

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1753 OF 2018

1. NARESH GARG AND SONS (HUF)
THROUGH ITS KARTA NARESH GARG #CORNER
BHATTI, HOUSE NO. 13317, NAMDEV MARG, BATHINDA
CITY,
BATHINDA-151005
PUNJAB

.....Complainant(s)

Versus

1. CHD DEVELOPERS LTD.
THROUGH ITS MANAGING DIRECTOR 702, 7TH FLOOR,
TOWER A, EMMAR DIGITAL GREENS, SECTOR 61, GOLF
COURSE, EXTENSION ROAD, GURUGRAM-122102

.....Opp.Party(s)

BEFORE:

**HON'BLE MR. JUSTICE RAM SURAT RAM MAURYA, PRESIDING MEMBER
HON'BLE DR. INDER JIT SINGH, MEMBER**

For the Complainant : Mr. Gagan Gupta, Advocate

For the Opp.Party : NEMO

Dated : 23 Mar 2023

ORDER

DR.INDER JIT SINGH, MEMBER

1. The present Consumer Complaint (CC) has been filed by the Complainant against Opposite Party (OP) as detailed above, inter alia praying for directions to the OP to:-

- i. Refund the amount of Rs.79,37,091/- with interest till the date of refund;
- ii. Pay damages to the extent of Rs.5.00 lakh;
- iii. Pay increase in service tax, if any, after 18.10.2013.

2. Notice was issued to the OP. Parties filed Written Statement/Reply, Rejoinder, Evidence by way of an Affidavit and Written Arguments/Synopsis etc. as per details given in the Table at Annexure-A. The details of the flats allotted to the Complainant/other relevant details, based on pleadings of the parties and other records of the case are also given in the Table at Annexure-A.

3. It is averred/stated in the Complaint that:

- i. The complainant through its Karta applied to the OP for re-allotment of Unit T-02-03/04 at 106, Golf Avenue, Gurgaon by way of application dated 05.03.2013. The flat was earlier allotted to Sh. Sarvesh Kumar Tiwari. The OP permitted the re-allotment after all the necessary formalities and payment of charges, to the complainant. Apartment Buyer's Agreement was entered into between the parties on 10.06.2013. As per Agreement the possession was to be delivered by the OP within 42 months from the date of Agreement with a grace period of six months. The Opposite Party failed to deliver the possession within the stipulated period. Hence, the complainant has prayed for refund.
- ii. The complainant issued a notice dated 17.05.2018 to the Opposite Party, however the OP did not respond to the same.

4. The OP in their written statement/reply stated that: -

- i. The complainant purchased the property for the purpose of investment/re-sale/real estate speculation. The complainant is not a consumer under section 2(1)(d)(i) of the C.P.Act, 1986. The complainant has inflated his claim to bring complaint within the pecuniary jurisdiction of this Commission. The value of the property is much below Rs.1.00 crore.
- ii. The complaint seeks refund because of a severe slump/decline in the prices of the properties. It is contended by the OP that there has been no deliberate or inordinate delay by the OP in the completion of construction. The delay occurred as the OP received a letter dated 01.05.2015 from the Regional Office North, Haryana State Pollution Control Board, informing the OP that vide order dated 07.04.2015 and 10.04.2015 in Original Application No. 21 of 2014 titled as "Vardhaman Kaushik Vs. Union of India", the Hon'ble National Green Tribunal, New Delhi has taken very serious views regarding pollution resulting from construction & other allied activities emitting dust emission and directed to stoppage of construction activities of all construction sites..."and in pursuance of that order the answering OP had to stop all the construction activities between the period May, 2015 to August, 2015. Thus, the construction could not be carried out for a period of 4 to 6 months. Therefore, this period is also to be excluded. Further, the office of the District Town Planner Enforcement on 10.11.2017 had again directed stoppage of all construction activity. Moreover, the construction could not be carried out for a period of about 7-8 months because of above said letter/NGT order and direction of District Town Planner Enforcement and compliance thereto.
- iii. The Apartment was originally allotted in favour of Mrs. Angoori Devi (the original allottee) vide allotment letter dated 04.10.2012. Later on she had transferred/assigned her right/title/interest in the said Apartment in favour Mr. Sarvesh Kumar Tiwari (the "Subsequent Allottee") vide Re-allotment Application dated 04.10.2012 and also executed other requisite documents. In pursuance thereof, the OP Re-allotted the said Apartment in favour of Mr. Sarvesh Kumar Tiwari (subsequent allottee) vide Re-allotment letter dated 05.10.2012, who further transferred/assigned his right/title/interest in the said Apartment in favour of the Complainant-Naresh Garg and Sons (HUF) vide Re-allotment application dated 05.03.2013 and also executed the Apartment Buyer Agreement with the complainant and allotted the said Apartment in favour of the Complainant vide Re-allotment letter dated 06.03.2013.

- iv. The complainant was aware about the stage of the construction of the said Apartment was clearly mentioned in the demands/intimation of due instalment for the said Apartment raised by the OP and also the OP through its officials have been apprising the stage of construction of the said Apartment from time to time. It is further contended that the construction is almost complete and mostly only the interior and finishing work is required to be completed and the same is in progress.
- v. It is also contended by the OP that the contention of the complainant is incorrect and denied by the OP that the complainant is not bound to accept possession in view of delay by the OP. It is also denied that the complainant is entitled for interest at any rate as alleged in the complaint.

5. Heard counsel for the Complainant.

6. The OP has not placed on record the updated status of construction as well as likely date of its completion, obtaining of OC and handing over the possession. Even now OP is not in a position to give any firm date for handing over of the possession of unit in question to complainant with OC. It was held by Hon'ble Supreme Court in **Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. vs DLF Southern Homes Pvt. Ltd. & Ors.** (2020) 16 SCC 512, "*failure of the developer to comply with the contractual obligation to provide the flat to a flat purchaser within the contractually stipulated period, amount to deficiency*". In **Kolkata West International City Pvt. Ltd. Vs. Devasis Rudra-** (2020) 18 SCC 613, Hon'ble Supreme Court observed that "*A buyer can be expected to wait for possession for a reasonable period.*"
7. The contention of OP that this Commission lacks pecuniary jurisdiction is not valid. Under Section 21 of the Act, Commission has the jurisdiction where value of goods and services and compensation, if any, claimed exceeds Rs. one crore. The contention that complainant(s) is/are not a consumer as he/they has/have purchased the unit for commercial purposes is also rejected as no such evidence has been adduced by the OP in this regard. It has been observed by this Commission in various cases (**Kavita Ahuja Vs Shipra Estates Ltd**, CC 137 of 2010, decided on 12.02.2015, **Santosh Johri Vs M/s Unitech Ltd**, CC 429 of 2014 and connected Cases, decided on 08.06.2015, **Aloke Anand Vs M/s Ireo Grace Pvt Ltd & Others**, CC no 1277 of 2017 decided on 01.11.2021) that purchase of a house can only be for a commercial purpose if the purchaser is engaged in the business of purchasing and selling houses or plots on a regular basis, solely with a view to make profit by way of sale of such houses, if the house is purchased purely as an investment and the purchaser is not undertaking the trading of houses on regular basis, then it would be difficult to say that he had purchased it for commercial purpose. The plea of OP that delay was due to force majeure circumstances is not valid as even after a gap of more than five years from the committed date given in the ABA, possession of flat has not been given. There is no documentary evidence to support the contention of the Opposite Parties that the reasons pleaded by them, can be construed as '*Force Majeure*'. A perusal of order dated 01.05.2015 issued by Haryana State Pollution Control Board (HSPCB) to the OP shows that there was no blanket order of NGT to stop construction activities, the direction to stop construction activities was only where the construction is carried out in violation to the MOEF Guidelines 2010. This order further states that construction site of OP was visited on 15.04.2015 and during inspection it was found that OP has not taken appropriate measures in compliance of Hon'ble NGT orders dated 07.04.2015 and 10.04.2015 as well as MOEF Guidelines 2010. It was in view of these circumstances that OP was directed by the HSPCB vide orders dated 01.05.2015 to stop the construction activity immediately and also directed to deposit the compensation amount of Rs.50,000/- per default as per orders of NGT. Hence, OP cannot reap the benefit of his own wrongdoings by now claiming such directions to stop construction activity by HSPCB as force majeure event. OP has not produced the copy of order dated 09.11.2017 of NGT in OA No. 2014, hence it is not possible to know the exact nature of ban on construction activity under this order and the period for which such ban was in force. Moreover, date of this order is after the committed date of possession as per ABA.

8. In the instant case, there is an inordinate delay in handing over the possession of flat by the OP. The complainant(s) cannot be made to wait for an indefinite time and suffer financially. Hence, the complainant(s) in the present circumstances have a legitimate right to claim refund alongwith fair delay compensation/interest from the OP. The plea of OP for entitlement of compensation to the complainant in accordance with provisions of the ABA is not valid.
9. For the reasons stated hereinabove, and after giving a thoughtful consideration to the entire facts and circumstances of the case, various pleas raised by the learned Counsel for the Parties, the Consumer Complaint is allowed/disposed off with the following directions/reliefs: -
- (i) The OP shall refund the entire principal amount of Rs.79,37,091/- (Rupees seventy nine lakh thirty seven thousand ninety one only) to the complainant, alongwith compensation in the form of simple interest @ 9% per annum from the date of each payment till the date of refund. The principal amount refundable mentioned in this para is subject to verification of actual amount paid by the complainant based on receipts etc.
- (ii) The OP shall pay a sum of Rs.25,000/- as cost of litigation to the complainant.
- iii. The payment in terms of this order shall be paid within three months from today.
- iv. In case the complainant has taken loan from Bank(s)/other financial institution(s) and the same/any portion of the same is still outstanding, the refund amount will be first utilized for repaying the outstanding amount of such loans and balance will be retained by the complainant. The complainant would submit the requisite documents from the concerned bank(s)/financial institution(s) to the OP four weeks from receipt of this order to enable them to issue refund cheques/drafts accordingly.
10. The pending IAs, in the Consumer Complaint, if any, also stand disposed off.

Annexure-A

Details of the Unit and other related details

Sr No	Particulars	
1	Project Name/Location etc.	'106 Golf Avenue' Sector 106 Gurgaon
2	Apartment no.	T02-03/04
3	Size (Built up/Covered/Super Area)	1511 sq.ft.

4	Date of Re-allotment in favour of the Complainant	06.03.2013
5	Date of signing Apartment Buyer's Agreement (ABA)	10.06.2013
6	Committed date of possession as per Agreement (with six month's Grace period)	10.06.2017
7	In case the Complainant(s) are not the original allottees, D/o Transfer by the OP(s) in the name of Complainant(s)	05.03.2013
8	Total Consideration as per Agreement (BSP)	Rs.70,26,150/-
9	Amount Paid	Rs.79,37,091/-
10	D/o Filing CC in NCDRC	03.08.2018
11	D/o Issue of Notice to OP(s)	08.10.2018
12	D/o Filing Reply/Written Statement by OP	11.12.2018
13	D/o filing Rejoinder by the Complainant(s)	28.01.2019
14	D/o Filing Evidence by way of Affidavit by the Complainant(s)	28.01.2019
15	D/o filing Affidavit of admission/denial of documents filed by Complainant(s)	18.04.2019
16	D/o Filing Evidence by way of Affidavit by the OP	17.01.2020
17	D/o filing Affidavit of admission/denial of documents filed by OP	26.03.2019
18	D/o filing Written Synopsis by the Complainant(s)	30.12.2021
19	D/o filing Written Synopsis by the OP	-

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RAM SURAT RAM MAURYA
PRESIDING MEMBER
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DR. INDER JIT SINGH
MEMBER