

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 1239 OF 2018

1. RAJ CAPRIHAN & ANR.

C-210, SARVODAYA ENCLAVE, NEW DELHI - 110 017

2. MRS. ANJU CAPRIHAN

C-210, SARVODAYA ENCLAVE, NEW DELHI - 110 017

.....Complainant(s)

Versus

1. TATA HOUSING DEVELOPMENT CO. LTD.

12th FLOOR, TIMES TOWER, KAMALA MILLS

COMPOUND, SENAPATI BAPAT MARG, LOWER PAREL,

MUMBAI - 400 013

.....Opp.Party(s)

BEFORE:

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

HON'BLE DR. INDER JIT SINGH, MEMBER

For the Complainant : Ms. Kanika Agnihotri, Advocate
: Mr. Y. Gupta, Advocate

For the Opp.Party : Mr. Saifur Rahman Faridi, Advocate
: Mr. Arjun Singh Rana, Advocate

Dated : 27 Dec 2022

ORDER

1. Heard Ms. Kanika Agnihotri, Advocate, for the complainants and Mr. Saifur Rahman Faridi, Advocate, for the opposite party.

2. Raj Kumar Caprihan and Mrs. Anju Caprihan have filed above complaint, for directing the opposite party to (i) refund Rs.24991249/- with interest @18% per annum, from the date of respective deposit till the date of payment, (ii) pay Rs.2000000/- as compensation for mental agony and harassment, (iii) pay Rs.500000/-, as litigation cost; and (v) any other relief which is deemed fit and proper in the facts and circumstances of the case.

3. The complainants stated that Tata Housing Development Company Limited (the opposite party) was a company, registered under the Companies Act, 1956 and engaged in the business of development and construction of group housing project and selling its unit to the prospective buyers. The opposite party launched a group housing project, in the name of "Tata Primanti" at village Fazilpur Jharsa, Sector-72, Gurgaon in the year 2011 and made wide publicity of its facilities and amenities. Believing upon the representations and promises of the opposite party, the complainants, who were in need of a residence, booked a Villa on 21.01.2012 and deposited booking amount of Rs.5000000/-. The opposite party allotted Villa no.-VA-28, admeasuring 7000 sq.ft. to the complainants on 07.03.2012 and executed Apartment Buyer's Agreement in their favour on 02.05.2012 of Villa no.-VA-28, admeasuring 7000 sq.ft., total sale price Rs.84175000/-. Under Payment Plan, 25% of sale price was payable within 45 days of allotment, 75% of sale price was payable on completion of brick works and other charges were payable at the time of offer of possession. Clause-4.2 of the agreement provides due date of possession as on or before 21.03.2014. The complainants deposited total Rs.14774134/- till 20.08.2016. The opposite party, vide letter dated 04.05.2015, informed that the construction was delayed and likely to be completed till August, 2015. The opposite party, vide letter dated 11.02.2016, informed that the construction had been completed and they had applied for issue of "occupation certificate". In October, 2016, the opposite party informed and the construction of the villa was not likely to be completed. The opposite party offered to shift allotment of villa in allotment of flat. The complainants requested to refund their money along with interest, as possession had

been unreasonably delayed. The officers of the opposite party threatened that in case of refund, huge amount would be deducted and only minuscule part would be refunded. They advised to switch the booking of villa to an apartment, which was likely to be completed soon. As per direction, the complainants signed transfer application on 07.11.2016. The opposite party issued Allotment Letter dated 09.12.2016, allotting Apartment No.3904, Tower-2, super area 2905 sq.ft. in the project "Primanti" and executed a fresh Apartment Buyer's Agreement dated 05.05.2017, in which sale consideration of Rs.24474625/- was mentioned. Clause-5.2 of this agreement provides due date of possession as on or before 30.06.2017. The opposite party issued a letter of offer of possession dated 28.06.2017 of Apartment No.3904, informing that "Occupation Certificate" has been obtained on 23.06.2017 and Final Demand Letter for Rs.10317339/- + Rs.290500/- towards IBMS + Rs.160356/- towards Advance maintenance charges, giving due date for payment as 31.08.2017. The complainants requested for inspection of the apartment in presence of an officer of the opposite party. After a series of emails for inspection, the opposite party fixed 06.09.2017, for inspection, which was changed as 08.09.2017. R.K. Caprihan and his son-in-law Mr. Manish Chopra inspected the apartment on 08.09.2017 and found that there were several deficiencies in construction of the apartment, list of which were given to the officer of the opposite party. The complainants also gave emails on 16.09.2017 and 08.11.2017 to the opposite party for removing deficiency but the opposite party was insisting to deposit the demanded amount and did not remove deficiencies. Then the complaint was filed on 21.05.2018, alleging unfair trade practice and deficiency in service.

4. The opposite party filed its written reply on 27.08.2018 and contested the complaint. The facts that the complainants booked a villa on 21.01.2012, allotment of Villa No.A-28 and execution of Apartment Buyers' Agreement in their favour on 02.05.2012, due to delay in construction of villa, the transfer of villa in to apartment by the opposite party on 09.12.2016 and execution of another agreement dated 05.05.2017 in respect of apartment and payment made by the complainants, have not been disputed. The opposite party took plea that due to force majeure reason the construction of villa could not be completed on time. High Court of Punjab and Haryana, by order dated 31.07.2012, passed in, Civil Writ Petition No.20032 of 2008, Sunil Singh Vs. Ministry of Environment and Forests and Ors., restrained usage of underground water. The opposite party applied for supply of STP water, which was sanctioned by the Administrator, HUDA on 17.09.2012. In the absence of the water, the construction work was stopped during 14.08.2012 to 19.07.2012. Stoppage of work led to demobilisation of labour from site and in absence of man power, the construction had been done with half strength during 18.09.2012 to 30.11.2012. High Court, by order dated 17.11.2015, imposed ban on excavation of sand. Therefore, construction of villa was delayed. The construction was stopped from 29.07.2016 to 01.09.2016 due to heavy rainfall. The complainants moved an application on 07.11.2016 for transfer of their allotment of villa into apartment. National Green Tribunal banned construction for 7 days by order dated 08.11.2016. Allotment letter dated 09.12.2016 was issued allotting Apartment no.3904 in Tower 2 of the same project. Fire NOC was obtained on 07.12.2016. The opposite party completed construction and applied for issue of "occupation certificate" on 12.12.2016. Then Apartment Buyers' Agreement was executed on 05.05.2017, in which, due date for possession was mentioned as 30.06.2017. The "occupation certificate" was issued on 23.06.2017. Thereafter, the opposite party, vide letter dated 28.06.2017, offered possession of the apartment to the complainant. The opposite party communicated force majeure reason as well as delay in construction of villa to the complainants time to time. There was downward revision in EDC/IDC charges which was duly adjusted in the final statement of account as served to the complainants. The complainants are liable to pay Haryana VAT which was imposed by Government of Haryana. The complainants had to deposit the amount as demanded in the letter dated 28.06.2017 and take possession up to 31.08.2017, but the complainants did not make payment. In view of the fact that allotment of villa was transferred in allotment of apartment on the application of the complainants, they are not entitled to claim any compensation inasmuch as possession was offered to him before due date of possession as mentioned in the agreement dated 05.05.2017. In any case for force majeure reason the construction was delayed and the opposite party was entitled for extension of time. The complaint has been filed suppressing the material fact. Preliminary issues that the complainants are not consumer and vexatious and exaggerated claims have been made as such the complaint is liable to be dismissed, are raised.

5. The complainants filed rejoinder reply on 03.05.2019, Affidavit of Evidence of Raj Kumar Caprihan and Affidavit of Evidence of Mrs. Anju Caprihan and documentary evidence. The opposite party filed Affidavit of Evidence of Kedar Shukla and documentary evidence. Both the parties filed their written submissions.

6. We have considered the arguments of counsel for the parties and examined the record. Allotment of villa No.28 to the complainants, execution of Apartment Buyers' Agreement in their favour on 02.05.2012 and deposits made by them of Rs.14774134/- have not been disputed. Under Clause 5.2 of the Apartment Buyers' Agreement dated 02.05.2012 due date of possession was 21.03.2014. Admittedly, the construction of villa was not completed nor possession was offered to the complainants. The opposite party took the plea of force majeure, but force majeure period was limited period i.e stoppage of construction during 01.08.2012 till 17.09.2012 due to restriction of ground water use. Thereafter, the work was done on half strength during 18.09.2012 till 30.11.2012. The ban on excavation of sand has been imposed in the year 2015, while due date of possession for the villa was 21.03.2014. Ultimately the opposite party expressed its inability to complete the construction of the villa in October, 2016. Similarly, the heavy rain fall was alleged during 29.07.2016 to 01.09.2016 and ban by National Green Tribunal was imposed on 08.11.2016. All these force majeure reasons are for the entire period of delay. Thus there was deficiency in service on the part of the opposite party, in not offering possession.

7. So far as change of allotment of villa into apartment is concerned, The complainants had already deposited Rs.14774134/- and demanded for refund of his money, in August, 2016 but the opposite party did not accept the demand rather threaten that in case of refund major portion would be forfeited and only nominal amount will be returned. The complainants had no option except to accept the offer of the opposite party for conversion of the allotment of the villa into allotment of apartment. Allotment dated 09.12.2016 and Apartment Buyer Agreement dated 05.05.2017 are one sided and unreasonable. Therefore, it is not binding upon the complainants. On its basis, the opposite party cannot raise a plea that the complainants were not entitled for delayed compensation for delay in possession which was otherwise payable under the agreement dated 02.05.2012. The opposite party arbitrarily denied delayed compensation to the complainants.

8. The complainants have stated that after offer of possession a joint inception was made by the complainants and his son-in-law as well as the officers of the opposite party on 08.09.2017 in which various deficiencies in construction was pointed to the officer of the opposite party. The deficiencies were acknowledged by the opposite party vide e-mail dated 16.09.2017, but inspite of it, it were not removed although the complainants gave emails on 16.09.2017 and 08.11.2017 to the opposite party for removing deficiency but the opposite party was insisting to deposit the demanded amount. Ultimately due to non-removal of the deficiencies the complainants opted for refund instead of taking possession. The opposite party did not produce any communication informing the complainants that deficiencies in constructions, which were acknowledged by them, had been made good. On this ground also the complainants are entitled to claim refund. Technical plea that the complainant the complainants are not consumers but there is nothing on record to prove the complainants are involved in purchase and sale of immovable property.

ORDER

In the result, the complaint succeeds and 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 respective deposit till the date of payment, within a period of two months from the date of this judgment.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER

DR. INDER JIT SINGH
MEMBER