

**Syed v Delcon Group Pty Ltd [2024] NSWCATCD 33**

**FACTS**

This case involved a dispute between Mrs. Nausheen Syed (the homeowner) and Delcon Group Pty Ltd (the builder) over rectification costs for defective residential building work. A contract was executed for a three-storey residence including an in-ground swimming pool and other structures. After moving in, the owner identified numerous defects, including water ingress and structural issues.

The proceedings were brought before the NSW Civil and Administrative Tribunal (NCAT). Despite various opportunities, Delcon failed to provide sufficient evidence or properly address critical issues, including whether they should be allowed to rectify the defects themselves. Late in the process, Delcon applied to reopen the case to submit additional evidence, which the Tribunal declined.

**ISSUE**

1. Should the Tribunal reopen the proceedings to admit further evidence from Delcon?
2. Whether the defects constituted "major defects" under the Home Building Act 1989 (NSW).
3. Determining the appropriate remedy: money order or work order.

**FINDING**

Senior Member D.G. Charles held

*“The need to adduce evidence addressing whether a work order should be made...was quite plain from the outset of the proceedings”* (para. 55)... *“The Builder’s Application, if granted, would significantly delay the Proceeding... granting the Builder’s Application to re-open would not align with the Tribunal’s guiding principle in s 36(1) of the NCAT Act”* (para. 57)

The Tribunal determined that several defects, such as balcony waterproofing and subfloor excavation issues, constituted "major defects" under Section 18E of the *Home Building Act*. The Tribunal emphasized that water ingress issues caused "an inability to inhabit or use part of the building for its intended purpose" (paras. 68, 92)

Despite the *Home Building Act’s* preference for work orders, the Tribunal awarded \$495,534.17 as a money order. The Tribunal cited the builder's history of non-compliance and the owner's lack of confidence in their ability to perform the required work (paras. 102-109)

**IMPACT**

This decision underscores the importance of timely submission of all the evidence.

Parties must ensure all relevant evidence is submitted within the specified timelines to avoid procedural disadvantages.

It is important to note the classification of defects and that NCAT often departs from the "preferred outcome" of work orders if justified by a party's prior non-performance or other factors.

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