MUKESH ARORA V. M/S. JAIPRAKASH ASSOCIATES LIMITED

1. MUKESH ARORA

……..Complainant(s)

Versus

1. M/S. JAIPRAKASH ASSOCIATES LIMITED

……..Opp.Party(s)

Case No: CONSUMER CASE NO. 344 OF 2019

Date of Judgement: 06 Jan 2023

Judges:

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

For the Complainant : Mr. Pradeep Mahajan, Advocate
Mr. Sudhir Mahajan, Advocate
Mr. Rohan Yadav, Advocate
For the Opp.Party : Mr. Sukumar Pattjoshi, Sr.Advocate
with Mr. Sumeet Sharma, Advocate
Mr. Paras Choudhary, Advocate

Facts:

Complaints filed by Lal Lakhiani & Ors. and Roma Gupta against Puri Constructions Pvt. Ltd. & Another regarding delays and issues with possession of flats booked in project “Emerald Bay” in Gurugram. Flats were booked in 2013. As per Builder Buyer Agreements, committed date of possession was 16.03.2018 for Lal Lakhiani and 29.04.2018 for Roma Gupta. Builders offered possession on 21.01.2019 after delays. Occupation Certificate was received on 21.11.2018. Complaints allege builders mortgaged entire project land to raise loans without

informing allottees, raising questions on intention to handover possession. It is alleged Puri Constructions is not entitled to sell flats as license was granted to Florentine Estates of India Ltd. Puri does not meet definition of "colonizer". Complaints sought refund with interest, compensation and costs. Builders contested maintainability, stating possession offered and obligations fulfilled.

Court's Opinions and Decision:

Delay of 10 months in offering possession is not unreasonable. Complainants obligated to take possession. Builders obligated to give possession, arrange inspection of flats and pay delay compensation at 6% interest. If complainants wish refund in light of mortgage of land and license issue, builders shall refund principal amounts without interest or penalties within 30 days of written request. Builders directed to pay Rs.25,000 as litigation costs to each complainant.

Arguments:

Complainants:

Mortgaging of project land jeopardizes allottees' ownership rights. Puri Constructions not entitled to sell flats and collect money since license was for Florentine Estates of India Ltd. No permission granted for collaboration between the two builders.

Builders:

Complaints not maintainable since filed after possession offered. All obligations fulfilled. Complainants want to avoid financial losses due to dip in property prices. Obtained occupation certificate in November 2018. Delay of only 8 months in handing over possession.

Sections:

Section 2(d) Haryana Development & Regulation of Urban Areas Act, 1975 Section 21 Consumer Protection Act, 2019

Cases Referred:

Judgment in Viresh Arora vs Puri Constructions (CC 1598/2017)

Laws Referenced:

Haryana Development & Regulation of Urban Areas Act, 1975. Haryana Development & Regulation of Urban Areas Rules, 1976. Consumer Protection Act, 2019

In summary, builders held liable for delay in possession. Complainants can opt for either possession with compensation or full refund of principal amounts paid.

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Full Text of Judgment:

1. The present Consumer Complaints (CCs) have been filed by the complainants against the opposite party as detailed above, inter alia praying for directions to OP:-
i. To hand over the possession of the unit in question or offer an alternative property in same locality or refund of amount paid by the complainant(s) to the opposite party alongwith interest @ 18 %.
ii. In case flat is being offered by OP, direct OP to execute conveyance of flat in favour of complainant(s) and handing over of physical possession of flat.
iii. To direct OP to pay complainant(s) cost of funds @12% p.a. on the amounts paid by the complainant(s) from the committed date of possession till the date of actual physical possession.
iv. Cost of complaint
2. Since the facts and question of law involved and the reliefs prayed for in these complaints are similar/identical

and against the same Opposite Party except for minor variations in the dates, events and flat numbers etc., which are summarized in the Table in para 5 below, these complaints are being disposed off by this common order. However, for the sake of convenience, Consumer Complaint (CC) no 344 of 2019 is treated as the lead case and facts enumerated herein under are taken from CC 344/2019. In CC 1506 of 2018, the main prayer is for refund with Interest @18% p.a. with possession as alternate prayer along with Occupancy Certificate & Conveyance deed etc.

3. It is averred/stated in the complaint that:-

i. That the complainant entered into an Agreement to Sell with the original allottee on 02.12.2011, OP vide letter dated 25.02.2012 transferred the rights under provisional allotment letter dated 18.11.2010 for the said apartment in the name of complainant. The original allottee booked a flat on 22.07.2010 in the residential Project launched by the OP in the name of "KNIGHTS COURT" in Jaypee Greens, Sector 128, Noida, U.P. and was allotted flat No. KGT 4-1702, on the 17 Floor with a Super Area 2690 sq.ft. A provisional allotment letter dated 18.11.2010 was issued. The total consideration for the flat was Rs. 1,60,07,850/- out of which, the complainant paid Rs. 1,44,34,398/- till 15.01.2019. The OP was liable to handover the possession of the unit within 36 months with a grace period of 3 months i.e. November, 2013 from the date of issue of provisional allotment letter dated 18 November 2010.

ii. After having received almost 95% of the total cost of the flat, the OP failed to hand over the possession and is liable to compensate complainant for cost of funds @ 18% pa till execution of conveyance and handover of the said flat in habitable condition with all amenities. That OP has utilized complainant(s) hard earned money in other projects and taking false and frivolous defences in various forums/commissions in order to escape OP liability. That the OP comes with a new delivery date every time and wants to delay infinitely, default is on OP and therefore OP is liable for all consequences arising out of delay. The intention of OP was to

cheat complainant and did not disclose and inform the true picture. There are malpractices on the part of OP for their wrongful gains causing wrongful losses and injuries to buyers including the complainant.

4. The OP-1 in their written statement/reply has denied the fact of deficiency in providing its services and being involved in unfair trade practices and restrictive trade practices as alleged in the complaint and has stated that

i. The delay occurred due to force majeure conditions and grievances are baseless, devoid of merits and tainted with malafides. That the complainant booked the unit in question for speculating in real estate market. Therefore, complainant is not a consumer as defined in Consumer Protection Act, 1986. That the complaint suffers with defects of non joinder of necessary and proper party and the complaint is liable to be dismissed.

ii. That the complainant agreed with the standard terms and conditions of the Allotment letter as the time period for possession was 36 months and 90 days grace period and despite demand, complainant has not made payment of the remaining amount of Rs. 18,36,243/- making him defaulter and legally barred to pray for possession of unit. That the OP tried to carry out work but for reasons beyond control of OP i.e, due to force majeure events such as – Government approvals of building plans, shortage of labour, scarcity of water, restrictions in excavations, villager agitations and legal impediments which caused delay and delivery of project got rescheduled. It was agreed between the parties as by clause 7.1, that in force majeure events OP would be entitled to extended time without incurring liability.

iii. That the funding required for development of project was partly from sale of apartments and sale of land at other land parcels, the funding halted in 2010 due to farmer’s agitation. Due to agitation, law and order problem occurred and without State’s support OP was not in position to sell units and lands of other projects to raise finances. The orders of NGT dated 11.01.2013 restrained builders of Noida and Greater Noida from

extracting underground water for construction, further in obtaining Environmental clearance due to project being in within 10 km radius of Okhla Bird Sanctuary the project got delayed.

iv. That OP is paying delay compensation as per clause 7.2 of standard terms and conditions, if consumer still asks for refund even after agreed terms of compensation, the same shall be refunded as per clause 9.1.5 duly agreed by complainant. That the instant complaint is not maintainable before this Hon'ble Commission as the complainant filed a complaint in UP RERA and forgiven his rights to file complaint before this Commission in view of Section 71 of RERA Act, 2016. That U.P. RERAAuthority passed the order dated 29.01.2021 pursuant to an Agreement dated 22.01.2021 executed between Association of Allottees and OP directing to complete the remaining work of the project within 15 months, that the delay penalty shall be settled after balance development work of project is complete. That the order records that all connected with the development of project shall be bound by aforesaid order and therefore, the complainant is also bound by the order passed by UP RERAAuthority.

5. Rejoinder was filed by the complainant(s). Evidence by way of an Affidavit was filed by the complainant(s) and OP broadly on the lines of averments made in their respective complaint/reply. Written Synopsis was also filed by the Complainant(s) and OP. The details of the flats allotted to the Complainant(s) other relevant details of the case are given in the Table below. In the rejoinder, the complainant stated that the unit in question is for use by his family, hence he is a consumer. As per provisional allotment letter, Jaypee Infratech is the conforming party, which has not been arrayed as respondent. Allotment letter mentions M/S Jai Prakash Associates Ltd. and no dealing of any nature has been done by complainant with Jaypee Infratech Ltd. nor any agreement has been signed to this effect. The order of NGT should not come to the rescue of OP as many other commercial projects have been delivered during the same

period.

Sr No	Particulars	Case No/ Complainant	Case No/ Complainant
		CC/344/2019 Mukesh Arora	CC/1506/2018 Atulya Gupta
1	Project Name/Location etc.	“KNIGHTS COURT”Jaypee Greens, Sector 128, Noida, U.P.	“KNIGHTS COURT”Jaypee Greens, Sector 128, Noida, U.P.
2	Apartment no	KGT 4 – 1702	KGT 7- 1601
3	Size (Built up/Covered/Super Area)	2690 sqft.	2070 sqft.
4	Date of application	22.07.2010	25.02.2011
5	Date of allotment	18.11.2010	14.11.2011
6	Committed date of possession as per ABA/BBA (with Grace period, of 90 days)	November 2013	November 2014
7	Total Consideration	1,60,07,850	1,39,40,510
8	Amount Paid	1,44,34,398	1,42,34,960
9	D/o Filing CC in NCDRC	27.02.2019	28.06.2018
10	D/o Issue of Notice to OP(s)	25.03.2019	18.07.2018

11	D/o Filing Reply/Written Statement by OP1	04.07.2019	27.08.2018
12	D/o filing Rejoinder by the Complainant	09.08.2019	24.10.2018
13	D/o Filing Evidence by way of Affidavit by the Complainant	09.08.2019	24.10.2018
14	D/o filing Affidavit of admission/denial of documents filed by Complainant	09.08.2019	24.10.2018
15	D/o Filing Evidence by way of Affidavit by the OP	04.11.2019	06.02.2019
16	D/o filing Written Synopsis by the Complainant	07.12.2020	04.12.2020
17	D/o filing Written Synopsis by the OP	18.11.2021	18.11.2021

6. Heard counsels of both sides. The learned counsel for the complainant submitted that even after more than 5 years since the due date of possession, possession has not been offered. By no means unilateral extension of 6 years by OP can be held to be reasonable. The complainant is not part of group who has approached RERA. The complainant has not chosen any other

forum to agitate his grievance. The learned counsel for the OP submitted that allottees who have purchased the flat more than one
year of date of initial allotment cannot be treated at par with original allotees and have no locus standi to complain about delay in possession. OP is entitled to extension of time for completion of project in the event of force majeure events. OP is paying delay compensation to complainant as per the standard terms and conditions. Complainant has defaulted in certain payments. The prayer sought by complainant has been satisfied by RERA Authority. Complainant, as primary prayer has sought possession and same should be allowed keeping in view the larger interest of allotees, refund may not be ordered as it will disrupt the positive cash flow.

7. The OP has failed to deliver the possession of the unit to the complainant till date and therefore, the cause of action is continuing. The contention of OP that the complainant is not a consumer as he has purchased the unit for commercial purpose is rejected as no such evidence has been adduced by the OP in this regard. The plea of OP that delay was due to force majeure circumstances is not valid as even after a gap of more than 08 years from the committed date given in the ABA, possession of flat has not been given. The contention of the OP that the parties are bound by the agreement is also not acceptable. Hon'ble Supreme Court in Pioneer Urban Land & Infrastructure Ltd. Vs. Govindan Raglivan II (2019) CPJ 34 (SC) decided on 02.04.2019 held that "a term of a contract will not be final and binding if it is shown that the flat purchasers had no option to sign on the dotted line, on a contract framed by the builder …… the incorporation of one sided clause in an agreement constitute an unfair trade practice as per Section 2 (r) of the Consumer Protection Act, 1986 since it adopts unfair methods or practices for the purpose of selling flats by the builder ……, the appellant-builder cannot seek to bind the respondent with such one sided contractual terms." The plea of OP that the complaint is not maintainable as U.P. RERA has passed order is also not valid

as remedies under the Consumer Protection Act were in addition to the remedies available under special statue. Moreover, the complainant stated that he is not part of the group who has approached RERA. Hence, this Commission has the jurisdiction to entertain this complaint.

8. In the instant case, there is an inordinate delay in handing over the possession of flat by the OP. The complainants cannot be made to wait for an indefinite time and suffer financially. Hence, the complainant 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.1,44,34,398 (Rupees One crore forty four lakhs thirty four thousand three hundred and ninety eight 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(s) four weeks from receipt of this order to enable them to issue refund cheques/drafts accordingly.

(i) The OP shall refund the entire principal amount of Rs.1,42,34,960 (Rupees One crore forty two lakhs thirty four thousand nine hundred and sixty 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(s) four weeks from receipt of this order to enable them to issue refund cheques/drafts accordingly.
10. The pending IAs, if any, also stand disposed off.