

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 784 OF 2018

1. SUGANTHI MURALI

W/O SH. MURALI KITTU, R/O NO.96, FERNS MEADOWS,
BILLSHIVALE VILLAGE, NEAR BYRATHI CROSS,
BILISHIVALE
BANGALORE- 562149

.....Complainant(s)

Versus

1. M/S. LANDMARK APARTMENTS PVT. LTD.
THROUGH ITS MANAGING DIRECTOR/ AUTHORISED
SIGNATORY, LANDMARK HOUSE, PLOT NO.85,
SECTOR-44
GURGAON
HARYANA

.....Opp.Party(s)

BEFORE:

HON'BLE MR. SUBHASH CHANDRA,PRESIDING MEMBER

FOR THE COMPLAINANT : MR. SUDHIR MAHAJAN, ADVOCATE

FOR THE OPP. PARTY : MR. NARENDER HOODA, SR. ADVOCATE
WITH MR. SHAURYA LAMBA AND
MS. RASHI CHAUDHARY, ADVOCATE

Dated : 11 December 2023

ORDER

ORDER

This Complaint under Section 21 of the Consumer Protection Act, 1986 (for short “the Act”) alleges deficiency in service and unfair trade practice on the part of the Opposite Party in failing to hand over possession of the commercial space booked by the Complainant in the project promoted by Opposite Party for her personal use in order to earn her livelihood.

2. The facts, in brief, are that in June 2008, the Complainant, who is a freelance marketing professional, booked a commercial space admeasuring 1000 sq.ft. in Landmark Cyber Park in Sector 67, Gurgaon, Haryana for a sale consideration of ₹39 Lakhs from the Opposite Party. The complete down payment of ₹39 Lakhs was made by the Complainant to the Opposite Party and a Memo of Understanding (MOU) was executed on 14.02.2008 as per which the possession was to be handed over after 36 months. During this period, the Opposite Party was required to pay the Complainant an amount of ₹49/- per sq.ft. per month (Clause 4) for three years or upto the first leasing. It was also agreed between the parties that in case of non-completion of the project, the Opposite Party would reimburse the entire principal amount with bank interest @ 18% p.a. (Clause 11). The Complainant contends that possession was not handed over as promised and therefore, a Legal Notice dated 11.10.2017 was issued to the Opposite Party which was not replied to. The Complainant is before this Commission with the following prayers:

“(i) to allow the reliefs sought in the paragraphs above

(ii) to pass such further order or orders as this Hon’ble Commission deem fit and proper for granting complete relief to the Complainant

(iii) Pass such other or further orders as may be deemed fit and proper in facts and circumstances of the present case.”

3. The Complaint was resisted by way of reply by the Opposite Party who denies the averments made in the Complaint and took the preliminary objection that the Complaint was not maintainable as the Complainant was not a consumer under Section 2(1)(d) of the Act since the commercial space had been booked for investment purpose. On merits, it was stated that an offer of possession had been made vide letter dated 11.06.2015 which had not been acted upon by the Complainant. It was contended that it had paid the monthly amount @ ₹49/- per sq. ft. in installments of ₹1,31,859/- on various dates between May 2008 to May 2013 out of ₹27,74,772/- and that only ₹11,02,500/- was pending to be paid for the period August 2013 to June 2015. However, the Complainant was due to pay to the Opposite Party development charges, FAC and IFMS charges amounting to ₹8,54,900/-. The Occupation Certificate (OC) had been obtained from the Director, Town and Country Planning Department (DTCP) for the building on 26.12.2018. It was also stated that a Memo of Settlement between the parties had been signed on 27.07.2019 whereby the Opposite Party had agreed to allot another commercial space admeasuring 1350 sq.ft. in lieu of the originally allotted space of 1000 sq.ft. and that the said agreement recorded that the possession of this space was deemed to have been handed over in terms of the Settlement Agreement. Therefore, it was argued that the MOU dated 14.02.2008 stood novated by this document on 27.07.2019 and hence the claim of refund with interest @ 18% as per Clause 11 of the MOU did not arise. It was accordingly prayed that the Complaint be dismissed.

4. Parties led their evidence. Both parties filed written submissions. I have heard learned Counsel for both the parties and given careful consideration to the material on record.

5. Learned Counsel for the Complainant argued that the Memorandum of Settlement dated 27.09.2019 was not binding since the additional promised 350 sq. ft of space had not been handed over by way of a separate Sale Deed and therefore, the document was not applicable to her case as it was clearly recorded therein that the additional space would be handed over within one month. It was also argued that the Opposite Party had never offered possession of the originally allotted commercial space on 11.06.2015 for the purpose of fit-outs and that no Occupation Certificate was available with the Opposite Party on that day or till the filing of this complaint. Therefore, the offer of possession was not valid. It was admitted that the Opposite Party had paid a sum of ₹49/- per sq.ft. till May 2013 as per Clause 4 of the MOU. The prayer was limited to Clause 11 regarding seeking full refund with 18% interest since the purpose of booking the commercial space stood defeated. It was also submitted that the case was squarely covered by a judgment of this Commission in ***Gitika Sahana vs. M/s Landmark Apartments Pvt. Ltd.*** Consumer Case No.508 of 2018 decided on 08.10.2021 which was upheld by the Hon’ble Supreme Court in Civil Appeal No.4570 of 2022 vide its order dated 18.07.2022.

6. On behalf of the Opposite Party, learned Counsel admitted that the Occupation Certificate obtained from the DTCP was dated 26.12.2018 and stated that the Complainant had defaulted in not making the payment of the other charges due amounting to ₹8,54,900/-. It was also argued that the Memorandum of Settlement dated 27.07.2019 had novated the earlier MOU and hence the Consumer Complaint did not lie. It was, therefore, contended that the Complaint be disallowed.

7. From the facts of this case and the material on record it is evident that the offer of possession dated 11.06.2015 for the purpose of fit-outs cannot be considered to be a valid offer of possession since admittedly the Occupation Certificate from the Competent Authority is dated 26.12.2018. The OC, therefore, was obtained after nearly 2½ years after this 'offer'. The Memorandum of Settlement dated 27.07.2019 cannot be considered to be in novation of the MOU dated 14.02.2008 since the settlement was not complied with by the Opposite Party in view of the fact that no Sale Deed by which the previous allotment of 1000 sq. ft. was changed to another allotment of 1350 sq.ft. was brought on record by the Opposite Party. The contention of the Opposite Party in this regard, therefore, cannot be considered. In view of the above, it is manifest that the Memorandum of Understanding dated 14.02.2008 whereby the possession was promised after 36 months has not been complied with. It is also evident that this case is squarely covered by the judgment of this Commission in **Gitika Sahana** (supra) which stands upheld by Hon'ble Supreme Court. This Complaint is found to have merits and is allowed accordingly in terms of the order in **Gitika Sahana** (supra).

8. In view of the foregoing discussions, the Complaint is allowed with the following directions:

(i) The Opposite Party is directed to refund the entire amount of ₹39 Lakhs received by it from the Complainant with simple interest @ 9% p.a. from the date of deposit till repayment within two months of this order, failing which the applicable rate of interest shall be 12% p.a.;

(ii) The Opposite Party shall also pay litigation costs of ₹25,000/- to the Complainant.

9. Pending IAs, if any, stand disposed of with this order.

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SUBHASH CHANDRA
PRESIDING MEMBER