

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

CONSUMER CASE NO. 2041 OF 2016

1. JATIN AGGARWAL

H NO -931, SECTOR-8, PUNCHKULA

.....Complainant(s)

Versus

1. DLF HOMES PANCHKULA PRIVATE LIMITED

"DLF Homes private limited SCO 190-191-192 Sector 8-C
Chandigarh.

Valley Panchkula

PIN-160009

.....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. Jatin Aggarwal, In person

For the Opp.Party : Mr. Pravin Bahadur, Advocate
: Mr. Prabhat Ranjan, Advocate
: Ms. Sonia, Ms. Seema, Advocates

Dated : 05 Jan 2023

ORDER

1. Heard Mr. Jatin Aggarwal, the complainant, in person and Mr. Pravin Bahadur, Advocate, for the opposite party.
2. Jatin Aggarwal has filed above complaint, for directing the opposite party to (i) handover possession of the floor, along with delayed compensation in the form of interest @18% per annum, on the deposit of the complainant, from December, 2014 till the date of handing over possession, or in alternative refund entire amount deposited by the complainant with interest @18% per annum from the date of respective deposit till the date of actual payment, (ii) pay Rs.800000/- as compensation for mental agony and harassment, (iii) pay Rs.100000/-, as litigation cost; and (iv) any other relief which is deemed fit and proper in the facts and circumstances of the case.
3. The complainant stated that DLF Homes Panchkula Private 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 "DLF Valley" at village Bhagwanpur, Kalka, district Panchkula, Gurgaon, in the year 2011 and made wide publicity of its facilities and amenities. Sadhna Rathee (predecessor in interest of the complainant), booked an Independent Floor on 16.02.2011 and deposited booking amount of Rs.600000/-. The opposite party allotted Unit no.-VF-A-1/7-First Floor, saleable area 2560 sq.ft., basic sale price of Rs.7499519.99 and executed Independent Floor Buyer's Agreement in her favour on 25.12.2012. Sadhna Rathee transferred her right in aforesaid unit to Deepak Garg on 29.06.2013. Deepak Garg transferred his right in aforesaid unit to the complainant in December, 2013. Payment Plan was "construction link payment plan". As per demand, the complainant and his predecessors-in-interest deposited total amount of Rs.8831968/- till 12.11.2016. Clause-11(a) of the agreement provides that the construction will be completed within 24 months from the date of agreement subject to timely payment of the instalments and force majeure reasons. Although due date of possession expired but the opposite party neither offered possession nor paid delayed compensation.

The complainant vide email and letter sent through courier dated 29.08.2016, inquired about possession and demanded delayed compensation. The opposite party issued demand notice dated 09.11.2016, for Rs.993376.94. The construction was not near completion, the opposite party instead of paying delayed compensation, was demanding further amount as such the complaint was filed on 07.12.2016, for refund of the money with interest, alleging deficiency in service. Later on the complainant filed IA/8118/2021, for amending prayer clause, which was allowed on 21.07.2022 and relief for possession was also added.

4. The opposite party filed its written reply on 17.11.2017 and contested the matter. The opposite party did not dispute, booking of the floor, allotment of the floor, deposits made by the complainant and his predecessors. The opposite stated that the complainant has concealed material fact that he was not an allottee of the opposite party rather a transferee from open market in December, 2013. At the time of purchasing the floor, the complainant very well knew that the construction had been delayed. Punjab and Haryana High Court vide order dated 06.04.2010, passed in CWP No. 6230 of 2010 Tara Chand Vs. M/s. DLF Homes Panchkula (P) Ltd., directed the opposite party to maintain status quo and not to create third party interest over the project land. One Ravindra Singh filed CWP No.6155 of 2010, challenging land acquisition, which was dismissed by High Court. Ravindra Singh filed SLP (C) No.21786-21788 of 2010, in which, Supreme Court, vide order dated 19.04.2012, restrained the opposite party from raising any construction, which was dismissed vide order dated 12.12.2012. Layout plan of the project was approved on 12.12.2011 but due to interim orders as stated above, the construction could not proceed. The opposite party submitted revised layout plan on 04.03.2013, which was approved on 06.09.2013 although the opposite party consistently followed up the concerned authorities. The opposite party received approval with respect to service plans on 14.08.2014. Thereafter, the opposite party started construction with full swing and completed it and applied for issue of "occupation certificate", which was issued on 20.10.2016, then possession was offered vide letter dated 31.05.2017. The complainant, instead of depositing the balance amount of instalment as demanded vide letter dated 09.11.2016, filed this complaint concealing the material facts. The complainant and his predecessors-in-interest were rank defaulter in payment of instalment. Instalments due on (i) 16.04.2011 was paid with delay of 860 days, (ii) 14.03.2012 was paid with delay of 527 days, (iii) 10.05.2013 was paid with delay of 105 days, (iv) 04.06.2013 was paid with delay of 80 days, (v) 05.08.2013 was paid with delay of 57 days, (vi) 21.09.2013 was paid with delay on 24 days and (vii) 04.09.2017 was paid with delay of 73 days. The opposite party is wrongly claiming delayed compensation although delay was caused for force majeure reasons, which is liable to be extended under clause 11(b) of the agreement. Preliminary objections that the complainant was not a consumer, claim is not falling with pecuniary jurisdiction of this Commission and the agreement contained an arbitration clause as the complainant be relegated for arbitration, are also raised. The opposite party has not committed any deficiency in service. The complaint is liable to be dismissed.

5. The complainant filed Rejoinder Reply, Affidavit of Evidence of Jatin Aggarwal. The opposite party filed Affidavit of Evidence of Shiv Kumar. The complainant filed short synopsis of the arguments.

6. We have considered the arguments of the parties and examined the record. The preliminary issues raised by the opposite party have no substance. For excluding a home buyer from the definition of 'consumer' as defined under Consumer Protection Act, 1986, it is required to be proved that service was availed for 'commercial purpose'. Number of flats/houses owned or booked by the buyer is not decisive as held by Supreme Court in **Lilavati KirtilaL Mehta Medical Trust Vs. Unique Shanti Developers, (2020) 2 SCC 265**. In the present case the opposite party has not adduced any evidence that the floor was booked for commercial purpose. Supreme Court in **Emaar MGF Land Limited Vs. Aftab Singh, (2019) 1 CPJ 5 (SC)**, held that arbitration clause does not exclude the jurisdiction of consumer fora. Value of floor and compensation claimed in the complaint exceed Rs. one crore as such the complaint falls within pecuniary jurisdiction of this Commission.

7. Although, the complainant has concealed the fact that he had purchased the floor from open market in the complaint but in written synopsis, he had admitted that he had purchased the floor in question from Deepak Garg, in December, 2013, who had purchased it from original allottee Mrs. Sadhna Rathee. Payment Plan was "construction link payment plan". So far as timely payment of the instalments, is concerned, the opposite party has stated that the complainant and his predecessors-in-interest were rank defaulter in payment of instalment.

Instalments due on (i) 16.04.2011 was paid with delay of 860 days, (ii) 14.03.2012 was paid with delay of 527 days, (iii) 10.05.2013 was paid with delay of 105 days, (iv) 04.06.2013 was paid with delay of 80 days, (v) 05.08.2013 was paid with delay of 57 days, (vi) 21.09.2013 was paid with delay on 24 days and (vii) 04.09.2017 was paid with delay of 73 days. The opposite party issued demand notice dated 09.11.2016, for Rs.993376.94, which was not paid. These facts have not been disputed by the complainants. Although from 07.12.2016 till 21.07.2022, the complainant did not demand possession but the opposite party did not cancel the agreement nor returned his money as such, agreement still exist. Now the complainant wants possession of the floor in question as such relief for possession can be granted.

8. So far as delayed compensation is concerned, the agreement does not contain any clause for payment of delayed compensation. Clause-11(b) of the agreement provides for extension of period, for which, the construction was delayed for force majeure reasons. The opposite party stated that the construction could not be started due to interim order dated 06.04.2010, passed in CWP No. 6230 of 2010 Tara Chand Vs. M/s. DLF Homes Panchkula (P) Ltd. of Punjab and Haryana High Court and thereafter due to order of Supreme Court, dated 19.04.2012 passed in SLP (C) No.21786-21788 of 2010, which was dismissed vide order dated 12.12.2012. The opposite party submitted revised layout plan on 04.03.2013, which was approved on 06.09.2013 and service plan was approved on 14.08.2014. The complainant did not dispute these facts. For force majeure reason, the construction could not proceed till 12.12.2012 and the opposite party is entitled for extension of the period for which stay order was operative. The complainant purchased the floor in December, 2013 as such the period of 24 months has to be counted from the date of his transfer deed as held by Supreme Court in **DLF Homes Panchkula Private Ltd. Vs. D.S. Dhanda, (2020) 16 SCC 318** and **Laureate Buildwell Private Ltd. Vs. Charanjeet Singh, 2021 SCC OnLine SC 479**.

9. Supreme Court in **Wg. Camdr. Arifur Rahman Khan Vs. DLF Southern Theme Pvt. Ltd. (2020) 16 SCC 512**, held that in case of delay in handing over possession, the home buyer is entitled for compensation in the form of interest @6% per annum on his deposit. The complainant would be entitled to delayed compensation from January, 2016 till the offer of possession on 31.05.2017.

ORDER

In view of the aforesaid discussions, the complaint is partly allowed. The opposite party is directed to issue a fresh demand letter in terms of agreement, adjusting delayed compensation in the form of interest @6% per annum on the deposit of the complainant from January, 2016 till 31.05.2017. The opposite party shall charge interest after 01.06.2017 @9% per annum on the amount to be paid by the complainant. The opposite party will give six weeks' time to the complainant to deposit the amount. On deposit of the amount, the opposite party shall execute conveyance deed in favour of the complainant and handover possession of the floor, complete in all respect as per specification without any further delay.

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RAM SURAT RAM MAURYA
PRESIDING MEMBER

DR. INDER JIT SINGH
MEMBER