

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 675 OF 2016

1. DHARAMVIR SINGH & ANR.

HOUSE NO. 1887, GALI NO. 3, NEW PANNA PURI,
HAPUR, GHAZIABAD, UTTAR PRADESH.

.....Complainant(s)

Versus

1. JAI PRAKASH ASSOCIATES LIMITED & ANR.

REGD. OFFICE: JAYPEE GREENS, SECTOR-128,
NOIDA-201304,U.P.

2. JAYPEE SPORTS INTERNATIONAL LIMITED

REGD. OFFICE: JAYPEE GREENS, SECTRO-128,
NOIDA-201304,U.P.

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA,PRESIDING
MEMBER**

HON'BLE BHARATKUMAR PANDYA,MEMBER

FOR THE COMPLAINANT : MR. MADHURENDRA KUMAR, ADVOCATE

FOR THE OPP. PARTY : NEMO

Dated : 12 December 2023

ORDER

1. Heard Mr. Madhurendra Kumar, Advocate, for the complainants.
2. Dharamvir Singh and Puneet Kumar have filed above complaint for directing the opposite party to (i) handover possession of Apartment No.KS1-12-101, in the project "Kassia", compete in all respect as per specification and execute conveyance deed, within a stipulated period or in alternative refund entire amount deposited by them with interest @18% per annum from the date of deposit till the date of refund; (ii) pay delay compensation in the form of interest @18% per annum on their deposit from due date of possession till the date of delivery of possession; (iii) to bear excess charges of the stamp duty and registration of sale deed due to revision of circle rate; (iv) pay Rs.15000/- per months towards rental incurred by the complainants from April, 2013 till the date of handing over possession; (v) pay Rs.5000000/-, as compensation for devaluation of currency; (vi) pay Rs.2500000/- as compensation for mental agony and harassment; (vii) pay Rs.50000/- per month as punitive damages from due date of possession till the date of possession; (viii) pay Rs.500000/- as litigation costs; and (ix) any other relief which is deemed fit and proper in the facts and circumstances of the of the case. At the time of arguments, relief for refund has been pressed.
3. The complainants stated that M/s. Jaiprakash Associates Limited (the OP) and M/s. Jaypee Sports International Limited were companies, registered under the Companies Act, 1956 and engaged in the business of development and construction of group housing project. M/s. Jaypee Sports International Limited was a subsidiary of M/s. Jaiprakash Associates

Limited and now merged with the OP. The OP advertised for development of an integrated megacity project of a sporting lifestyle and featuring premium residential and commercial spaces spread over 2500 acres in the name of “Jaypee Greens Sports City”, at Sector-25, Yamuna Expressway, Gautam Budh Nagar in the year, 2009. The OP launched a group housing project in the name of “Kassia” in the township “Jaypee Greens Sports City”, in the year, 2010 and made wide publicity of its amenities and facilities. Believing upon the representations of the OP, the complainants booked Unit Reference No.KS1-12-101, in the project “Kassia” and deposited Rs.400000/- on 26.02.2011. The OPs, vide Provisional Allotment Letter dated 28.03.2011, allotted Unit Reference No.KS1-12-101, (area 2140 sq. ft., total price of Rs.5587740/-), in the project “Kassia”. The complainants further deposited Rs.750000/- on 20.04.2011, Rs.390000/- on 28.05.2011, Rs.517228/- on 28.05.2011, Rs.3299999/- on 28.07.2011, Rs.3863/- on 07.01.2013, Rs.5533/- on 26.04.2013, Rs.13479/- on 01.09.2013 and Rs.28165/- on 11.07.2014 (total Rs.5408267/-). Allotment letter provides 24 months period, for handing over possession with grace period of 90 days. Due date of possession including grace period expired on 28.06.2013. The complainants inquired about date of delivery of possession then the OP informed that possession would be handed over till December, 2015. The complainants, vide email dated 14.04.2015, cancelled the allotment and sought for refund of their money with interest. The OP did not respond to the email. The complainants gave legal notice dated 07.01.2016, demanded for refund of his amount along with interest. In spite of service of the notice, the OP did not respond. Then this complaint was filed on 19.04.2016.

4. M/s. Jaiprakash Associates Limited (the OP) filed its written reply, in which, booking of the flat, allotment of the flat and deposits made by the complainants, have not been disputed. The OP stated that the complainants are investors in real estate and not consumers. The complaint does not fall within pecuniary jurisdiction of this Commission. Standard Terms and Condition contains an arbitration clause as such the dispute be referred to an Arbitrator as per Section 8 of Arbitration and Conciliation Act, 1996. The OP obtained approvals for development of the project. However, due to reasons, beyond the control of the OP, i.e. shortage of labour, scarcity of water, restrictions in excavations, farmer’s agitations against land acquisition and legal impediments, development work was delayed. National Green Tribunal, vide order dated 11.01.2013, restrained all the builders of Noida and Greater Noida, from using ground water in construction works due to which the OP had to arrange water from alternate source, which delayed construction work and increased the cost. Under the Concession Agreement with Government of U.P., the OP had to construct Yamuna Expressway, from the fund collected from five townships. Due to above reasons, the OP was not able to sell the plots/flats in the five townships, which created paucity of fund. State of U.P. has taken back a portion of Yamuna Expressway from the OP, which caused further loss to the OP. State of U.P., vide order dated 29.08.2014, directed for payment of additional amount of 64.4% to the farmers, towards compensation of the land. After this notification, the farmers started demanding of additional amount and stopped development till its payment. The OP is entitled for extension of the period for which, the development was delayed for above reasons under Clause-7.1 and 7.2 of. Refund can be made as per Standard Terms and Conditions. Under Clause-9.1.5 of Standard Terms and Conditions, earnest money is liable to be forfeited and the amount would be refunded without any interest and after adjusting interest payable to the OP. The complaint is liable to be dismissed.

5. The complainants filed Rejoinder Reply, Affidavit of Evidence, Affidavit of Admission/Denial of documents of Dharamvir Singh and documentary evidence. The opposite party filed Affidavit of Evidence, Affidavit of Admission/Denial of documents of Navneet Kumar Saxena and documentary evidence. Along Affidavit of Evidence of Navneet Kumar Saxena, the OP filed order of Supreme Court dated 10.01.2018 passed in Writ Petition (Civil) No.744 of 2017, Chitra Sharma Vs. Union of India by which Mr. Pawan Shree Agarwal, Advocate was appointed a Amicus Curiae and has been authorise to entertain claim of home buyers of Jaypee Infratech Limited.

6. We have considered the arguments of the counsel for the complainants and examined the record. So far as the preliminary issue raised by the OP that the complainants are not a consumer, is concerned, the OP has not filed any evidence to prove that the complainants were engaged in the business and purchasing and selling the properties. As such, it cannot be said that the flat was booked for commercial purpose. Section 21 of the Consumer Protection Act, 1986 provides that where value of the goods together with the compensation claimed exceeds Rs.one crore, the complaint is maintainable before National Commission. In the present case, value of service together with compensation claimed in this complaint, exceeds Rs.one crore. Supreme Court in **Emaar MGF Land Limited Vs. Aftab Singh, (2019) 12 SCC 751**, held that consumer forum exercises jurisdiction in addition and not in derogation of Arbitration and Conciliation Act, 1996, as such, in spite of arbitration clause in the agreement, consumer complaint is maintainable. Preliminary objections have no merit and are rejected.

7. Provisional Allotment Letter dated 28.03.2011 provides 24 months period for delivery of possession and Standard Terms and Conditions provides 90 days grace period. As such due date of possession was 28.06.2013. Out of total basic price of Rs.5587740/-, the complainants paid total Rs.5408267/- till 11.07.2014, which includes Rs.28164.83 as interest. The OP realized amounts time to time and also charged interest as such defence of force majeure is not liable to be accepted. Till today, the OP could not obtain "occupation certificate" nor offered possession. Supreme Court in **Bangalore Development Authority Vs. Syndicate Bank, (2007) 6 SCC 711, Fortune Infrastructure Vs. Trevor D' Limba, (2018) 5 SCC 442, Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raghavan, (2019) 5 SCC 725, Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra, 2019 (6) SCALE 462** and has held that the buyer cannot be made to wait for indefinite period for possession.

O R D E R

In view of aforesaid discussions, the complaint is partly allowed. The opposite party is directed to refund entire amount deposited by the complainants with interest @9% per annum from the date of respect deposit till the date of refund, within a period of two months from the date of this judgment.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER

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BHARATKUMAR PANDYA
MEMBER