the cracks in the floor slab were caused by a major structural defect the homeowner will be entitled to full relief otherwise the action will fail.

13. The NHBRC appointed an expert who was of the view that the cracks were caused by shrinkage as a result of poor workmanship when the concrete slab was poured and secondly the builders failure to place expansion joints in the slab where required. No tests were conducted and the conclusion reached and put forward was that the defects in the slab were not structural in nature.

14. The engineer appointed by the homeowner after conducting tests produced results which showed that the fill beneath the slab was not sufficiently compacted to bear the weight of the slab.

CONCLUSION

After assessing both experts' views the Court ordered the NHBRC to rectify the structural defects in the Plaintiff's home in terms of the Act. The Court also ordered the NHBRC to pay the Plaintiff's costs

What is the NHBRC

The National Home Builders Registration Council is a statutory body with the responsibility to provide protection in terms of the Housing Consumer Protection Measures Act. It is there to provide protection for all new housing consumers against defects and to regulate the home building industry.

What are the obligations of the home builder

- Register with the NHBRC and renew the registration annually
- Enter into a written agreement with the housing consumer
- Ensure that the home is –
- Constructed in a professional way
- Fit for habitation
- Constructed in accordance with the NHBRC technical requirements, terms, plans and specifications
- Enrol the home with the NHBRC before construction commences
- Rectify workmanship deficiencies within 3 months of occupation
- Roof leaks to be repaired within 12 months of occupation date
- Rectify major structural defects within a period of 5 years of the date of occupation and caused by non-compliance with the NHBRC technical requirements
- No payment may be received from a housing consumer if not registered
- Where a homebuilder is not registered he is prohibited from constructing a home

Mission of the NHBRC

- Customer service excellence honesty integrity and objectivity
- Accountability and transparency and being a caring organisation